

 Yukon Workers' Compensation Health and Safety Board	Part:	Earnings Loss		
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END OF LOSS OF EARNINGS BENEFITS

GENERAL INFORMATION

Loss of earnings benefits compensate an injured worker for earnings the worker has lost because of a work-related injury. This policy outlines circumstances when these benefits end.

PURPOSE

This policy provides direction to Yukon Workers' Compensation Health and Safety Board (YWCHSB) decision-makers on when to end a worker's loss of earnings benefits.

Despite the end of loss of earnings benefits, a worker may still be eligible for other workers' compensation benefits, such as health care services or permanent impairment awards.

DEFINITIONS

1. **Loss of earnings benefits:** benefits paid under section 22 of the *Workers' Compensation Act* S.Y. 2008 (the "Act") to an injured worker to compensate the worker for earnings (defined in section 3 of the Act) lost because of a work-related injury.
2. **Maximum medical improvement:** the point at which an injured worker has recovered to the best possible condition, has stabilized at that condition and is unlikely to significantly improve.
3. **Old Age Security benefits:** benefits available under Part 1 of the *Old Age Security Act*, R.S., 1985, c.0-9. These include the Old Age Security pension, the Guaranteed Income Supplement and the Allowance.
4. **Recurrence of injury:** a situation where an injured worker experiences an unexpected return or worsening of symptoms associated with a work-related injury. It meets the criteria in YWCHSB policy EN-16, "Recurrence of Injury."
5. **Just cause:** a legal concept referring to an employer's legitimate reasons for dismissing a worker. Examples of what may constitute just cause include but are

not limited to: theft, fraud, dishonesty, assault or harassment of co-workers, breach of duty, serious or chronic wilful misconduct, conflict of interest especially if it involves a loss to the employer, serious or repetitive breach of an employer's rules or practices, serious or repetitive undermining of corporate culture, chronic absenteeism or tardiness, poor performance, or failing to perform duties of the employment contract.

PREVENTION

Preventing workplace injuries is the responsibility of everyone in the workplace. YWCHSB encourages employers, workers, health care providers and other parties to work together to prevent such injuries. Under section 14 of the *Act*, every worker must take all reasonable steps to reduce or eliminate impairments by co-operating in health care treatment and evaluations required by YWCHSB. Under section 40 of the *Act*, when an injury occurs, workers, employers and YWCHSB must co-operate to return the worker to safe, suitable and available work as soon as functionally possible. This helps prevent disability, ultimately leading to lower assessment rates.

YWCHSB also administers the *Occupational Health and Safety Act and Regulations*. All workplace parties are legally obligated to know how this legislation applies to their work.

POLICY STATEMENT

1. A worker's loss of earnings benefits end in the following circumstances:

a) The Worker Recovers from the Work-related Injury

YWCHSB determines the worker has recovered from the work-related injury, regardless of whether the worker has returned to work.

b) The Worker Returns to Work

The worker has returned to work, is no longer experiencing loss of earnings and the employer is paying the worker his/her full pre-injury earnings. See YWCHSB policy, RE-01, "Return to Work -- Overview".

c) The Worker Reaches Pre-injury Earnings Capacity

The worker has reached maximum medical improvement and YWCHSB has determined the worker is capable of earning his/her pre-injury earnings under YWCHSB policy, RE-13, "Determining Suitable Employment and Earnings Capacity."

d) The Worker is Eligible for Old Age Security Benefits

The worker has reached the age at which he/she is entitled to apply for Old Age Security benefits, in accordance with subsection 4(2) of the *Act*.

However, a worker may still be entitled to loss of earnings benefits if he/she is, on the day of injury, at least the age, less two years, that a worker becomes entitled to apply for Old Age Security benefits. In that case, the worker is entitled

to loss of earnings benefits for the same work-related injury for up to 24 months, in accordance with subsection 4(3) of the *Act*.

For example, if the age of eligibility for Old Age Security Benefits is 65, any worker aged 63 or older could be entitled to loss of earnings benefits for up to 24 months for each work-related injury.

e) The Worker Retires

YWCHSB may determine a worker has retired if evidence supports, on the balance of probabilities (see YWCHSB policy, EN-02, “Merits and Justice of the Case”), the conclusion the worker has voluntarily retired from the workforce.

f) The Worker is Incarcerated

The worker has been incarcerated in a penal facility, as stated in subsection 33(1) of the *Act*.

In such cases, if the worker is incarcerated on a charge but not convicted (for example, the worker is in custody awaiting trial), YWCHSB may divert the loss of earnings benefits, that would have been payable during the incarceration period, to the worker’s dependents.

If the worker is convicted of a charge for which he/she has been incarcerated, no loss of earnings benefits shall be diverted after the date of the conviction.

When a worker is released from a penal facility, YWCHSB may resume paying loss of earnings benefits to the worker, if those benefits are not ended for other reasons outlined in this policy.

g) The Worker Dies

While loss of earnings benefits end for the worker when he/she dies, other compensation benefits may be payable to the spouse and/or dependents as a result of the worker’s work-related injury, as outlined in sections 43 to 49 of the *Act*.

h) The Worker Commits Fraud

YWCHSB has determined the worker has received benefits by providing false information, according to section 111 of the *Act* and YWCHSB policy, GN-05, “Fraud”. In addition, the worker may be required to repay benefits to YWCHSB in accordance with section 123 of the *Act* and YWCHSB policy, EL-04, “Recovery of Overpaid Compensation”. This is in addition to penalties that may be levied under section 111 of the *Act*.

2. A worker’s loss of earnings benefits *may* end in the following circumstances:

a) The Worker Fails to Mitigate or to Co-operate

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YWCHSB has determined the worker has failed to mitigate his/her injury or loss according to section 14 of the *Act*. Benefits may be terminated in accordance with subsection 14(2) of the *Act* and YWCHSB policy, RE-03, "Mitigation of Loss".

Similarly, a worker's loss of earnings benefits may end when YWCHSB determines the worker has failed to co-operate in return to work according to subsection 40(2) of the *Act*. Benefits may be terminated in accordance with subsection 40(6) of the *Act* and YWCHSB policy, RE-02-4, "Duty to Co-operate, Part 4 of 4: Penalties for Non-co-operation".

b) The Worker Quits his/her Pre-injury Job or Voluntarily Withdraws from Workforce

The worker has resigned from his/her job with the pre-injury employer. YWCHSB may determine a worker has quit if evidence supports, on the balance of probabilities (see YWCHSB policy, EN-02, "Merits and Justice of the Case"), the conclusion the worker has voluntarily resigned from his/her pre-injury employment or voluntarily withdrawn from the workforce.

To decide if loss of earnings benefits should be ended, YWCHSB will investigate to determine if by quitting, the worker or employer is failing to co-operate in return to work or the worker is failing to mitigate his/her loss. YWCHSB will apply sections of the *Act* and policies listed above under section 2(a) of this policy. If YWCHSB determines the worker is failing to co-operate or mitigate, YWCHSB may end loss of earnings benefits.

YWCHSB will also consider the main cause of the worker's loss of earnings – whether it is the worker's act of quitting or the work-related injury. If the main cause is the worker's act of quitting, YWCHSB may end loss of earnings benefits.

When YWCHSB finds the possibilities evenly balanced, YWCHSB will give the benefit of the doubt to the worker, in accordance with section 19 of the *Act*.

c) The Worker is Suspended or Dismissed for Just Cause from his/her Pre-injury Job

YWCHSB may determine a worker has been suspended or dismissed for just cause if evidence supports, on the balance of probabilities (see YWCHSB policy, EN-02, "Merits and Justice of the Case"), this conclusion.

To decide if loss of earnings benefits should be ended, YWCHSB will investigate to determine if by being dismissed or suspended, the worker or employer has failed to co-operate in return to work or the worker has failed to mitigate his/her loss. YWCHSB will apply sections of the *Act* and policies listed under section 2.a) of this policy. If YWCHSB determines the worker has failed to co-operate or mitigate, YWCHSB may end loss of earnings benefits.

YWCHSB will also consider the main cause of the worker's loss of earnings – whether it is the dismissal or suspension of the worker or the work-related injury. For example, does the evidence show, on the balance of probabilities, that the worker would have been dismissed or suspended regardless of the injury? If so, YWCHSB may end loss of earnings benefits. Or, does the evidence show, on the balance of probabilities, that the worker was dismissed or suspended because of the injury? If so, YWCHSB may continue loss of earnings benefits and may penalize the employer.

When YWCHSB finds the possibilities evenly balanced, YWCHSB will give the benefit of the doubt to the worker, in accordance with section 19 of the *Act*.

d) The Worker is Released by the Employer While on Probation

YWCHSB will investigate to determine the evidence supports, on the balance of probabilities (see YWCHSB policy, EN-02, “Merits and Justice of the Case”) a worker has been released, while on probation, from the pre-injury employer.

To decide if loss of earnings benefits should be ended, YWCHSB will investigate to determine if the worker or employer has failed to co-operate in return to work or the worker has failed to mitigate his/her loss. YWCHSB will apply sections of the *Act* and policies listed above under section 2(a) of this policy. If YWCHSB determines the worker has failed to co-operate or mitigate, YWCHSB may end loss of earnings benefits. If YWCHSB determines the employer has failed to co-operate, YWCHSB may continue the worker's loss of earnings benefits and may penalize the employer.

YWCHSB will also consider the main cause of the worker's loss of earnings – whether it is the release while on probation or the work-related injury. For example, does the evidence show, on the balance of probabilities, that the worker would have been released regardless of the injury? If so, YWCHSB may end loss of earnings benefits. Or, does the evidence show, on the balance of probabilities, that the worker was released because of the injury? If so, YWCHSB may continue loss of earnings benefits and may penalize the employer.

When YWCHSB finds the possibilities evenly balanced, YWCHSB will give the benefit of the doubt to the worker, in accordance with section 19 of the *Act*.

3. A worker's loss of earnings benefits may continue in the following circumstances, as long as the worker is continuing to mitigate his/her loss and has not yet reached maximum medical improvement.

a) The Worker is Dismissed or Suspended with No Just Cause

If the worker has been suspended or dismissed from his/her pre-injury job with no just cause, the worker is still disabled from working at pre-injury capacity and is doing everything reasonable to mitigate his/her loss, YWCHSB may continue loss of earnings benefits. YWCHSB will also investigate to determine if the worker or

employer has failed to co-operate in returning the worker to work under section 40 of the *Act*. Such a failure for the employer could result in a penalty, in accordance with section 40(4) of the *Act* and YWCHSB policy RE-02-4, “Duty to Co-operate, Part 4 of 4: Penalties for Non-co-operation”.

b) The Worker is Laid Off or his/her Job/Contract Ends as Planned

If the worker has been laid off from his/her pre-injury job or the job or contract has ended as planned, the worker is still disabled from working at pre-injury capacity and is doing everything reasonable to mitigate his/her loss, YWCHSB may continue loss of earnings benefits, taking into consideration the worker’s pattern of employment.

If the worker is a student and his/her summer job has ended and the worker has returned to studies, YWCHSB may continue loss of earnings benefits after the end of the summer job unless the worker is functionally able to work at available jobs during his/her studies.

ROLES AND RESPONSIBILITIES

Workers

Workers are responsible for providing YWCHSB with full, timely and accurate information on any matter related to their claims, including any change in circumstances, including if they have resigned, retired or been suspended, dismissed or laid off. These responsibilities are outlined in subsections 14(1) (d) and 14(1) (e) of the *Act*, this policy and YWCHSB policies, RE-03, “Mitigation of Loss” and RE-02-2, “Duty to Co-operate, Part 2 of 4: Roles and Responsibilities”.

Employers

Employers are responsible for providing YWCHSB with full, timely and accurate information concerning a worker’s employment information, earnings, injury and return to work, including if the employer has suspended, dismissed or laid off the worker or the worker has resigned or retired, in accordance with sections 10, 40 and 83 of the *Act* and YWCHSB policy, RE-02-2, “Duty to Co-operate, Part 2 of 4: Roles and Responsibilities”.

YWCHSB

YWCHSB decision-makers are responsible for notifying a worker, dependents of a deceased worker, or the worker’s employer of any decision affecting the claim for compensation as soon as is practicable, in accordance with section 16 of the *Act*.

APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of YWCHSB; to the Workers’ Compensation Appeal Tribunal; and to employers and workers covered by the *Act*.

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EXCEPTIONAL CIRCUMSTANCES

When the circumstances of a case are such that this policy cannot be applied or doing so would bring an unfair or unintended result, YWCHSB will decide the case based on YWCHSB policy, EN-02, "Merits and Justice of the Case". Such a decision will be for that case only and will not be precedent setting.

APPEALS

Workers or employers may request a hearing officer to review a YWCHSB decision made under this policy, as provided by subsection 53(1) of the Act. They may also appeal YWCHSB decisions to the Workers' Compensation Appeal Tribunal, under subsections 14(3) and 54(1) of the Act. Requests for review and notices of appeal must be filed within 24 months of the date of the decision being reviewed or appealed, in accordance with section 52 of the Act.

ACT REFERENCES

Sections 3, 4, 10, 14, 16, 19, 22, 33, 40, 43, 44, 45, 46, 47, 48, 49, 52, 53, 54, 83, 111 and 123

Old Age Security Act, R.S., 1985, c.0-9

POLICY REFERENCES

EL-04, "Recovery of Overpaid Compensation"

EN-02, "Merits and Justice of the Case"

RE-01, "Return to Work -- Overview"

RE-02-2, "Duty to Co-operate, Part 2 of 4: Roles and Responsibilities"

RE-02-4, "Duty to Co-operate, Part 4 of 4: Penalties for Non-co-operation"

RE-03, "Mitigation of Loss"

RE-13, "Determining Suitable Employment and Earnings Capacity"

GN-05, "Fraud"

HISTORY

EL-06, "End of Loss of Earnings Benefits," effective July 1, 2012,
revoked January 1, 2016

EL-06, "End of Loss of Earnings Benefits," effective July 1, 2008,
revoked July 1, 2012

CL-45, "Loss of Earnings for a Worker age 63 or Over," effective January 1, 1993,
revoked July 1, 2008.