 Yukon Workers' Compensation Health and Safety Board	<b>Part:</b>	<b>Return to Work and Rehabilitation</b>	
	<b>Board Approval:</b>		<b>Effective Date:</b> <b>July 1, 2012</b>
	<b>Number:</b>	<b>RE-13</b>	<b>Last Revised:</b>
	<b>Board Order:</b>		<b>Review Date:</b>

**DETERMINING SUITABLE EMPLOYMENT & EARNINGS CAPACITY LOSS**

*When referencing any of the return to work policies (RE-01 to RE-13), it is important to recognize the responsibilities of the employer and worker within the context of the complete return to work process. Therefore, the return to work model must be considered in its entirety and not only the specific guidelines under an individual policy.*

**GENERAL INFORMATION**

The injured worker, the employer, the Yukon Workers' Compensation Health & Safety Board (YWCHSB) and health care providers share responsibility for assisting the worker in mitigating the effects of a work-related injury. This is typically achieved through the recovery, rehabilitation and return to work process, by focusing on the worker's functional abilities.

In some cases, a worker will be unable to fully overcome the effects of a work-related injury and will continue to have a loss of earnings capacity. This worker is entitled to compensation for the difference between their pre-injury earnings, as determined under YWCHSB policy EL-01, "Loss of Earnings Benefits", and the worker's estimated earnings capacity once rehabilitation is completed.

These compensation benefits are not fixed or permanent. They are reviewed regularly, taking into account factors including, but not limited to, changes in the worker's functional abilities, changes in his or her capacity to earn and changes in the labour market.

**PURPOSE**

This policy outlines how YWCHSB will estimate a worker's loss of earning capacity, to ensure that a fair, reasonable and predictable approach is followed.

Together with the series of YWCHSB policies on return to work, this policy ensures a collaborative and client-centered approach that assists a worker to recover from his or her injury and to return to pre-injury work or to employability in another suitable occupation.

Appendix A outlines the key steps in determining a suitable occupation and earnings capacity loss.

## DEFINITIONS

1. **Functional Abilities:** The injured worker's limitations and abilities (what the worker can and cannot do) with respect to a work-related injury.
2. **Labour Market Review:** The process in which YWCHSB gathers information on the current job duties, required skills and levels of earnings of occupations.

## PREVENTION

Preventing workplace injuries is the responsibility of everyone in the workplace. When injuries do occur, it is important for workers and employers to minimize the impacts by:

- (1) When possible, keeping the worker at work in safe and productive work or
- (2) Returning the worker to safe and productive work as soon as it is functionally appropriate for the worker to do so.

Prevention of recurrences and further injuries once injured workers have returned to work is of utmost importance.

## POLICY STATEMENT

### 1. Estimating Loss of Earning Capacity

Estimating a worker's loss of earning capacity due to a work-related injury requires:

- a) determination of the worker's pre-injury earnings and subtraction of 50 per cent (50%) of the CPP/QPP disability benefit, if the worker is receiving one, in accordance with YWCSHB policy EL-01, "Loss of Earnings Benefits";
- b) identification of a suitable occupation for the worker, based on his or her functional abilities and usually a vocational assessment;

- c) estimation of the earnings that the worker could earn in that suitable occupation; and
- d) calculation of the difference between a) and c).

An illustration of estimated earnings loss calculations is provided in Appendix B.

## **2. Identification of a Suitable Occupation**

The worker's suitable occupation will generally be identified through the vocational assessment process, as per YWCHSB policy RE-10, "Vocational Rehabilitation". This is in cases where the worker is unable to fully recover from a work-related injury and also unable to return to his or her pre-injury job.

In all cases, except where the worker is considered capable of earning minimum wage, the occupation that the worker has chosen (or a default option, if applicable) must meet the definition of "suitable occupation" set out in YWCHSB policy RE-02-1, "Duty to Co-operate Part 1 of 4: Early and Safe Return to Work Plans."

The worker's ability to remain employed in Yukon, as well as the worker's employment pattern (full-time, part-time, seasonal), are factors considered in the identification of a suitable occupation.

## **3. Earnings for the Suitable Occupation**

YWCHSB will rely on current (i.e. not more than three years old) published labour market information or, in the absence of published labour market information, on a labour market survey of at least three suitable employers when determining estimated earnings for the suitable occupation.

Wage scales applied to a suitable occupation will be based on the greater of Yukon wage scales for the occupation or the wage scale in the jurisdiction where the worker resides. Where a Yukon wage scale is unavailable, Canadian wage scales will be used.

Once YWCHSB has identified an appropriate wage scale, an appropriate earnings level on the scale must be determined.

Where a worker has the physical functional ability to work at least three hours a day, that worker will be considered capable of earning at least the Yukon minimum wage (in effect at the time the policy is applied and updated as the Yukon minimum wage changes, under regulations of the *Employment Standards Act, R.S.Y. 2002*).

a) Acquiring a New skill – Estimating Earnings

The estimated earnings level on the wage scale for workers whose suitable occupation involves acquiring a completely new skill set (not involving transferable skills) or entering a new occupation in which they have no previous experience will be based on the average of the base entry wage.

b) Transferable Skills Development – Estimating Earnings

For workers whose return to work plan is designed to improve or augment existing or transferable skills for the suitable occupation, estimated earnings will be the mid-point on the scale.

c) Actual Earnings in the Suitable Occupation

If the worker has actual earnings in the suitable occupation, YWCHSB will use those earnings in estimating the worker's loss of earning capacity if:

- i) the actual wages are higher than the average entry wage or average wages as appropriate under a) or b) above; or
- ii) the actual wages are within 90 per cent (90%) of the average entry wages or average wages, as appropriate under a) or b) above.

#### **4. Application of YWCHSB Policy RE-12, "Employment Readiness"**

If, as part of the worker's return to work plan, YWCHSB is providing the worker with an employment readiness program it will be administered under YWCHSB policy EN-12, "Employment Readiness".

#### **5. Annual Review**

In partnership with the workers, YWCHSB annually reviews claims involving compensation to determine loss of earning capacity.

The review considers:

- i) any change in the worker's functional abilities;
- ii) any change in the worker's earnings from employment; and
- iii) whether the worker has tried to reduce the financial and physical impacts of the work-related injury, according to requirements of section 14 of the *Workers' Compensation Act S.Y. 2008* (the *Act*) and YWCHSB policy RE-03, "Mitigation of Loss."

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This includes, but is not limited to, the worker:

- a. performing or searching for work that fits with his or her functional abilities;
- b. getting appropriate health care treatment and following instructions of health care providers;
- c. trying to maintain functional abilities for as long as possible; and
- d. keeping YWCHSB informed of changes in functional abilities or employment earnings.

### *Indexing of Benefits*

The review includes the annual indexing of both the pre-injury earnings and the earnings YWCHSB considers the worker capable of earning in a suitable occupation. The index for both the pre-injury earnings and the earnings YWCHSB determines the worker capable of earning in a suitable occupation is equal to the same percentage determined under section 35 of the *Act*.

### *Labour Market Review*

From time to time, YWCHSB will conduct a labour market review to determine current levels of earnings for a suitable occupation for the worker. YWCHSB will give notice to the worker in the year preceding the labour market review year if it decides to conduct such a review. In no case does YWCHSB conduct a labour market review two years in a row.

In a year when there is a labour market review, YWCHSB may adjust or remove the indexing of the suitable occupation applied that same year.

Changes made to the worker's estimated loss of earning capacity will be communicated to the worker verbally, where possible, and in writing. These changes will also be documented on the claim file.

### *Applying for a review*

Workers under this policy who do not incur a loss of earnings as a result of their work-related injury can apply for a review should their functional abilities change due to the work-related injury.

## **ROLES AND RESPONSIBILITIES**

### **Workers**

Workers have an ongoing obligation to inform YWCHSB of any changes in their circumstances that may affect the estimation of their loss of earnings capacity and to continue to take all reasonable steps to reduce the physical and financial impact of their work-related injury, in accordance with section 14 of the *Act*. They are also responsible for assisting the employer in identifying available, suitable employment and for accepting that suitable employment, in accordance with section 40 of the *Act*. Workers must also fully participate in the vocational assessment process as well as in any vocational rehabilitation plan that may result from the assessment.

### **Employers**

Employers are responsible for providing suitable employment that is available and consistent with the worker's functional abilities and for providing YWCHSB with information concerning the worker's return to work, in accordance with section 40 of the *Act*.

### **YWCHSB**

YWCHSB is responsible for estimating the worker's loss of earnings capacity and for explaining the process to the injured worker -- including how it fits within the return to work and rehabilitation process -- as early as is appropriate. The primary focus is on the worker's recovery and return to work.

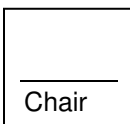
YWCHSB is also responsible for ensuring that the worker understands the process of estimating his or her post-injury earning capacity and for ensuring the worker is advised of the outcome and the implications for his or her benefits.

## **APPLICATION**

This policy applies to the Board of Directors, President/CEO and staff of YWCHSB; and to the Workers' Compensation Appeal Tribunal. It also applies to all workers and employers regardless of the date of injury.

## **EXCEPTIONAL CIRCUMSTANCES**

In cases where the individual circumstances of a case are such that the provisions of this policy cannot be applied, or to do so would lead to unfair or unintended results, YWCHSB will decide the case based on YWCHSB policy EN-02, "Merits and Justice of the Case". Such a decision will be considered for that specific case only and will not be precedent setting.

  
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## **APPEALS**

Decisions made by YWCHSB under this policy can be appealed directly in writing to the hearing officer of YWCHSB in accordance with subsection 53(1) of the *Act*, or any decision made under subsection 14(2) of the *Act* may be appealed directly to the Workers' Compensation Appeal Tribunal (WCAT).

Notice of the appeal must be filed within 24 months of the date of the decision by YWCHSB, in accordance with section 52 of the *Act*.

## **LEGISLATIVE REFERENCES**

*Employment Standards Act*, R.S.Y. 2002

*Workers' Compensation Act*, S.Y. 2008, sections 14, 35, 40, 52 and 53

## **POLICY REFERENCES**

EL-01, "Loss of Earnings Benefits"

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

RE-02-1, "Duty to Co-operate Part 1 of 4: Early and Safe Return to Work Plans"

RE-03, "Mitigation of Loss"

RE-10, "Vocational Rehabilitation"

RE-12, "Employment Readiness"

## **HISTORY**

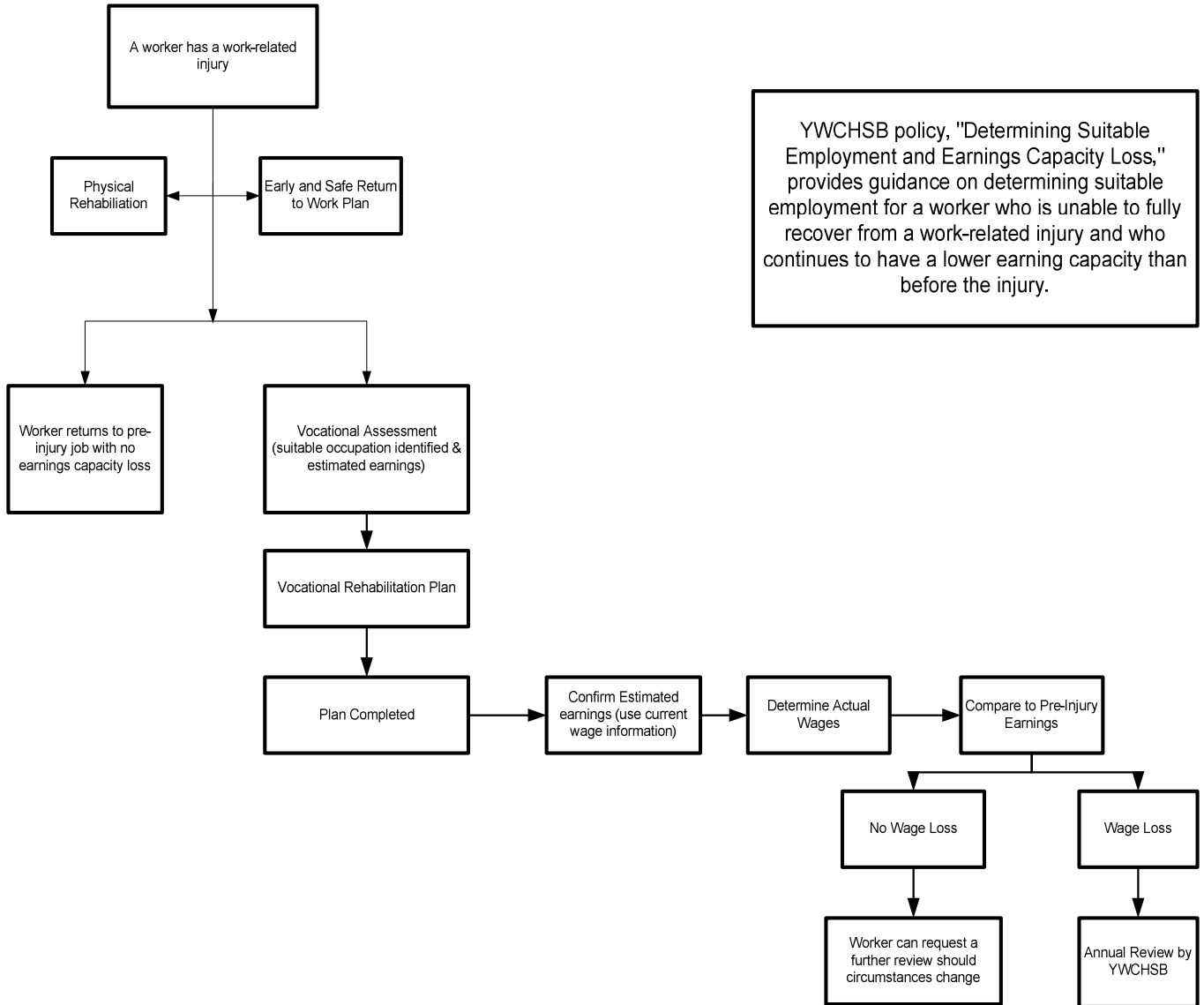
RE-13, "Determining Suitable Employment & Earnings Capacity Loss," effective July 1, 2008, revoked July 1, 2012.

CS-08, "Determining Suitable Employment and Earnings Capacity Loss", effective January 1, 2007, revoked July 1, 2008.

CS-08, "Fitness for Employment, Suitable Occupation, Deeming," effective November 9, 1994, revoked January 1, 2007.

Determining Suitable Employment & Earnings Capacity Loss

**APPENDIX A**



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**APPENDIX B**

Wage loss benefits are paid to a worker when a compensable injury results in a loss of earnings ability. The difference between the worker's average earnings before the injury (minus 50 percent (50%) of the worker's CPP/QPP disability benefit if he/she is receiving one) and what the worker is determined capable of earning after the injury determines the amount of wage loss benefits paid. For example<sup>1</sup>:

<b>Example 1 (Worker who is also receiving CPP/QPP disability benefits)</b>	<b>Year One</b>	<b>Year Two (4% indexing)</b>
Earnings before disability	\$ 30,000	\$ 31,200
Minus 50% of CPP/QPP disability benefit if worker is receiving one (e.g. \$12,000 per year)	- (50% x \$12,000)	- (50% x \$12,300 (if CPP indexed at 2.5 %))
Earnings with CPP/QPP disability off-set	24,000	25,050
Post-injury earnings	20,000	20,800
Difference	4,000	4,250
X 75%		
	\$ 3,000	\$ 3,188

<b>Example 2 (Seasonal Worker)</b>	<b>Year One</b>	<b>Year Two (4% indexing)</b>
Earnings before disability (Long-term rate – using EL-01)	\$ 50,000	\$ 52,000
Post-injury earnings	20,000	20,800
Difference (less than MWR)	30,000	31,200
X 75%		
	\$22,500	\$ 23,400

<b>Example 3 (Earning Over MWR)</b>	<b>Year One</b>	<b>Year Two (4% indexing)</b>
Earnings before disability	\$150,000	\$156,000
Post-injury earnings	20,000	20,800
Difference (over MWR)	130,000	135,200
MWR	\$ 69,500	\$ 71,000 (est.)
Post – injury earnings	20,000	20,800
Paid only to MWR	49,500	50,200
X 75%		
	\$ 37,125	\$ 37,650

<sup>1</sup> These examples are intended for illustration purposes only. They represent hypothetical CPP/QPP benefit levels and do not take into account factors such as average weekly wage calculations, and review adjustments, etc.

