

Chapter: Benefits

Legislative authority: sections 102, 103

Prevention statement

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act (the 'Act') establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy outlines how the board determines when a worker no longer has a loss of earning capacity and may not be entitled to further loss of earnings benefits.

Definitions

board means the Workers' Safety and Compensation Board

just cause means 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

loss of earnings benefits means benefits paid under section 102 of the Act to an injured worker to compensate the worker for a loss of earning capacity as a result of a work-related injury

maximum medical improvement means 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

Old Age Security benefits means the benefits available under Part 1 of the *Old Age Security Act*, R.S.C, 1985, c.0-9

Policy statement

1. General

When a worker has a loss of earning capacity because of a work-related injury, the board pays loss of earnings benefits to a worker in accordance with policy 3.1 Loss of Earnings Benefits.

Loss of earnings benefits are payable to an injured worker who has a loss of earning capacity until the earlier of

- a. the date the loss of earning capacity ends; and
- b. the date the worker reaches the age that they are eligible to apply for benefits under Part 1 of the *Old Age Security Act (Canada)*.

Despite (a) and (b), when a worker is at least the age determined under (b) less four years, at the time of the work-related injury, the board may pay loss of earnings benefits to the worker for up to 48 months from the date of the work-related injury.

2. Circumstances which may result in the end of loss of earnings benefits

The board determines when a worker no longer has a loss of earning capacity and is no longer entitled to loss of earnings benefits.

Circumstances that may result in suspension or termination or end of a worker's loss of earnings benefits include, but are not limited to the following:

- a. the worker recovers from the work-related injury

The board determines the worker has recovered from the work-related injury, and no longer has a loss of earning capacity, regardless of whether the worker has returned to work.

- b. the worker returns to work

The worker has returned to work, and the board determines that the worker no longer has a loss of earning capacity.

- c. the worker no longer has a loss of earnings capacity

The worker has reached maximum medical improvement and the board has determined the worker is capable of earning their earnings they made at the time of the work-related injury under policy 4.17 Determining Suitable Employment and Loss of Earnings Capacity.

- d. the worker is eligible for benefits under the Old Age Security Act

The worker reaches the age when they are eligible to apply for benefits under Part 1 of the Old Age Security Act (Canada).

However, a worker may still be entitled to loss of earnings benefits if they are, on the date of the work-related injury, at least the age that they are eligible to apply for benefits under Part 1 of the Old Age Security Act (Canada) or older. In those circumstances, the board may pay loss of earnings benefits to the worker for up to 48 months after the date of the work-related injury.

For example, if the age of eligibility for Old Age Security Benefits is 65, any worker aged 61 or older could be entitled to loss of earnings benefits for up to 48 months.

- e. the worker retires

The board determines that a worker has voluntarily retired from the workforce, based on the evidence on a balance of probabilities.

- f. the worker is incarcerated

A worker is incarcerated in a correctional facility, but the board may pay the loss of earnings benefits that would otherwise have been payable to them for that period to their spouse or any of their dependants as the board considers appropriate.

- g. the worker dies

While loss of earnings benefits end when a worker dies, other compensation benefits may be payable to their spouse or dependents of a deceased worker if the death is work-related.

- h. the worker commits fraud

The board determines the worker has received benefits by providing false or misleading information. In addition, the worker may be required to repay benefits to the board.

- i. the worker fails to mitigate or to co-operate

The board determines that a worker has failed to mitigate their injury or loss of earning capacity as required under the Act. Similarly, a worker's loss of earnings benefits may end if the board determines the worker has failed to co-operate in their return to work.

- j. the worker quits their job or voluntarily withdraws from workforce

The board determines that a worker has resigned from their job. The board determines whether a worker has quit if evidence supports, on the balance of probabilities, the conclusion the worker has voluntarily resigned from their job or voluntarily withdrawn from the workforce.

To decide if loss of earnings benefits should be ended, the board 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 their loss.

The board 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, the board may end loss of earnings benefits.

When the board finds the possibilities evenly balanced, the board will give the benefit of the doubt to the worker.

- k. the worker is suspended or dismissed for just cause from their job

The board determines a worker has been suspended or dismissed for just cause if evidence supports, on the balance of probabilities, this conclusion

To decide if loss of earnings benefits should be ended, the board 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 their loss. If the board determines the worker has failed to co-operate or mitigate, the board may end loss of earnings benefits.

The board 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, the board 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, the board may continue loss of earnings benefits and may penalize the employer.

When the board finds the possibilities evenly balanced, the board will give the benefit of the doubt to the worker.

- l. the worker released while on probation

The board determines, based on the evidence, on a balance of probabilities, that a worker has been released, while on probation, from their employment.

To decide if loss of earnings benefits should be ended, the board 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 their loss of earning capacity. If the board determines the worker has failed to co-operate or mitigate, the board may end loss of earnings benefits. If the board determines the employer has failed to co-operate, the board may continue the worker's loss of earnings benefits and may penalize the employer.

The board will also consider the main cause of the worker's loss of earnings capacity—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, the board 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, the board may continue loss of earnings benefits and may penalize the employer.

When the board finds the possibilities evenly balanced, the board will give the benefit of the doubt to the worker.

3. Circumstances where loss of earnings benefits may continue

A worker's loss of earnings benefits may continue in the following circumstances, as long as the worker is continuing to mitigate their loss and still has a loss of earning capacity because of the work-related injury.

3.1 Worker dismissed or suspended without just cause

If the worker has been suspended or dismissed from their job without just cause, the worker has a loss of earning capacity because of the work-related injury and is doing everything reasonable to mitigate their loss, the board may continue loss of earnings benefits. The board will also investigate to determine if the worker or employer has failed to co-operate in returning the worker to work. Such a failure for the employer could result in enforcement measures being taken.

3.2 Worker laid off or job/contract ends as planned

If the worker has been laid off from their job or the job or contract has ended as planned, but the worker still has a loss of earning capacity because of the work-related injury and is doing everything reasonable to mitigate their loss, the board may continue loss of earnings benefits, taking into consideration the worker's pattern of employment.

If the worker is a student and their summer job has ended and the worker has returned to studies, the board 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 their studies.

History

- EL-06 End of Loss of Earnings Benefits, effective January 1, 2016, revoked July 1, 2022
- 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