



# Modernization of the *Workers' Compensation Act and Occupational Health and Safety Act*

## Workers over 63

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### Background

Under section 4(2) of the Workers' Compensation Act, loss of earnings benefits are payable to a worker for their work-related injury unless the worker has reached the age at which they are entitled to receive benefits under the Old Age Security Act. This age is currently set at 65. The Workers' Compensation Act is tied to this federal legislation so that it remains current and takes into account an aging population where workers are working longer. If the age of retirement under the Old Age Security Act changes, so does the retirement age under the Workers' Compensation Act without requirement for an amendment.

The Workers' Compensation Act allows, however, Yukon Workers' Compensation Health and Safety Board (YWCHSB) to provide loss of earnings benefits to an injured worker for up to 24 months when they are 63 or older at the time of injury. For example, if a worker who is 67 years old is injured at work, they may be entitled to up to 24 months of loss of earnings benefits. Injured workers who are over 63 years of age at the time of injury are eligible to receive medical benefits until they have recovered from their work-related injury, regardless of whether or not they are entitled to loss of earnings benefits.

During the Chair's and President's legislative appearance in November 2019, concerns were raised that some workers past the age of 65 who are unable to work as a result of their work-related injury, would be cut off from benefits after 24 months, despite their need to work longer. It was suggested that in 2019, seniors aged 65 and older may be working out of necessity, as the cost of living exceeds their retirement benefits. Capping injured workers benefits at two years may, therefore, be unfair and not based on reality.

The limit on loss of earnings benefits for retirement-aged workers has been challenged in some jurisdictions. One example is *Gouthro v. Workplace Safety and Insurance Appeals Tribunal 2014 ONSC 7289*, where an injured worker argued the age limit in Ontario's legislation (which is the same as Yukon's) was

unconstitutional, discriminating on the basis of age. It was found in an Ontario court, however, that although the legislation creates a distinction based on age, it did not create a disadvantage based on a stereotypical attribute, and therefore, did not violate the Canadian Charter of Rights and Freedoms as claimed.

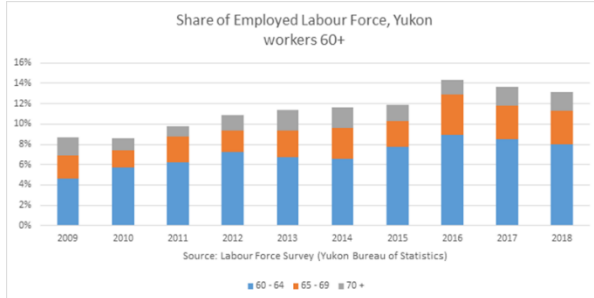
Legislation in New Brunswick, Newfoundland, Nova Scotia, Ontario, PEI and Saskatchewan also have provisions that provide loss of earnings benefits, not exceeding 24 months, to workers age 63 or older at the time of injury. British Columbia's provisions are generally the same, however, BC will continue to provide loss of earnings benefits beyond 24 months if a later date the worker would retire is determined by the board. Manitoba's board will provide loss of earnings benefits not exceeding 48 months to workers age 61 or older. Of all Canadian jurisdictions, this is the longest specified period of time this benefit is payable to workers older than 65. Alberta's and Northwest Territories' legislation do not specify the age at which loss of earnings benefits cease for retirement age workers.

According to Statistics Canada, the participation rate for Canadian workers aged 60 and over was 26 per cent in 2017, and the average retirement age was 64. Of those 26 per cent, 49 per cent were working out of necessity, while 51 per cent were doing so by choice. Past the age of 65, when public pension plans come into effect, the amount of workers working out of necessity dropped nearly 20 per cent.

Yukon Bureau of Statistics' 2018 Labour Force Survey shows the labour force participation rate of Yukoners aged 60 or older was 13 per cent compared to 9 per cent in 2009. Five per cent of Yukon's total labour force in 2018 were age 65 or older, just one per cent more than in 2009. In 2018, Yukon had the highest employment rate of all Canadian jurisdictions.

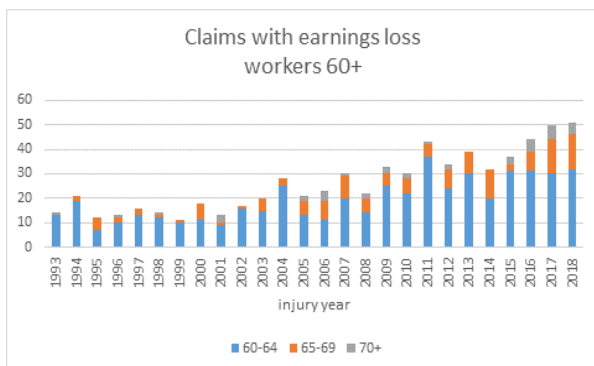
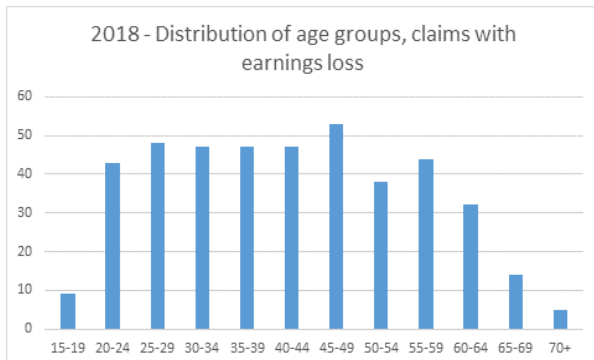


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## Current costs

In 2018, the number of injury claims for workers over the age of 65 represents roughly five per cent of YWCHSB's loss of earnings claims for that year. Compared to previous years, there is a steady increase in the number of loss of earnings claims for workers over the age of 65 at the time of injury.



In 2019, 16 workers over the age of 63 were injured and received loss of earnings benefits. The costs to-date for these workers' loss of earnings are approximately \$61,000. This amounts to roughly six per

cent of the total claims indemnity costs for 2019. As of mid-January 2020, 12 of the 16 injured workers have returned to work and are no longer receiving loss of earnings benefits.

## Recommendation

With the increasing number of Yukon workers working longer and receiving loss of earnings benefits when injured at work, administration recommends increasing the cap on the number of years a retirement-aged worker is entitled to this benefit. Administration recommends allowing 48 months of loss of earnings benefits to be payable to workers aged 61 or older at the time of injury.

Worker's age at time of injury	60	61	62	63	64	65
Eligibility under current scheme	65	65	65	65	66	67
Number of years LOE payable	5	4	3	2	2	2
Eligibility under proposed scheme	65	65	66	67	68	69
Number of years LOE payable	5	4	4	4	4	4

The cost of increasing the coverage period of loss of earnings benefits from 24 to 48 months is projected to be approximately \$130,000 per injury year, which translates to a one cent increase in the future assessment rate.

In recent years, approximately 80 per cent of injured workers return to work within 90 days. The majority of workers who do not return within 90 days are between the ages of 30 and 50.

The financial risk to the organization of adopting this approach is relatively minimal at this time. Based on increasing numbers of retirement-age workers working longer, however, this approach may result in higher costs down the road if this trend continues.