



YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD

SUBJECT Average Weekly Earnings

POLICY NO.: CL-35

BOARD APPROVAL:

REVOKED

FEB 2 2002

APPROVAL DATE: December 17, 1999

REVOKED

BOARD ORDER NO.:

FEB 27 2002

EFFECTIVE DATE: December 31, 1999

INTERIM POLICY STATEMENT

SECTION
REFERENCE:

1(1), 3, 4, 22, 23, 24, 26, 34, 62(6), 89, 90, 96, 101(1)
Workers' Compensation Act, SY 1992 as amended

POLICY:

AVERAGE WEEKLY EARNINGS

GENERAL INFORMATION

The Workers' Compensation Act (the Act) provides compensation based on the dual award system. A worker who has suffered a work-related disability may be eligible for compensation in the form of a permanent impairment award or loss of earnings benefits. If a worker is absent from work because of a work-related disability, they may be entitled to 75% of their gross weekly loss of earnings. This benefit is normally referred to as a "loss of earnings benefit" or "earnings loss benefit."

As a starting point in the calculation of earnings loss, the board must determine how much a worker earns from employment-related income. This amount is referred to as "average weekly earnings" in the Act, and cannot exceed an amount set annually by the Board (known as "the maximum wage rate").

Under the Act, the board has the authority and exclusive jurisdiction to calculate average weekly earnings. Calculations of average weekly earnings may be based on any sources of earnings and over such periods of time that the board considers fair and just. This policy establishes the method for calculating average weekly earnings and the resulting earnings loss benefit.

All claim decisions may be appealed to the Workers' Compensation, Health and Safety Board. Calculations of average weekly earnings and resulting benefit rates are claim decisions.

Adjudicators or other appropriate staff will render reasonable assistance to workers to help them to understand this policy. Staff will also assist workers to understand how calculations of average weekly earnings or benefit rates were made.

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POLICY

A. PURPOSE

The purpose of the policy is to ensure that disabled workers who suffer a loss of earnings are compensated at a rate that reflects their most likely loss of earnings. Calculations of average weekly earnings and the resulting benefit rate should recognize the real short and long-term cost to workers of time lost from work.

B. PRINCIPLES

The principles upon which the policy is based are:

- (a) Timeliness: payments for loss of earnings should be swift;
- (b) Openness: the method of calculating average weekly earnings should be obvious to workers, their dependants, employers, and board staff;
- (c) Fairness: the method of calculating average weekly earnings should be based on the best representation of a worker's earnings profile, and when there is more than one calculation that could be reasonably interpreted to best represent a worker's earnings profile, then the board shall choose the method of calculation that is most beneficial to the worker;
- (d) Adequacy: the method of calculating average weekly earnings should contribute to an adequate level of compensation that recognizes short-term and long-term earnings profiles;
- (e) Consistency: the method of calculating average weekly earnings should be consistently applied in similar situations;
- (f) Flexibility: calculations of average weekly earnings, while maintaining simplicity, should be flexible to accommodate the unique circumstances of individual workers.


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C. APPLICATION -- GENERAL

This policy applies to all post-1992 disabilities:

- (i) arising on or after the effective date of this policy; or
- (ii) that recur on or after the effective date of this policy.

D. BINDING NATURE

This policy is binding on board staff, the members of the board, including any appeal panel and after April 01, 2000, an appeal tribunal.

E. ROLES AND RESPONSIBILITIES

Adjudicators are responsible for calculating average weekly earnings and the resulting loss of earnings benefit.

Workers and employers are responsible for providing information and documentation to the board respecting employment and earnings, and such other information as the board may require.

F. DEFINITIONS

EARNINGS

Earnings means salary, wages, commissions, tips, remuneration for overtime, piece work and contract work, bonuses and allowances, the cash equivalent of board and lodging, store certificates, credits, directors' fees, indemnities and allowances paid to members of the Legislative Assembly, and any substitute for money. It does not include any amount received for expenses incurred by the worker by reason of the worker's employment.

DOCUMENTATION

Documentation means confirmation of earnings that may include pay slips, T4 returns or employers proof of worker's employment earnings.


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REGULAR EARNINGS

- (a) **Regular Earnings** means the documented amount of earnings received by a worker in their occupation(s) during a period of time immediately before the disability arose. The board shall choose a period of time that best represent the worker's earnings profile before the work-related disability arose. Normally, the duration for calculation of Regular Earnings will range from two weeks to one month immediately prior to the date that the disability arose. If Regular Earnings do not provide a reasonable representation of a disabled worker's loss of earnings, the board may use Similarly Employed Earnings to calculate the benefit rate.
- (b) **Regular Earnings** shall be determined based on the hourly, daily, weekly, monthly or other interval that best represents the workers earnings profile.

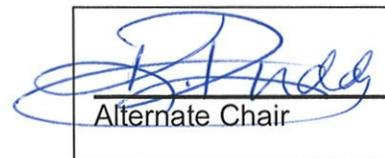
AVERAGE YEARLY EARNINGS

- (a) **Average Yearly Earnings** means:
 - (i) the documented amount of earnings that a worker received in their occupation(s) during one to five years immediately prior to the date that the disability arose; or
 - (ii) an average of any or all of the above; or
 - (iii) Similarly Employed Earnings.
- (b) **Average Yearly Earnings** shall be determined in a manner that best represents the worker's earnings profile.

SIMILARLY EMPLOYED EARNINGS

Similarly Employed Earnings means the annual average of earnings of other workers:

- (a) in a similar Yukon occupation; or
- (b) if a Yukon comparison cannot be made, then in a similar occupation within Canada.


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PERMANENT EMPLOYMENT

Permanent Employment means employment that is considered to last indefinitely, and that is not subject to specified lay-offs. It includes full-time permanent, part-time permanent and any other category where the employment relationship is enduring, whether or not it is classified as permanent in the usual sense.

NON-PERMANENT EMPLOYMENT

Non-permanent Employment means employment for periods of time that is sporadic, temporary, cyclical, irregular or unpredictable in nature. Seasonal, casual, on-call, temporary, contract, auxiliary and piecework employment shall be normally considered as non-permanent employment. Non-permanent employment may include part-time work.

SHORT-TERM BENEFIT RATE

Short-term Benefit Rate means the loss of earnings benefit rate established by the board at the outset of the claim, when documentation to establish a worker's earnings profile is provided. If the documentation is unavailable, an emergency employment benefit rate is to be paid until such time as the documents are provided. The emergency temporary benefit rate may be based on:

- (a) information provided by the worker or employer; or
- (b) Similarly Employed Earnings,

as deemed appropriate by the board.

LONG-TERM BENEFIT RATE

Long-term Benefit Rate means the loss of earnings benefit rate established and applied by the board when the Short-term Benefit Rate is no longer appropriate.

G. CALCULATIONS

- (a) The board shall calculate average weekly earnings and the resulting Short-term Benefit Rate on the basis of Regular Earnings for all workers at the outset of a claim for lost earnings.


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- (b) When the calculation of average weekly earnings was made on the basis of Regular Earnings, a review of the calculations shall occur within 90 days of the date that the loss of earnings began. If the worker is still in receipt of an earnings loss benefit, average weekly earnings will be based on Average Yearly Earnings, provided it is more representative of the worker's earnings profile. The Long-term Benefit Rate shall be applied 90 days after the loss of earnings began.

H. DIFFERENCE BETWEEN EMERGENCY TEMPORARY BENEFIT RATE AND WORKER'S ENTITLEMENT

The board shall pay retroactively any underpayment, and may recover any overpayment between an Emergency Temporary Benefit Rate and a benefit rate based on demonstrated earnings.

I. DIFFERENCE BETWEEN SHORT-TERM BENEFIT RATE AND LONG-TERM BENEFIT RATE

When the Short-term Benefit Rate is higher than the Long-term Benefit Rate, then the difference is deemed not to be an overpayment. This does not apply when the Short-term benefit rate was calculated wrongly because of an error, omission or false information, intentional or otherwise.

J. EARNINGS INFORMATION

- (a) The board shall document the calculation of average weekly earnings and the resulting benefit rate on the claim file.
- (b) Workers and employers shall provide to the board, in a timely fashion, information and documentation regarding employment and earnings.

- K. POLICY CL-35 dated July 23, 1993 is hereby rescinded effective December 31, 1999.

CL-35 Average Weekly Earning Policy Statement Application dated February 12, 1997 is hereby rescinded effective December 31, 1999.


Alternate Chair

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REFERENCES

Workers' Compensation, Health and Safety Board:

Review and Appeals Policy Statement
Assessment of Operators of Taxi-cabs Policy Statement
Commutation of Pensions Policy Statement
Exclusion of Director from Coverage – Not Subject to the Hazards of
the Industry Policy Statement
Fitness for Employment, Suitable Occupation, Deeming Policy
Statement
Fraud Policy Statement
Independent Operator/Contractor or Proprietor Policy Statement
Loss of Earnings for a Worker Age 63 or Older Policy Statement
Minimum Compensation for Total Disability Policy Statement
Optional Coverage Policy Statement
Recovery of Overpaid Compensation Policy Statement
Statement and Estimate of Earnings – Value of Service Policy
Statement
Suspension, Reduction and Termination of Compensation Policy
Statement
Transitional Clause Policy Statement
Maximum Wage Rate Board Order

HISTORY

1. *Workers' Compensation Act*, Chapter 16, in force January 1, 1993.
2. Policy Statement CL-35, Average Weekly Earnings, effective January 2, 1993.
3. Policy Statement CL-35, Average Weekly Earnings, amended December 17, 1999, effective December 31, 1999.


Alternate Chair

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YUKON WORKERS' COMPENSATION HEALTH AND SAFETY BOARD

MOTION July 25, 2000

It is motioned that Interim Policy Statement CL-35, approved December 17, 1999, be amended to delay the implementation of paragraphs G (b) until January 15, 2001.

MOTION Bart Evans

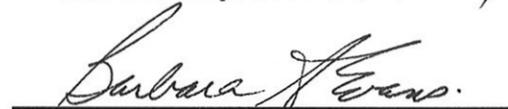
SECONDED Ivan Dechhoff

Dated at Whitehorse this 25th day of July, 2000.

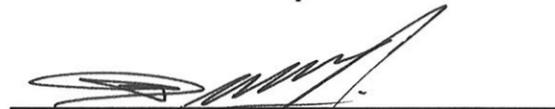


Doug Rody
Labour Representative

Arden Meyer
Business Representative



Barbara A. Evans
Labour Representative



Ivan Dechhoff
Business Representative



Dale Schmekel
Chair

1. Policy statement CL-35, Average Weekly Earnings, effective January 2, 1993.
2. Interim Policy statement CL-35, Average Weekly Earnings, amended December 17, 1999; effective December 31, 1999.
3. Interim Policy statement CL-35, Average Weekly Earnings, amended February 8, 2000; Clause G(b) effective August 8, 2000.
4. Interim Policy statement CL-35, Average Weekly Earnings, amended July 25, 2000; Clause G(b) effective January 15, 2001.

YUKON WORKERS' COMPENSATION HEALTH AND SAFETY BOARD

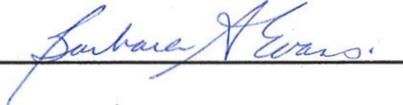
MOTION DECEMBER 12, 2000

It is motioned that Interim Policy Statement CL-35 approved December 17, 1999, be amended to delay the implementation of paragraphs G (b) until April 15, 2001.

MOTION

A handwritten signature in black ink, appearing to be "Dale Schmekel", written over a horizontal line.

SECONDED

A handwritten signature in blue ink, appearing to be "Barbara A. Evans", written over a horizontal line.

Dated at Whitehorse this 12th day of December 2000.

A handwritten signature in blue ink, appearing to be "Dale Schmekel", written over a horizontal line.

**Dale Schmekel
Chair**

History:

1. Policy Statement CL-35, Average weekly Earnings, effective January 2, 1993.
2. Interim Policy statement CL-35, Average weekly earnings, amended December 17, 1999; effective December 12, 1999.
3. Interim Policy statement CL-35, Average Weekly Earnings, amended February 8, 2000, Clause G (b) effective August 8, 2000.
4. Interim Policy statement CL-35, Average Weekly Earnings, amended July 25, 2000, Clause G (b) effective August 8, 2000.
5. Interim Policy statement CL-35, Average Weekly Earnings, amended December 12, 2000, Clause G (b) effective _____.

YUKON WORKERS' COMPENSATION HEALTH AND SAFETY BOARD

MOTION MARCH 27, 2001

It is motioned that Interim Policy Statement CL-35 approved December 17, 1999, be amended to delay the implementation of paragraph G (b) until October 14, 2001.

Dated at Whitehorse this 27th day of March 2001.



Christiane Boisjoly
Alternate Chair

History:

- 1. Policy Statement CL-35, Average weekly Earnings, effective January 2, 1993.**
- 2. Interim Policy statement CL-35, Average weekly earnings, amended December 17, 1999; effective December 12, 1999.**
- 3. Interim Policy statement CL-35, Average Weekly Earnings, amended February 8, 2000, Clause G (b) effective August 8, 2000.**
- 4. Interim Policy statement CL-35, Average Weekly Earnings, amended July 25, 2000, Clause G (b) effective January 15, 2001.**
- 5. Interim Policy statement CL-35, Average Weekly Earnings, amended December 12, 2000, Clause G (b) effective April 15, 2001.**
- 6. Interim Policy statement CL-35, Average Weekly Earnings, amended March 27, 2001, Clause G (b) effective October 14, 2001.**

YUKON WORKERS' COMPENSATION HEALTH AND SAFETY BOARD

MOTION OCTOBER 9, 2001

It is moved that Interim Policy Statement CL-35 approved December 17, 1999, be amended to delay the implementation of paragraph G (b) until February 28, 2002.

Dated at Whitehorse this 9th day of October 2001.



Dale Schmekel
Chair

Oct 9 2001

History:

1. Policy Statement CL-35, Average weekly Earnings, effective January 2, 1993.
2. Interim Policy statement CL-35, Average weekly earnings, amended December 17, 1999; effective December 12, 1999.
3. Interim Policy statement CL-35, Average Weekly Earnings, amended February 8, 2000, Clause G (b) effective August 8, 2000.
4. Interim Policy statement CL-35, Average Weekly Earnings, amended July 25, 2000, Clause G (b) effective January 15, 2001.
5. Interim Policy statement CL-35, Average Weekly Earnings, amended December 12, 2000, Clause G (b) effective April 15, 2001.
6. Interim Policy statement CL-35, Average Weekly Earnings, amended March 27, 2001, Clause G (b) effective October 14, 2001.
7. Interim Policy statement CL-35, Average Weekly Earnings, amended October 9, 2001, Clause G (b) effective February 28, 2002.