

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

GENERAL INFORMATION

When a worker has a loss of earnings because of a work-related injury, the Yukon Workers' Compensation Health and Safety Board (YWCHSB) pays the worker loss of earnings benefits in accordance with section 22 of the *Workers' Compensation Act* S.Y. 2008 (the "Act").

Section 22 states YWCHSB shall calculate a worker's loss of earnings benefits based on the worker's average weekly earnings. A key part of the process is determining the worker's earnings at the time of the injury.

A worker may be receiving disability benefits in addition to those paid by YWCHSB. Under section 24 of the *Act*, YWCHSB must subtract a portion of Canada Pension Plan or Quebec Pension Plan (CPP/QPP) disability benefits from a worker's average weekly earnings. This is to encourage the worker to recover and return to work by ensuring he/she does not receive more income from injury-related benefits than from employment.

PURPOSE

This policy provides direction to YWCHSB decision-makers on how to calculate a worker's loss of earnings benefits.

DEFINITIONS

1. **Apprentice:** a worker who is enrolled in a regulated apprenticeship program with a sponsoring employer and who is learning a trade by working for a fixed period with a qualified journeyperson.

2. **Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) disability benefits:** monthly benefits paid to individuals who have a disability which prevents them from working at any job on a regular basis. The disability may be caused by work-related or non-work-related injuries, diseases, or a combination of several injuries/diseases. CPP benefits are paid by the federal government; QPP benefits are paid by the Quebec government.

3. **Documentation:** pay slips, T4 slips, tax returns, contracts, employers' proof of workers' earnings, employers' letters or other documents which confirm a worker's earnings and employment pattern.
4. **Earnings:** these include, in accordance with section 3 of the *Act*: "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 but does not include any amount received for expenses incurred by the worker because of the worker's employment."
5. **Interruption of earnings:** a period when a worker's earnings are interrupted and the interruption is atypical, irregular or significantly different from the worker's regular employment pattern. Examples include, but are not limited to:
 - a) documented illness or injury;
 - b) maternity or paternity leave; or
 - c) strikes or lockouts.
6. **Learner:** as defined by the *Act*, "any person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry in the course of undergoing testing, training, or probationary work as a preliminary to employment."
7. **Maximum wage rate:** under Section 3 of the *Act*, maximum wage rate for a year means:
 - a) \$74,100 as of January 1, 2008; and
 - b) commencing January 1, 2009, and in each year thereafter, the amount resulting from adjusting the previous year's maximum wage rate by
 - (i) the percent change in the Consumer Price Index for Whitehorse, calculated by using the percent change between the average index for the twelve month period ending October 31st of the previous year and the same time period one year earlier; however,
 - (ii) despite subparagraph (i), if the percent change is greater than four percent, the percent change to be used will be four percent; and, if the percent change is less than zero percent, the percent change to be used will be zero percent."
 - c) **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."

- d) **Seasonal worker:** a worker with a recurring employment profile of a period of seasonal employment, followed by a period where the worker is not working and may be receiving Employment Insurance benefits, followed by a period of seasonal employment.
- e) **Student:** a worker who is enrolled and studying full or part-time at a secondary or post-secondary educational institution.
- f) **Terms and conditions of employment:** information from a worker and the worker's employer which confirms the worker's rate of pay and the hours normally worked by the worker which could be hourly, daily, weekly, bi-weekly, semi-monthly, monthly – or some other interval.
- g) **Young worker:** a worker who is 25 years or younger.

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*, 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

When a worker has a loss of earnings because of a work-related injury, YWCHSB compensates the worker with 75 per cent of the average weekly earnings the worker was earning, up to the maximum wage rate, in accordance with section 22 of the *Act*.

To determine a worker's loss of earnings, YWCHSB must first determine the worker's average weekly earnings at the time of the injury. Subsection 3(1) of the *Act* requires YWCHSB to calculate those "based on any sources of earnings over any period of time that the board of directors considers fair and just, as established by policy."

YWCHSB calculates average weekly earnings over periods that are considered to provide the most accurate picture of the worker's earnings and earning pattern immediately before the injury.

There are three types of loss of earnings benefits:

- short-term, usually paid immediately after the injury and based on the worker's earnings immediately before the injury;
- provisional, paid immediately after the injury, at a temporary rate, when there is little or no documentation to verify the worker's earnings; and
- long-term, paid after the worker has been receiving loss of earnings benefits for at least 90 days and based on longer term earnings before the injury.

1. Short-term Benefits

Initially, workers eligible for loss of earnings benefits receive short-term benefits. To determine a worker's average weekly earnings for the calculation of these benefits, YWCHSB considers the worker's earnings, supported by documentation, over two full pay periods or one month immediately before the injury, whichever is longer. If these earnings do not fairly and justly represent the worker's loss of earnings at the time of the injury, YWCHSB will consider looking at other periods prior to the injury.

If the worker has little or no documentation to show earnings at the time of the injury, YWCHSB may calculate the worker's short-term benefit rate based on the worker's terms and conditions of employment.

When directors of incorporated companies have no earnings from their roles as directors, they will generally receive no loss of earnings benefits as directors, though they may receive such benefits based on other earnings (under section 8 of this policy and subsection 22(1) of the Act) and may receive medical and other compensation benefits under the Act. See YWCHSB policy EA-06, "Coverage for Directors."

2. Duration of Short-term Benefits

A worker eligible for loss of earnings benefits may receive short-term benefits for up to 90 days from the day the worker first experiences a loss of earnings because of the work-related injury.

For a seasonal worker, entitlement to short-term benefits may be extended to 180 days from the day the worker first experiences the loss of earnings. This applies only if the worker is cooperating in his/her recovery and return to work in accordance with the Act and YWCHSB policies.

A seasonal worker's short-term benefit rate period shall not extend beyond the date when the worker's seasonal employment normally ends (or 180 days from the date of injury, whichever is earlier). If the seasonal worker continues to suffer from the work-related injury, he/she may be entitled to the long-term benefit rate.

3. Provisional Benefits

When it is difficult to obtain documentation immediately to confirm a worker's earnings, YWCHSB may determine a provisional rate of benefits based on the worker's terms and conditions of employment.

Depending on how the worker is paid, his/her provisional benefit rate could be based on the daily, weekly, bi-weekly, semi-monthly, monthly or other rate of pay that reflects what the worker would normally have earned immediately prior to the injury.

YWCHSB shall confirm the terms and conditions of the worker's employment with the worker and worker's employer. YWCHSB may obtain the confirmation verbally.

4. Duration and Review of Provisional Benefits

YWCHSB may pay an injured worker provisional benefits up to a maximum of four weeks from the date of injury. Within those four weeks, the worker and worker's employer shall provide YWCHSB with documentation confirming the worker's earnings for a period of up to a month immediately prior to the injury. YWCHSB shall review the provisional benefit rate based on that documentation and shall adjust the rate up or down accordingly.

5. Differences Between Provisional, Short-term and Long-term Benefits

If the provisional benefits have been higher than the short-term benefits, YWCHSB shall not consider the differences to be overpayments, unless there were errors or omissions in the calculations. See YWCHSB policy, EL-04, "Recovery of Overpaid Compensation".

If the provisional payments have been lower than the short-term benefits, YWCHSB shall pay the worker the difference between the short-term and provisional benefit rate, retroactive to the date of injury.

Any differences between the short-term and long-term benefits shall not be considered overpayments or underpayments, unless there were errors or omissions in the calculations. See YWCHSB policy EL-04, "Recovery of Overpaid Compensation".

6. Long-term Benefits

A worker who remains eligible for loss of earnings benefits after receiving the short-term benefit for 90 days (or up to 180 days for a seasonal worker) shall then receive long-term benefits.

To determine the long-term benefit rate, YWCHSB considers the worker's earnings from all employment over the two calendar years immediately prior to the date the injury occurred, and selects earnings over the calendar year in the worker's favour.

The amount YWCHSB uses to calculate the worker's long-term benefit rate should fairly represent the worker's long-term annual loss of earnings.

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If the worker has had interruptions of earnings during either of these years, YWCHSB may exclude the time of the interruption and extend the calculation backward for a period equivalent to the interruption. YWCHSB's main consideration will be whether excluding the interruption will result in a calculation that more fairly represents the worker's long-term loss of earnings.

In some exceptional circumstances affecting young workers, students, learners, apprentices or workers with two years or less of documented work history, the calculation of a worker's long-term benefit rate may not provide a reasonable representation of his/her loss of earnings. In these cases, YWCHSB may base its benefit calculation on comparable earnings of other workers in the same or a similar occupation in Yukon (or a similar occupation in Canada if a Yukon comparison cannot be made).

7. Recurrence of Injury

If a worker has a recurrence of his/her work-related injury after returning to work, YWCHSB shall calculate his/her benefits based on the worker's average weekly earnings at the time of the original work-related injury, or at the time of the recurrence, whichever is greater, in accordance with section 26 of the *Act*.

In these cases, the worker is entitled to the full period of the short-term benefit rate (90 days) for the recurrence.

If a worker has a recurrence of his/her work-related injury, without having returned to work, YWCHSB shall calculate his/her benefits based on the worker's average weekly earnings immediately before the original work-related injury.

In these cases, the benefit shall be a continuation of the benefit the worker was receiving when he/she was previously entitled to compensation for the same work-related injury.

8. Concurrent Employment

When, at the time of injury, a worker is employed by more than one employer, YWCHSB will base the worker's loss of earnings benefit rate on earnings from all employment, including employment outside Yukon, which the worker is unable to perform because of the work-related injury, up to the maximum wage rate. This includes earnings from self-employment if the worker is also a sole proprietor and has purchased optional workers' compensation coverage. See YWCHSB policy EA-04, "Optional Coverage for Sole Proprietors, Partners or Employers."

In determining the worker's loss of earnings benefits, YWCHSB must also consider any increase in the worker's earnings from employment he/she is able to continue performing.

Example:

A worker injures her foot at her carpentry job and cannot do that work while her foot heals. However, she can continue her part-time bookkeeping job. In fact, she does more bookkeeping because she has extra time without her carpentry work. YWCHSB must consider the increase in her earnings from bookkeeping when calculating her loss of earnings benefits.

9. Benefits Paid For Lost Time Days Only

YWCHSB shall pay injured workers loss of earnings benefits only for days on which the worker has experienced loss of earnings. As a result, the worker's initial short-term benefit payment does not commence until the first day on which the worker has an actual loss of earnings because of the work-related injury.

The exception is the day of injury. Employers are responsible for paying a worker on the day of their work-related injury, if the worker is unable to work that day. This is in accordance with section 27 of the *Act*.

10. Retirement

Workers who are retired as defined by YWCHSB policy, EL-06, "End of Loss of earnings Benefits," shall not receive loss of earnings benefits.

11. Off-setting CPP/QPP Disability Benefits

If a worker is eligible for loss of earnings benefits, and the worker is also receiving or entitled to receive CPP/QPP disability benefits, YWCHSB shall subtract 50 per cent (50%) of the gross disability CPP/QPP benefits from the worker's average weekly earnings, as required by section 24 of the *Act*. This affects workers who were eligible for or began receiving CPP/QPP disability benefits on or after July 1, 2008.

The subtraction, or off-setting, shall:

- a) be 'gross to gross' – 50 per cent (50%) of gross CPP/QPP benefits subtracted from a worker's gross average weekly earnings (before the maximum wage rate is applied);
- b) apply to retroactive CPP/QPP disability benefits, to July 1, 2008, if the worker receives notification on or after the effective date of this policy that he or she is receiving or is eligible to receive such benefits;
- c) not reduce a worker's loss of earnings benefits below the level of minimum compensation set out by Order of the Board of Directors in accordance with section 30 of the *Act*; and
- d) not apply to CPP/QPP disability benefits for the worker's dependents.

12. Worker's Responsibility to Notify YWCHSB about CPP/QPP Disability Benefits

A worker shall notify YWCHSB within 10 days of being notified that he or she is entitled to receive CPP/QPP disability benefits.

13. Timing of CPP/QPP Off-set

YWCHSB shall start subtracting CPP/QPP disability benefits from the date the worker is entitled to receive monthly CPP/QPP disability benefits, as notified by the federal or Quebec governments.

ROLES AND RESPONSIBILITIES

Workers

Workers are responsible for providing YWCHSB with complete and accurate earnings information as soon as possible once they file a claim for compensation. They must notify YWCHSB of any change in circumstances affecting their claim, in accordance with subsections 14(1)(d) and 14(1)(e) of the *Act*. This includes notifying YWCHSB if he/she has been notified by the federal or Quebec governments of eligibility to receive CPP/QPP disability benefits. Workers are also responsible for co-operating fully in efforts to return to work, in accordance with section 40 of the *Act*.

Employers

Employers are responsible for providing YWCHSB with complete and accurate earnings information as soon as possible once the claim for compensation has been filed. They must notify YWCHSB of any change in circumstances that affects the worker's claim, in accordance with sections 10 and 83 of the *Act*. Employers are also responsible for co-operating fully in efforts to return the worker to work, in accordance with section 40 of the *Act*.

YWCHSB

YWCHSB decision-makers are responsible for calculating loss of earnings benefits based on the best information available, including CPP/QPP disability benefit off-sets if applicable, and documenting the calculations on the worker's claim file. Decision-makers are also responsible for notifying a worker, the 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 3,10,14,16, 22, 24, 26, 27, 30, 40, 52, 53, 54 and 83

POLICY REFERENCES

EA-06, “Coverage for Directors”
EL-04, “Recovery of Overpaid Compensation”
EL-06, “End of Loss of Earnings Benefits”
EN-02, “Merits and Justice of the Case”
EN-16, “Recurrence of Injury”

HISTORY

EL-01, “Loss of Earnings Benefits,” effective July 1, 2012, revoked January 1, 2016
EL-01, “Loss of Earnings Benefits”, effective July 1, 2008, revoked July 1, 2012
CL-35, “Loss of Earnings Benefits”, effective February 27, 2002, revoked July 1, 2008
CL-35, “Average Weekly Earnings”, amended February 8, 2000; section G (b) effective August 8, 2000
CL-35, “Average Weekly Earnings”, amended December 17, 1999, effective December 31, 1999
CL-35, “Average Weekly Earnings”, effective January 2, 1993, revoked December 31, 1999