



## Policy Amendment Proposal EL-01 Loss of Earnings Benefits

This policy amendment proposal relating to earnings loss benefits will reflect the issues consulted on during the engagement for the *Workers' Safety and Compensation Act* (the 'Act') and will align the amendments made in the new legislation.

The new Act comes into force July 1, 2022. The intended effective date of the proposed policy amendments will be July 1, 2022.

The proposed new Loss of Earnings Benefits policy incorporates policies and board orders under the *Workers' Compensation Act*, which will be revoked. The proposed policy amalgamates two current policies, EL-01 Loss of Earnings Benefits and EL-02 Minimum Compensation.

The purpose of the policy is to outline the manner in which the board determines loss of earnings benefits for a worker entitled to compensation under the Act.

### Relevant sections of the Act

The following sections of the Act are relevant:

- 99-106 compensation for loss of earnings capacity

### Proposed changes to this policy

- minor changes to section references, language and definitions
- amendments to reflect the following Act changes:
  - short-term and long-term loss of earnings benefits for proprietors, partners, elected officials; this information will be set out in a policy proposal relating to optional coverage;
  - loss of earnings benefits for lower income workers increasing to 100% of pre-injury earnings rather than 75% of pre-injury earnings;
  - duration of loss of earnings benefits; and
  - removal of CPP offset provisions.
- simplification of language to succinctly describe the process by which the board determines the loss of earnings benefits for a worker entitled to compensation under the Act
- amalgamation of policy EL-02 Minimum Compensation



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- sets out minimum compensation amount as defined in the Act (currently in Board Order 2006/04 Minimum Compensation Amount)

### Board Orders/Regulations

The following board orders/regulations will be revoked as content has been incorporated into the policy amendment proposal.

- [EL-02 Minimum Compensation](#)
- [Board Order 2006/004](#) Minimum Compensation Amount

### Current policy

#### [EL-01 Loss of Earnings Benefits](#)

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The Board of Directors is providing this policy amendment proposal to stakeholders seeking their input, comments, questions and suggestions.

Some questions for consideration:

1. Are there any general comments about this policy proposal?
2. Are there any gaps in this policy proposal?
3. Additional comments?

The views of our stakeholders are important to us. All feedback will be considered prior to the Board of Directors approving any amendments.

Engagement on this policy proposal is **extended to February 28, 2022**. Please provide your feedback by:

1. Downloading a [fillable form](#) on our website and sending it as an attachment to [Policy.Feedback@wcb.yk.ca](mailto:Policy.Feedback@wcb.yk.ca)
2. Emailing comments directly to [Policy.Feedback@wcb.yk.ca](mailto:Policy.Feedback@wcb.yk.ca)
3. Receipt in our building **extended to February 28, 2022**, by mail or drop off at  
*Yukon Workers' Compensation Health and Safety Board  
401 Strickland Street  
Whitehorse, Yukon Y1A 5N8*

A summary of all feedback on this policy amendment proposal will be published on our website at [www.wcb.yk.ca](http://www.wcb.yk.ca) (extended to March 2022).

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# Policy Amendment Proposal

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Preventing work-related injuries is the most important job in any workplace. The *Workers' Safety and Compensation 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.

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### Purpose

This policy outlines the manner in which the board determines loss of earnings benefits for a worker entitled to compensation under the Act.

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### Definitions

**apprentice** means 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 journeyman

**average earnings** means the average earnings of a worker as determined by the board

**board** means the Workers' Safety and Compensation Board

**documentation** means pay slips, T4 slips, tax returns, contracts, employer's proof of worker's earnings, employer's letters or other documents which confirm a worker's earnings and employment pattern

**earnings** means, but is not limited to, 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 or elected officials of a municipality, and any substitute for money but does not include any amount received for expenses incurred by the worker because of the workers' employment

**employer** means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

**interruption of earnings** means a period when a workers' earnings are interrupted and the interruption is atypical, irregular or significantly different from the worker's regular employment pattern (examples include illness or injury, maternity or paternity leave, or strikes or lockouts)

**learner** means a 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.



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**loss of earning capacity** means the difference, if any, between the worker's average earnings before the work-related injury determined under section 100 of the Act and the average earnings the board determines the worker is capable of earning after the work-related injury.

**maximum annual earnings** means the amount that is determined annually under section 77 of the Act

**minimum loss of earnings benefit** means 25% of the maximum annual earnings

**optional coverage** means coverage purchased by eligible individuals or employers under the terms and conditions (that will be set out in a proposed policy relating to optional coverage)

**seasonal worker** means 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

**student** means an individual who is enrolled and studying full- or part-time at a secondary or post-secondary educational institution

**terms and conditions of employment** means 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 in a day, week, month or other period of time

**worker** means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

**young worker** means a worker who is 25 years old or younger

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### Policy statement

#### 1. Loss of earning capacity

When a worker suffers a loss of earning capacity due to a work-related injury, the worker may be entitled to receive loss of earnings benefits.

Employers are responsible for paying a worker for any loss of earnings on the day of the work-related injury.



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### *Worker's average earnings before the work-related injury*

To determine a worker's loss of earning capacity, the board first determines the worker's average earnings from employment before the work-related injury. The board takes into account employment earnings over a period of time that best represents the worker's earnings from employment immediately prior to the injury. The average earnings of a worker cannot exceed the maximum annual earnings for the year.

When determining average earnings, if the worker is employed by more than one employer, the board will consider earnings from all employment, including employment outside of Yukon.

If the worker has no earnings, the worker is not entitled to earnings loss benefits but may be entitled to other compensation benefits, such as medical aid.

### *Determination of workers' average earnings after a work-related injury*

After the determination of the worker's average earnings before the work-related injury, the board then determines the worker's average earnings after the work-related injury. Some of the factors that the board considers are:

- the functional abilities of the worker after the work-related injury;
- whether the worker has recovered from the work-related injury to the point of maximum medical recovery;
- whether the worker has returned to work on a full- or part-time basis;
- whether the worker is capable of returning to their pre-injury employment, on a full or part-time basis;
- whether the worker is capable of returning to suitable employment; and
- whether the worker is earning any income from employment.

## **2. Calculation of loss of earnings benefits**

A worker's loss of earnings benefits are equal to 75% of a worker's loss of earning capacity. For workers with low average earnings, further information is provided in section 4 of this policy.

There are three categories of loss of earning benefits and each is described in further detail, below:

- **Provisional:** paid immediately after the injury for a limited period of time. This is used in situations where it is difficult to immediately verify the worker's earnings.



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- Short-term: usually paid immediately after the injury and based on the worker's earnings immediately before the injury.
- Long-term: paid after the worker has been receiving loss of earnings benefits for at least 90 days and based on the worker's longer-term earnings prior to the injury.

### *Provisional loss of earnings benefits*

If no documentation is immediately available to confirm a worker's average earnings, the board may determine provisional loss of earnings benefits based on the worker's terms and conditions of employment.

Depending on how the worker is paid, the board may base the worker's provisional loss of earnings benefit 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.

The board may pay a worker provisional loss of earnings benefits up to a maximum of four weeks from the date the worker first experiences a loss of earning capacity. Within those four weeks, the worker and worker's employer must provide the board with documentation confirming the worker's earnings prior to the work-related injury. The board will review the provisional loss of earnings benefit based on documentation and shall adjust the provisional loss of earnings benefit accordingly.

Provisional loss of earnings benefits do not apply to workers with optional coverage (proprietors, partners, volunteers and elected or appointed officials of a First Nation) and workers designated under section 82 of the Act by the Government of Yukon.

### *Short-term loss of earnings benefits*

A worker who has a loss of earnings capacity and is entitled to loss of earnings benefits initially receives short-term loss of earnings benefits. To determine short-term loss of earnings benefits, the board considers the worker's earnings from employment, supported by documentation, over two full pay periods immediately before the work-related injury.

A worker is entitled to receive short-term loss of earnings benefits for up to 90 days from the day the worker first experiences a loss of earning capacity due to the work-related injury.

If the worker has little or no documentation to prove their earnings at the time of the work-related injury, the board may calculate the worker's short-term loss of earnings benefit based on the worker's terms and conditions of employment.



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If a worker is determined to be a seasonal worker, the duration of short-term loss of earnings benefits may be extended by the board for up to an additional 90 days. Nonetheless, the short-term loss of earnings benefit period cannot be extended beyond:

- the date when the worker's seasonal employment normally ends; or
- 180 days from the day the worker first experiences a loss of earning capacity, whichever is earlier.

If the seasonal worker continues to have a loss of earnings capacity due to the work-related injury, the worker may be entitled to long-term loss of earnings benefits.

### ***Long-term loss of earnings benefits***

A worker who continues to have a loss of earning capacity after receiving short-term loss of earnings benefits is entitled to receive long-term loss of earnings benefits.

To determine the long-term loss of earnings benefit, the board considers the worker's earnings from all employment over the two calendar years immediately before the date of the work-related injury. The calendar year with the higher earnings is utilized by the board to calculate the worker's long-term loss of earnings benefits.

If there are interruptions of earnings in either of the two calendar years, the board may extend the time period back used for calculation for the same duration of the interruption.

If the average earnings of a young or new worker, learner, student, apprentice or worker with less than two years of documented work history does not provide a reasonable representation of their average earnings, the board may base their average earnings on earnings of other workers in the same or similar occupation in Yukon (or a similar occupation in Canada if a Yukon comparison cannot be made).

### ***Differences between calculations of provisional, short-term and long-term loss of earnings benefits.***

If the provisional loss of earnings benefits paid were higher than the short-term loss of earnings benefits determined by the board, the board will not consider the differences to be overpayments, unless there were errors or omissions in the calculations (as set out in policy [EL-04 Recovery of Overpaid Compensation](#)).

If the provisional loss of earnings benefits paid were lower than the short-term loss of earnings benefits determined by the board, the board will pay the worker the difference between the short-term and provisional loss of earnings benefits, retroactive to the beginning of the loss of earning capacity.



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Differences between the short-term and long-term loss of earnings benefits are not considered overpayments or underpayments and no retroactive adjustments will be made (as set out in policy [EL-04 Recovery of Overpaid Compensation](#)).

### 3. Special categories of workers

#### *Proprietor, partner and elected or appointed officials of a First Nation Government*

Proprietors, partners of a partnership, and elected or appointed officials of a Yukon First Nation may purchase optional coverage with the board.

Short-term loss of earnings benefits will be based on the estimate of earnings provided in the application for optional coverage (amount purchased), subject to the maximum annual earnings.

*For example, if a proprietor applies for optional coverage and states in their application that their annual earnings for the year will be \$60,000, the short term loss of earnings benefit will be based on annual earnings of \$60,000. In this example, the short term loss of earnings benefit would be 75% of \$60,000.*

Long-term loss of earnings benefits will be based on the lesser of:

- the amount purchased in the application for optional coverage; and
- the amount of the worker's loss of earnings capacity (see section 1 of this policy), subject to the maximum annual earnings.

*Continuing with the example above, if the worker's annual earnings for the two previous years was \$55,000 and \$45,000, the board would determine the long term loss of earnings benefit based on \$55,000 as this is the lesser of the amount purchased and the higher earnings from the two prior years. The long term loss of earnings benefit would be 75% of \$55,000.*

For sole proprietors or partners of a partnership, average earnings are calculated on net business income for the previous calendar year, as reported to the Canada Revenue Agency. If no report was made to the Canada Revenue Agency, average earnings will be calculated by the board on existing documentation provided by the sole proprietor or partners of a partnership.

#### **Volunteers**

Volunteers are not considered workers and are not covered for compensation unless an employer has obtained optional coverage from the board for the volunteer. The average earnings of a volunteer who is covered by optional coverage and has a loss of earnings capacity is the greater of:





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- the volunteer's average earnings determined as under section 1 of this policy; and
- one-half of the maximum annual earnings.

### *Designated workers of Government of Yukon*

Certain workers, such as members of a volunteer fire brigade or search and rescue operations, are designated as workers who are employed by the Government of Yukon.

The average earnings of a designated worker of the Government of Yukon who has a loss of earnings capacity is the greater of:

- the worker's average earnings determined as under section 1 of this policy; and
- one-half of the maximum annual earnings.

### **4. Workers with low average earnings**

A worker who is entitled to loss of earnings benefits who has low average earnings may be entitled to a modified loss of earnings benefit calculation.

- a. A worker who has a loss of earning capacity who has average earnings before the work-related injury that are equal to or less than the minimum loss of earnings benefit amount, is entitled to receive loss of earnings benefits equal to 100% of their loss of earning capacity.

*For example, if the worker's average earnings before the work-related injury is \$15,000 and the minimum loss of earnings benefit is \$23,500, the worker's loss of earnings benefit will be based on 100% of \$15,000 instead of the usual 75%.*

- b. A worker who has average earnings before the work-related injury that are greater than the minimum loss of earnings benefit but are less than or equal to 133% of the minimum loss of earnings benefit is entitled to receive loss of earnings benefits equal to the greater of

- the minimum loss of earnings benefits, less the average earnings that the board determines the worker is capable of earning after the work-related injury; and
- the loss of earnings benefits determined under section 1 of this policy.

*For example, a worker has average earnings of \$25,000 before the work-related injury. The minimum loss of earnings benefit is \$23,500. The worker is unable to work after the injury. Based on the normal calculation of benefits - 75% of \$25,000 would equal to \$18,750. Since this*



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*is less than the minimum loss of earnings benefit, the worker would be entitled to a loss of earnings benefit of \$23,500, as this is the greater amount,*

*In this example, if the worker was able to work part time after the injury and earned \$5000, then the loss of earnings benefits would be reduced by these earnings and would be \$23,500 less \$5000 = \$18,500.*

- c. A worker who suffers a permanent total loss of earning capacity is entitled to receive loss of earnings benefits in an amount that must not be less than the minimum loss of earnings benefit.

#### 5. Recurrence of work-related injury

Any recurrence of a work-related injury must meet the criteria as set out in policy [EN-16 Recurrence of Injury](#).

Where a worker returns to employment after a work-related injury, but suffers a recurrence of their work-related injury that results in a loss of earning capacity the worker's average earnings before the work-related injury will be the greater of:

- the average earnings on the date of the work-related injury, as determined under this policy and indexed by the indexing factor under the Act, and
- the average earnings at the date of the recurrence of the work-related injury, as determined under this policy.

The worker is entitled to receive the short-term loss of earnings benefit starting from the date of the recurrence of the loss of earning capacity.

A worker who continues to have a loss of earning capacity after receiving short-term loss of earnings benefits for 90 days (or the period as extended for a seasonal worker) is entitled to receive long-term loss of earnings benefits, as determined under this policy.

#### 6. Duration of loss of earnings benefits

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

- the date the loss of earning capacity ends; and
- 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).



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When a worker is at the age that they are eligible to apply for benefits under Part 1 of the Old Age Security Act (Canada), less four years at the time of the work-related injury and has a loss of earning capacity, the board may pay loss of earnings benefits to the worker for up to 48 months from the date of the work-related injury.

The board determines when a worker no longer has a loss of earning capacity and is no longer entitled to loss of earnings benefits as set out in policy [EL-06, End of Loss of Earnings Benefits](#).

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### Related Policies

Policy proposal relating to optional coverage (underway)

[EL-04 Recovery of Overpaid Compensation](#)

[EL-06 End of Loss of Earnings Benefits](#)

[EN-16 Recurrence of Injury](#)

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