wsib ONTARIO

Operational Policy

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Document Number 18-02-03

Section

Average Earnings

Subject

Determining Long-term Average Earnings: Workers in Permanent Employment

Policy

The long-term average earnings of a worker in permanent employment are generally the same as the worker's short-term average earnings.

A worker's average earnings are recalculated to long-term average earnings if the WSIB determines that it is unfair to continue paying loss of earnings (LOE) benefits based on the short-term average earnings. Either of the workplace parties can request a recalculation.

LOE benefits are paid based on a worker's long-term average earnings from the beginning of the 13th week of LOE benefits.

Purpose

The purpose of this policy is to outline when and how a recalculation to long-term average earnings is conducted.

Guidelines

Definitions

Permanent employment is employment where a worker:

- is employed (by the employer) 52 weeks a year, with no seasonal or cyclical layoffs
- has no set termination date, apart from retirement
- may be full or part-time, and
- may have earnings that vary from day to day or week to week due to irregular hours or method of payment.

Permanent employment may involve occasional short-term layoffs or non-earning periods such as shortages of work, plant shutdowns during holidays, retooling, strikes, or lockouts. Such temporary layoffs or non-earning periods do not reflect a break in the employment pattern.

Workers in permanent employment may include:

- workers whose salary is based solely on commissions, or
- drivers paid per mileage driven.

In some industries, such as construction, employers may hire workers for either permanent or non-permanent employment. (For a definition of non-permanent employment see 18-02-04, Determining Long-term Average Earnings: Workers in Non-Permanent Employment.) Therefore, the type of industry may not always be indicative of the employment relationship.

The WSIB's determination to consider a worker to be in permanent or non-permanent employment is generally based on the earnings information provided by the employer, see 15-01-02, Employers' Initial Accident Reporting Obligations.

A **recalculation** involves redetermining a worker's average earnings taking into account the worker's long-term employment pattern. The recalculated long-term average earnings become effective from the beginning of the 13th week of LOE benefits.

A **break in the employment pattern** is a change in a worker's employment that is significant enough to make the period before the break irrelevant to the determination of the worker's long-term average earnings. This may involve a **permanent** change:
- of employers
- from full- to part-time work, or vice-versa
- from permanent to non-permanent employment, or vice versa
- in job grade, classification, trade, or method of payment
- from self-employment to permanent employment, or vice-versa, or
- in status from dependent contractor to worker in permanent employment, see 18-02-08, Determining Average Earnings - Exceptional Cases.

A break in the employment pattern shortens the recalculation period for long-term average earnings (see "Recalculation period" in this document).

A **non-earning period** is the time during which a worker was not earning due to layoff, contract termination, illness, or leave of absence.

Non-earning periods that **are** part of the employment pattern (e.g., layoffs, contract terminations) are factored into the recalculation (see "Non-earning periods included in the recalculations" in this document). Non-earning periods that **are not** part of the employment pattern are factored out of the calculation. Examples of these periods are pregnancy leaves (also may be referred to as maternity leaves) and parental leaves (see "Non-earning periods excluded from recalculation" in this document).

When to conduct a recalculation

Generally, a worker's long-term average earnings are the same as the worker's short-term average earnings and a recalculation is not necessary. A recalculation may be done if it is not fair to continue paying LOE benefits based on the worker's short-term average earnings. It is considered unfair if the worker's short-term average earnings profile does not reflect the long-term average earnings profile.

The short-term average earnings may not reflect the worker's long-term earnings profile if the worker:

- had prior earnings that are not included in the short-term average earnings
- worked overtime that is or is not included in the short-term average earnings
- earned irregular bonuses or commissions, or
- experienced temporary layoffs due to work shortages, retooling, or holiday shutdowns.

Recalculation period

Long-term average earnings are based on the employment earnings in the 12 months before the injury, or a lesser period. The recalculation period may be shortened by a break in the employment pattern (see "Break in the employment pattern" in this document).

If a shorter recalculation period is to be used, the start of the period is the date when the actual change (the movement from one pattern of employment to another) occurred.

Example - Break in the employment pattern

Bill started working for a large automotive parts manufacturer as an assembly line worker in 1985 and was promoted to supervisor on May 15, 2000. Bill suffered a work-related injury on February 1, 2001, which required them to remain off work for more than 12 weeks.

A recalculation was requested at the 12th week. While the recalculation period would normally be the 12 months before the injury (i.e., from **February 1, 2000** to January 31, 2001), it was shortened by the break in the employment pattern. As a result, the period of recalculation is from **May 15, 2000** to January 31, 2001.

Extending the recalculation period

If necessary, the 12-month period may be extended to include the full calendar year before the injury, plus the current year up to the date of injury.

This simplifies the process of gathering the worker's past earnings information with the use of income and deduction printouts (available from Canada Revenue Agency (CRA)), T-4 slips, pay cheque statements, or letters from employers. The recalculation period may not extend beyond a break in the employment pattern.

Non-earning periods excluded from recalculation

Non-earning periods that are not part of the worker's employment pattern are factored out of the recalculation period. These periods may include:

- pregnancy leaves and parental leaves
- unpaid periods of injury or illness
- periods of injury or illness for which the worker received long-term disability benefits
- periods of injury or illness for which the worker received workplace insurance benefits* or benefits from another insurance plan
- periods of full-time schooling

- unpaid leaves of absence
- periods of incarceration
- periods on social assistance benefits**
- strikes/lockouts, and
- unpaid periods of absence due to jury duty, spouse's or children's illnesses, funerals, dentist, or doctor appointments.

The WSIB may require a worker to provide documentation with respect to non-earning periods.

* This only includes periods during which the worker was:
- unable to work and receiving full benefits (i.e., full LOE benefits under the WSIA, s.37(1) temporary total disability, or s.147(2) supplementary benefits under the *Workers' Compensation Act*), and
- participating in return-to-work (RTW) activities, active in a RTW assessment or plan, and/or involved in appropriate RTW services resulting from a breach of the re-employment obligation. See 19-02-07, RTW Overview and Key Concepts, 19-02-08, RTW Co-operation Obligations, 19-02-09, Re-employment Obligations, and 19-02-10, RTW Assessments and Plans.

** This may include periods during which the worker was:
- not working and receiving social assistance benefits, or
- working and receiving social assistance benefits.

Non-earning periods included in the recalculation
Non-earning periods that are part of the employment pattern may include temporary layoffs due to work shortages, retooling, or holiday shutdowns. Gross employment insurance (EI) benefits received for these non-earning periods are included as earnings.

If a worker has periodic employment earnings supplemented by social assistance benefits and this is reflective of their employment pattern, the WSIB may accept only the earnings and time worked from employment.

Recalculation method
To determine a worker's long-term average earnings, the WSIB divides the worker's total earnings in the recalculation period by the length of the recalculation period.

Periods of non-covered self-employment are considered part of the worker's employment pattern and do not shorten the recalculation period. As a result, neither the earnings from the non-covered self-employment nor the time worked in the non-covered self-employment may be included in the recalculation.

The WSIB does not recalculate the worker's average earnings solely due to a pay increase or decrease prior to the injury. However, if:

- the worker's average earnings are to be recalculated (e.g., the worker had worked overtime over the course of the last 12 months that was not included in the short-term average earnings), **and**
- the worker had received a pay increase or decrease in the recalculation period,

the WSIB factors in the pay increase/decrease.

Example - Pay increase

In the 365 days* (12 months) before the injury Joe earned:

- $20.00/hr in a 40-hour week ($800.00/wk) for the first 36 weeks
- $20.80/hr in a 40-hour week ($832.00/wk) for the last 16 weeks, and
- $250.00 in overtime.

To calculate Joe's long-term average earnings the WSIB:

- adds the earnings in the recalculation period including overtime, for a total of $42,362.00
- divides this total by the recalculation period ($42,362.00 divided by 365*) x 7, for a weekly amount of $812.42
- adds to this weekly amount:
    - the amount of the pay increase ($32.00/wk)
    - multiplied by the number of weeks in the recalculation period that the worker was paid at the old rate (36 weeks),
    - multiplied by 7, divided by 365,*

for a long-term average earnings of $834.51.

Formula
$812.42 + [($32.00 x 36) x 7]/365*= $834.51

Example - Pay decrease

The following example illustrates the impact of a pay increase/decrease that is not related to a change in job grade or classification. If the pay increase/decrease is due to a change in job grade or classification this reduces the recalculation period (see "Break in the employment pattern" in this document).

If in the 365 days* (12 months) before the injury Sergei earned:

- $20.80/hr for the first 16 weeks
- $20.00/hr for the last 36 weeks, and
- $250.00 in overtime.

To calculate Sergei's long-term average earnings the WSIB:

- adds the earnings for a total of $42,362.00
- divides this total by the recalculation period
- ($42,362.00 divided by 365*) x 7, for a weekly amount of $812.42
- subtracts from this weekly amount:
    - the amount of the pay decrease ($32.00/wk)
    - multiplied by the number of weeks that the worker was paid at the old rate (16 weeks)
    - multiplied by 7 and divided by 365*

for a long-term average earnings of $802.60

Formula
$812.42 - [($32 x 16) x 7]/365* = $802.60

*This is the length of the recalculation period and may be less than 365 if the recalculation period is shortened by a break in the employment pattern, or non-earnings periods that are factored out.

Table of earnings

For a list of items that are included or excluded from the calculation of long-term average earnings, see 18-02-02, Determining Short-term Average Earnings.

Temporary long-term average earnings

If the WSIB does not have the complete earnings information necessary to determine long-term average earnings, temporary long-term average earnings may be established based on a best estimate of the worker's long-term earnings. LOE benefits may be paid based on this amount until the necessary information is obtained.

Severely impaired workers

The long-term average earnings of a severely impaired worker (a worker with a non-economic loss rating of 60% or more and receiving full LOE benefits), may not be less than 75% of the worker's short-term average earnings. Once the WSIB determines the permanent impairment rating of such a worker, any adjustment to the long-term average earnings is made retroactively to the beginning of the 13th week of LOE benefits.

Effective date of long-term earnings

If a recalculation of the worker's average earnings is conducted, LOE benefits are paid based on the long-term average earnings effective from the beginning of the 13^{th} week of benefits. Long-term average earnings may be adjusted if the information used for the recalculation is found to be incorrect or incomplete. For example, following the recalculation the worker could receive an irregular bonus that was earned prior to the injury.

An adjustment is made when the WSIB receives the new information. The adjusted long-term average earnings are retroactive to the beginning of the 13th week of benefits.

If the adjustment results in a lower rate, a benefit-related debt is created and may be recoverable, see 18-01-04, Recovery of Benefit-Related Debts.

Obligation to provide information

To determine long-term average earnings, the WSIB requires the worker and/or employer to supply relevant earnings information. The following documents are accepted as "proof of earnings":

- Income and Deduction Statement from CRA
- T4 statements issued by the employer
- pay cheque stubs
- Record of Employment as submitted for EI purposes, or
- letters from prior employers.

The WSIB has sole discretion to determine what is acceptable "proof of earnings." The WSIB may exercise discretion where documents not listed above are submitted as "proof of earnings."

The WSIB may reduce or suspend benefits if the worker fails to provide the requested information within the specified time period. If the worker must obtain information from a third party (e.g., CRA) and does not obtain this information, the WSIB must be satisfied that the worker failed to take all reasonable steps to acquire the information before reducing or suspending the worker's benefits. If the worker subsequently supplies the required information, full benefits are reinstated; however, this payment is not retroactive.

If the employer fails to provide the requested information, the employer may be found guilty of an offence and subject to a penalty, see 22-01-08, Offences and Penalties - Employer.

Application date

This policy applies to all decisions made on or after December 5, 2024, for all accidents occurring on or after December 1, 2002.

Document history

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4.1 dated January 1, 1998.

References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 21, 23, 53, 66, 152

Approval

Approved by the President and CEO on October 4, 2024.