
Policy

Where a worker's death results from a work-related injury/disease and the deceased worker is survived by more than one person entitled to survivors' benefits as a spouse, the lump sum payment and the periodic (monthly) payments are apportioned (divided) among the spouses.

Purpose

The purpose of this policy is to outline how the WSIB apportions survivors' benefits where more than one person is entitled to survivors' benefits as a spouse.

Guidelines

For the definition of spouse, see 20-01-02, Definitions and Application Dates.

Principles for apportionment

The WSIB apportions payments in cases where

- the total lump sum payments to all spouses would exceed the maximum lump sum amount (\$121,009.87), and/or
- the total periodic payments to all spouses would exceed the maximum periodic payment amount (85 per cent of the deceased worker's net average earnings (NAE) at the time of the injury).

NOTE

The maximum lump sum amount is indexed annually. The amount above is for 2017, see 18-01-02, Benefit Dollar Amounts - Accidents from 1998 for the amount as indexed each year from 1998 onward.

The deceased worker's earnings are subject to the statutory maximum, see 18-02-07, Calculating Net Average Earnings.

For information about when and how Canada Pension Plan (CPP) or Quebec Pension Plan (QPP) benefits impact periodic payments, see 20-03-03, Calculating CPP/QPP Offsets from Survivors' Benefits.

Lump sum payments

Current spouse and one separated spouse

The WSIB first determines the current spouse's lump sum entitlement, see 20-03-04, Spouse with No Children. The balance of the maximum lump sum is apportioned to the separated spouse up to a maximum of the current spouse's entitlement.

**Operational
Policy**

Section
Benefits for Survivors

Subject
Apportionment of Survivors' Benefits

Example

35 year old spouse at the time of the worker's death in 2017
One separated spouse

(base amount) + (incremental amount x # years under 40) = current spouse's lump sum
(\$80,673.30) + (\$2,016.83 x 5) = \$90,757.45

(maximum lump sum) - (current spouse's lump sum) = separated spouse's lump sum
(\$121,009.87) - (\$90,757.45) = \$30,252.42

No current spouse and one separated spouse

The WSIB treats the separated spouse as the current spouse for the purpose of determining lump sum entitlement, see 20-03-04, Spouse with No Children.

No current spouse and more than one separated spouse

The WSIB

- totals, for each separated spouse, any support payment or evidence of financial dependency (EFD) amounts the worker paid to each
- converts those totals into a percentage of the deceased worker's NAE
- applies those percentages to the maximum lump sum amount to determine each separated spouse's entitlement, and
- apportions those amounts to each separated spouse.

Periodic payments**Current spouse, one separated spouse, and no children**

If the total entitlement does not exceed 85 per cent of the deceased worker's NAE, the WSIB pays both spouses the entitlement to which each is due, regardless of any separation agreement, court order, or EFD.

If the total entitlement exceeds 85 per cent of the NAE, the WSIB apportions payments with respect to any separation agreement, court order, or EFD.

Current spouse, one separated spouse, and children

The WSIB

- adds any support amount or EFD amount that was paid to the separated spouse, and converts the total into a percentage of the deceased worker's NAE
- apportions that percentage of 85 per cent of the NAE to the separated spouse, and
- apportions the balance of 85 per cent of the NAE to the current spouse in accordance with either the guidelines for a spouse with one or more children or a spouse with no children, see 20-03-06, Spouse with One or More Children or 20-03-04, Spouse with No Children.

**Operational
Policy**

Section
Benefits for Survivors

Subject
Apportionment of Survivors' Benefits

Example

NAE of \$3,000 per month

Two children who are minors and live with the spouse

One child who is a minor and lives with the separated spouse

\$750 per month child support to the separated spouse

$(\text{support amount} \div \text{NAE}) \times 100 = \% \text{ support}$

$(\$750 \div \$3,000) \times 100 = 25\%$

$(85\% \text{ of NAE}) \times (\% \text{ support}) = \text{separated spouse's periodic payment}$

$(\$2,550) \times (25\%) = \637.50 per month

$(85\% \text{ of NAE}) - (\text{separated spouse's periodic payment}) = \text{current spouse's periodic payment}$

$(\$2,550) - (\$637.50) = \$1,912.50 \text{ per month}$

No current spouse and one separated spouse, either children or no children

The WSIB determines the separated spouse's entitlement in accordance with either the guidelines for a spouse with one or more children or a spouse with no children, see 20-03-06, Spouse with One or More Children or 20-03-04, Spouse with No Children.

No current spouse and more than one separated spouse

The WSIB

- adds each separated spouse's support and/or EFD amounts and converts each total into a percentage of the deceased worker's NAE
- uses those percentages to determine each separated spouse's entitlement to a portion of 85 per cent of the NAE, and
- makes periodic payments to each separated spouse according to those entitlements.

Reapportioning periodic payments

The WSIB reapportions periodic payments to the spouse or separated spouse if a change occurs in the circumstances of the youngest child in the care and control of a spouse or separated spouse. For example, payments are reapportioned if the youngest child

- is 19 years old or older, is still in school, and is to be paid directly
- is 19 or older and stops going to school, or
- is no longer in the care and control of the spouse or separated spouse.

Generally, periodic payments are not reapportioned until the youngest child turns 19.

However, depending on the number of children aged 19 or older who are still in school, payments may need to be reapportioned among the survivors with entitlement to periodic payments.

Reapportioned payments begin the month following the change.

**Operational
Policy**

Section
Benefits for Survivors

Subject
Apportionment of Survivors' Benefits

For more information, see 20-03-12, Child 19 Years or Older Continuing in Education.

Annual indexing

On January 1 every year, the WSIB indexes ongoing periodic payments by the indexing factor, see 18-01-14, Annual Indexing for more information about annual indexing.

Application date

This policy applies to all decisions made for entitlement periods on or after January 1, 2018 if the injury or disease that resulted in the worker's death occurred on or after March 9, 2005.

The guidelines for annual indexing apply to all decisions made for entitlement periods on or after January 1, 2018 if the injury or disease that resulted in the worker's death occurred on or after January 1, 1998.

Document history

This document replaces 20-03-09 dated April 6, 2009.

This document was previously published as:

20-03-09 dated October 12, 2004

20-03-09 dated June 15, 1999

13.15 dated January 1, 1998.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 2(1), 48(2), (3), (4), (6), (7), (8), (19), (24), 49, 51, 52

Minute

Administrative
#23, November 15, 2017, Page 546