

**Operational
Policy**

Section

Temporary Disability Benefits (Accidents before 1998)

Subject

Calculating Temporary Total Disability Benefits (Accidents between 1985 and 1998)

Policy

When a work-related injury/disease results in temporary total disability, the worker is entitled to compensation in an amount equal to 90 per cent of the worker's net average earnings (NAE) before the injury.

Purpose

The purpose of this policy is to outline how temporary total disability benefits are calculated in various situations.

Guidelines

Determining average earnings

A worker's average earnings are generally based on the daily or hourly rate of pay at the time of the accident (also see "Average earnings - optional insurance" and "Average earnings - exceptional cases" below).

If correct earnings information is not available at the time the claim is allowed, temporary average earnings are set by the WSIB, taking into consideration the worker's occupation and length of service. The correct earnings information must be obtained as soon as possible.

Types of earnings

Bonuses/pay increases

If the earnings information supplied by the employer includes an average bonus (e.g., daily, weekly, monthly), the bonus is included in the average earnings calculation. Irregular lump sum bonuses are not included in the calculation of the daily or hourly rate of pay.

Retroactive pay increases effective on or before the day of the accident are also taken into consideration.

Tips

If tips form part of the worker's employment income, they are considered earnings for compensation purposes. The WSIB contacts the employer for confirmation if the reported tips exceed 25 per cent of the worker's earnings.

EI benefits

EI benefits are not earnings for the purposes of determining a worker's average earnings, except for federal work-sharing or job creation programs.

When a worker is participating in a federal work-sharing or job creation program, the WSIB considers the amount and period for which EI benefits are paid to calculate the worker's

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average earnings. EI benefits paid in these programs generally function as earnings, even if the worker is paid some wages for the work performed.

Room and board

The value of free room and board provided by an employer is considered part of earnings for compensation purposes, if it is supplied as a condition of employment.

Effective January 1, 1979, the accepted values are

Full room and board - \$59.50 per week
Room (\$4.00 per day) - \$28.00 per week
Meals (\$1.50 per meal) - \$31.50 per week

If the employers' values are lower, they are used. If the employers' values are higher, the WSIB's values are used.

Room and board provided by employers to their own children is not considered earnings if the children attend school and work in the family business part-time or during school vacation periods.

Determining NAE

The WSIB determines NAE by deducting from the worker's average earnings the probable

- income tax
- Canada Pension Plan (CPP) premiums, and
- Employment Insurance (EI) premiums payable by the worker.

Income tax

The WSIB calculates the probable income tax payable by the worker by using the worker's Net Exemption Code (NEC), which is filed with the employer. The employer indicates the code when reporting an accident to the WSIB, see 15-01-02, Employers' Initial Accident Reporting Obligations.

Workers who do not have income tax deducted at the source are considered single workers with no dependents (NEC 01) unless documentation demonstrating otherwise is submitted.

Workers who are not required to pay income tax (e.g., those individuals who do not pay income tax as a result of s. 87 of the *Indian Act*) do not have probable income tax deducted from their average earnings when determining NAE.

NEC changes

The WSIB may redetermine the NAE of any worker whose NEC changes. The redetermined NAE become effective the first of January of the year following the change.

Older workers

A worker 65 years of age or older is exempt from paying premiums under the *Employment Insurance Act*. The effective date for redetermining the workers' NAE is the first day of the month following the month in which the worker turns 65.

Probable CPP contributions continue to be factored into the NAE until the worker applies for and receives a CPP retirement pension, or until the end of the month that the worker turns 70, whichever comes first.

Calculating temporary total disability benefits

The benefit payable to a worker who is temporarily totally disabled is 90 per cent of the worker's NAE, within the statutory maximums and minimums, see 18-01-03, Benefit Dollar Amounts - Accidents before 1998.

Recalculating temporary total disability benefits

If the worker or the employer do not agree with the benefit payable because it does not fairly represent the average earnings of the worker, the WSIB recalculates the benefit using the worker's average earnings for one year prior to the accident (e.g., worked periods of overtime, earned bonuses or commissions, worked seasonally or intermittently, experienced regular layoffs). A lesser period may be used if the worker has not been with the accident employer for one full year.

When recalculating the benefit, the WSIB determines whether periods of unemployment are to be factored into the average earnings. Periods of unemployment that are characteristic of the employment cycle in the industry in which the worker is employed and can be anticipated to occur are factored in to reduce the average earnings. Periods of unemployment are also factored in when they form a pattern in the worker's usual employment cycle.

The WSIB considers

- time losses that are normal for the industry in which the worker is employed (e.g., seasonal, annual, or regular layoffs), and
- what is normal for the worker in light of the past three to five years' employment pattern as determined by information obtained from either the worker's or employer's written application for recalculation of the average earnings.

Whether the recalculation results in an increased or a reduced benefit, the recalculated benefit is used. Any increase in the benefit is effective from the date of entitlement to the

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benefit, while any reduction in the benefit is effective from the date the recalculation is completed.

Benefit-related debts are not created when recalculation results in a decrease in the benefit.

Average earnings - optional insurance

The average earnings of a worker with optional insurance are the worker's actual earnings up to the amount of coverage selected prior to the injury.

The same average earnings are used for temporary disability and Future Economic Loss (FEL) purposes, see 18-04-05, Initial Determination - Workers Who are Earning at Time of Determination.

Executive officers

The actual earnings of executive officers of corporations are their earnings as reported to Canada Revenue Agency.

Independent operators, sole proprietors, partners

The actual earnings of workers who are independent operators, sole proprietors, and partners, who have been in business for one year or more are determined from

- an audited financial statement of earnings prepared by a professionally designated accountant (e.g., CGA, CMA, or CA), or
- net business income for the previous year as reported to Canada Revenue Agency, subject to audit by the WSIB. The WSIB adjusts the income by including as earnings
 - amounts contributed to pension plans and RRSPs
 - depreciation and amortization
 - charitable donations
 - expenses arising out of the worker's use of personal home or vehicle for business purposes
 - dividends from the business, and
 - such other items that may be considered earnings, as appropriate to the individual case.

The average earnings of independent operators, sole proprietors, and partners who have been in business for less than one year, are one-third of the statutory maximum in effect at the time of the injury.

If the worker's operation shows a net business loss in the year before the injury, temporary disability benefits are not paid.

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between 1985 and 1998)****Average earnings - exceptional cases****Students**

The average earnings of students are generally based on the daily or hourly rate of pay with the employer at the time of the accident (see “Determining average earnings” above).

The Ministry of Education sets the average earnings for students in work education programs. The average earnings for these programs are based on the Ontario minimum wage plus any wages the student may have been earning in part-time employment, see 12-04-07, Students in Work Education Programs.

For the average earnings of students with permanent impairments, see 18-04-10, Calculating FEL for Students, Learners, and Apprentices.

Learners

For accidents occurring on or after December 16, 1993, the average earnings of a worker who is a learner are as follows:

- a) If the learner has accepted an offer of a job that was to begin once the learner's probationary or training period was completed, the learner's average earnings are the wages the learner would be paid in that job.
- b) If the learner has not accepted a job offer, the average earnings are the total amount of any income that ends because of the injury/disease.

This income may include

- EI benefits
- social assistance benefits
- training allowances
- private insurance benefits, or
- job income.

This income does not include

- reimbursement of expenses, or
- stipends and honoraria, if the WSIB determines these are not enough to constitute a wage.

In determining the net amount of this income, the WSIB checks if each component of the total earnings is reported as a gross amount. If any component is reported as a net amount (i.e., earnings after deductions), or if the component is non-taxable, no further determination of net with respect to this component is required.

- c) If the learner was not receiving any income and has not accepted a job offer, the learner's average earnings are the Ontario minimum wage. In this case, the hours of a full-time

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learner are the standard hours of work with the employer. The hours of part-time learners are proportional to the extent of their participation in the training program.

- d) If the learner has a concurrent contract of service with another employer, see 18-06-05, Concurrent Employment.

NOTE

18-06-05, Concurrent Employment does not apply if the learner has accepted a job offer upon completion of the probationary or training period.

Apprentices

To calculate the average earnings of an apprentice, the WSIB uses the average earnings of a journeyman employed by the accident employer in the same trade as the one the apprentice was working in when injured.

If this cannot be done, the WSIB uses the average earnings of a journeyman employed in the accident employer's locality, in the same trade that the apprentice was working when injured.

Stevedores, longshoreworkers

Many stevedores are paid through a central payroll office used by most stevedoring companies. Earnings inquiries are made through the Maritime Data Centre in Montreal. If a stevedore is paid differently from above, contact should be made with the specific employer(s).

Truckers, teamsters

If a trucker with a truck is hired, one-third of the gross amount paid to the trucker is considered wages and two-thirds is considered as truck hire.

If a teamster with a team of horses is hired, one-half of the gross amount paid to the teamster is considered wages and one-half is considered as team hire.

Pieceworker

A pieceworker's average earnings are based on work performed and hours worked. To calculate the benefits payable, the WSIB determines the nature of the work, nominal rate of pay per unit, and the daily production rate. Pieceworkers are classed as Monday to Friday workers when work days are unavailable, otherwise the average number of days worked per week is used.

Earnings in other currencies

If the worker is paid in currency other than Canadian, the earnings are converted into Canadian funds to set the average earnings. The rate of exchange is acquired through the Bank of Canada and the rate used is that of the day benefits begin.

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On January 1 every year, the WSIB indexes ongoing temporary total disability benefits by applying the indexing factor to the amount payable, see 18-01-14, Annual Indexing.

Application dates

This policy applies to all decisions made for entitlement periods on or after January 1, 2018, for accidents from April 1, 1985 to December 31, 1997, except as noted below.

The guidelines for determining the average earnings of a worker with optional insurance apply to claims with accident dates from April 1, 1985 to December 31, 1997. (See Optional insurance.)

The guidelines for the federal work-sharing and job creation programs apply to accidents occurring on or after January 17, 1991. (See EI benefits.)

The guidelines for calculating the average earnings for a learner applies to accidents occurring on or after December 16, 1993. (See Learners.)

The guidelines for calculating the average earnings for an apprentice is effective January 18, 1991 and applies to accidents on or after January 2, 1990. (See Apprentices.)

Document history

This document replaces 18-06-01 dated March 3, 2008.

This document was previously published as:

18-06-01 dated February 20, 2006

18-06-01 dated October 12, 2004

05-02-02 dated October 22, 2001.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Section 111

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 1(1), 26, 37(1), 38, 39(1), 40, 41, 144, 146, 148, 151

Workers' Compensation Act, R.S.O. 1980, as amended
Sections 40, 43, 44

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O. Reg. 1102, R.R.O. 1990

Sections 14(2), 14(3), 14(4), 14(4.1), (4.2)

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