

Section	Policy
40	44.10.20.50.10

Section Title: Benefits Administration – *Adjudication and Compensation*
 Subject: Recurring Effects of Injuries and Illness (Recurrences)
 Effective Date: January 1, 2006 - December 31, 2021 (This policy applies to decisions made on accidents which occurred on or after January 1, 1992)

A. GENERAL INFORMATION

The date of accident determines which workers compensation legislation applies to a claim. *The Workers Compensation Act* (the Act) that is in force on the date of accident is the Act that applies to that claim, even if the Act has been repealed. The Act will determine the type and amount of compensation payable to injured workers and their dependants.

Many injured workers return to work and then subsequently discover that they have not recovered from their original injury or illness. They suffer an increase in permanent impairment or relapse of their injury that result in a loss of earning capacity that arises from the original compensable injury or illness. In these situations, the worker has experienced a recurrence.

When a recurrence has occurred, this policy establishes criteria to determine whether a worker's Workers Compensation Board (WCB) benefits should be recalculated. The policy first distinguishes between a new and separate accident and the recurring effects of a previous injury or illness. It then sets out a test that determines whether a worker's benefits should be recalculated.

In some circumstances, the WCB may remove the claim costs related to a recurrence from the Class-E accident employer's claim costs experience.

B. POLICY

When a worker makes a claim with the WCB, it will determine whether the worker is entitled to benefits and services under the Act. If the WCB decides that the worker is entitled to compensation under the Act, the WCB must next decide whether the worker has suffered a new accident or a recurrence.

When a worker has returned to work following a compensable injury or illness, and subsequently suffers a further loss of earning capacity as a result of that same injury or illness, the WCB will award compensation benefits to the worker during the current loss of earning capacity.

The compensation benefits to which a worker is entitled as a result of a recurrence will be based on *The Workers Compensation Act* in effect at the time of the original accident. This policy sets out the details for determining the calculation of benefits for recurrences under two different compensation schemes for workers who had accidents:

- from January 1, 1992 to December 31, 2005; or
- on or after January 1, 2006.

Accidents On or After January 1, 1992

1. Prior to determining the type and amount of compensation benefits payable, the WCB must first determine whether the worker's current loss of earning capacity is the result of a new and separate accident or a recurrence. The distinction between a new accident and the recurring effects of a previous injury or illness will be based upon whether the current loss of earning capacity is a consequence of the original compensable injury or illness or an intervening incident event, or exposure that contributed to the injury.

2. New Accident

The WCB will consider that the current loss of earning capacity results from a new and separate accident if the loss of earning has no relationship to a previous injury or illness. The current loss of earning capacity has no relationship to a previous injury or illness if the same body part or anatomical site as the original injury or illness is not injured or the worker's condition is not consistent with the details of the accident and the diagnosis as established in the original claim.

If there was an intervening incident, event, or exposure deemed capable of either causing the injury, or aggravating a previous susceptibility to injury, the WCB will also consider the current loss of earning capacity the result of a new and separate accident.

When the WCB has determined that the current loss of earning capacity is the result of a new and separate accident, compensation benefits will be based on the worker's average earnings at the time of the new accident. These average earnings will be calculated using section 45 of the existing Act and policy 44.80.10.10, *Average Earnings*, in effect on the accident date.

3. Recurrence

If the WCB determines that the current loss of earning capacity is not the result of a new and separate accident, then the current loss of earning capacity will be considered a recurrence of the effects of a previous injury or illness.

A recurrence is a clinically demonstrated increase in temporary or permanent impairment which results in a current loss of earning capacity, or a relapse of an injury which has been directly related to a previous compensable condition which results in a current loss of earning capacity.

4. When the WCB determines that the worker has not established a real and substantial attachment to the labour force at the time of the recurrence and the current loss of earning capacity is a continuing result of the original injury or illness, the worker's compensation benefits will be based on the pre-accident net average earnings (indexed) as would be the case for continuous benefits associated with the original injury or illness.
5. When the WCB determines that the worker has established a real and substantial attachment to the labour force at the time of the recurrence, the worker is entitled to have his or her compensation benefits based on whichever net average earnings are higher – at the time of the recurrence or at the accident date. When applicable, the WCB will consider maximum annual earnings levels.

The WCB will apply any applicable adjustments for indexing to the worker's average earnings from the date of accident to determine the current value of these net average earnings to use in the above comparison.

When the worker's original accident occurred from January 1, 1992, to December 31, 2005, the worker's net average earnings determined above cannot exceed the net average earnings based on the 2005 maximum annual earnings level. The WCB will also apply any applicable adjustments for indexing to this maximum annual earnings level to determine the current value of these net average earnings at the recurrence date.

When the worker's original accident occurred on or after the proclamation date of Bill 25, the wage-loss benefits payable to the worker at the time of the recurrence are still subject to subsection 39(7) of the Act. This subsection of the current Act provides a minimum rate of wage-loss benefits for low-income earners.

6. For the purposes of this policy, the following definition applies when determining "a real and substantial attachment to the labour force":

The worker's compensable condition has clinically stabilized and he or she has been able to sustain an attachment to the labour force for what the WCB considers a sufficient period, usually not less than 12 weeks.

Removal of Claim Costs

In the circumstances described in Schedule B of WCB policy 31.05.10, *Cost Relief/Cost Transfer - Class E*, the claim costs of a recurrence may be removed from the Class-E accident employer's claim costs experience.

C. REFERENCES

The Workers Compensation Act, subsections 40(2), 40(5) - (7), 81(1), section 45 [prior to January 1, 2006]

The Workers Compensation Act, subsections 40(2), 40(5) - (7), 81(1), section 45 [on or after January 1, 2006]

Related WCB Policies:

31.05.10, *Cost Relief/Cost Transfer - Class E*

44.80.10.40, *Net Average Earnings*

44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*

History:

1. Policy 44.10.20.50 amended by Board Order 13/00 on April 27, 2000.
2. Administrative Guidelines have been added to this policy – November 2002.
3. Policy amended by Board Order No. 27/05, on September 29, 2005, to rescind Board Order 13/00 effective January 1, 2006. The rescinded policy 44.10.20.50 will continue to apply to recurrence decisions made from January 1, 2001 to December 31, 2005 and any reconsiderations and appeals that derive from these decisions.
4. Policy 44.10.20.50.10 approved by Board Order 27/05 on September 29, 2005. The revised policy is effective January 1, 2006. Revisions to the policy include: splitting policy 44.10.20.50 into two based on the compensation rate, clarifying that the date of accident will influence the level of net average earnings that the WCB may use to pay benefits and highlighting that claim costs may be removed in some situations.
5. Administrative guidelines were removed from this policy. The Board of Directors approve the policy while the administration approves the guidelines.
6. Minor formatting and grammatical changes were made to the policy, June 27, 2012.
7. Reference section updated to add Policy 44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*, April 1, 2014.
8. Policy updated November 10, 2017 to reflect consequential amendments to "Removal of Claim Costs" section to incorporate changes arising out of transition to the new rate setting model.
9. Minor formatting changes were made to the policy, April 2021.
10. Policy 44.10.20.50.10, *Recurring Effects of Injuries and Illness (Recurrences)* was rescinded by Board Order 11/21 on April 19, 2021 effective January 1, 2022. The repealed policy was removed from the WCB Policy Manual and archived.