

Section	Policy
40	44.80.10.40

Section Title: Benefits Administration - Wage Loss
Subject: Net Average Earnings
Effective Date: January 1, 2001, modified January 1, 2008 (For accidents on or after January 1, 2001)

POLICY PURPOSE

This policy describes how the worker's net average earnings are calculated.

Workers who have accidents after December 31, 1991, will receive wage loss benefits or their survivors' benefits based on a percentage of the worker's net average earnings. Net average earnings are calculated in a two step process.

First, the Workers Compensation Board (WCB) determines the worker's average earnings before the accident. That process is described in policy 44.80.10.10, *Average Earnings*. From those average earnings, the WCB calculates amounts representing probable deductions for income tax payable, Canada Pension Plan (CPP) contributions, Employment Insurance (EI) premiums and other deductions as the Board of Directors may establish by regulation. Those amounts are deducted from "average earnings" to arrive at the worker's "net average earnings." The probable deductions that may be used in calculating a worker's net average earnings are described in this policy.

A. POLICY

With one exception, this policy applies to decisions on net average earnings for accidents on or after January 1, 2001. The exception is section iv. This section applies only to accidents on or after January 1, 2006.

Net Average Earnings

(i) Relationship to Average Earnings

1. The WCB determines a worker's net average earnings by deducting from the worker's average earnings the probable deductions for the following:
 - income tax payable by the worker;
 - Canada Pension Plan contributions payable by the worker;
 - Employment Insurance premiums payable by the worker; and
 - other deductions the Board of Directors may establish by regulation.
2. Net average earnings are recalculated whenever the worker's average earnings change.

(ii) Probable Deductions from Average Earnings

1. Probable deductions for CPP contributions and EI premiums are based on requirements of the *Canada Pension Plan Act* and the *Employment Insurance Act*.

2. When determining probable amounts, the WCB considers the contribution levels required under those Acts. Workers who are not required to pay CPP contributions or EI premiums do not have these probable contributions or premiums deducted.
3. Probable deductions for income tax are based on the worker's average earnings and the tax credits and deductions that the WCB allows. Workers who are not required to pay income tax do not have probable income tax deducted.
4. The worker may claim the following tax credits: basic personal amount, spouse or common-law partner amount, amount for an eligible dependant, amounts for dependent children who are under 18 at any time in the year, and infirm dependants age 18 or older. For the purpose of determining the probable deduction for income tax, the WCB will reduce the worker's average earnings by the following tax deductions: child care expenses and support payments. Probable income tax will then be applied to the reduced average earnings.
5. The WCB will only allow the tax credits and deductions outlined above if the worker qualifies to claim them under the federal and provincial *Income Tax Acts*.

The WCB does not use the spouse or common-law partner tax credit to determine the worker's probable income tax payable when the injured worker indicates to the WCB that his or her spouse or partner is employed.

6. Tax credits and deductions that a worker may claim are initially established at the date of accident. These credits and deductions will be adjusted on the first day of the month following the second anniversary of the accident and annually thereafter.

Subject to paragraph 6, the federal tax credit for dependant children who are under 18 at any time in the year may be claimed by workers with accidents on or after January 1, 2001. However, this tax credit may only be claimed on or after July 1, 2007.

(iii) Recurrences or New Accidents

This section (iii) applies only to recurrence decisions made on or after January 1, 2006, for accidents on or after January 1, 2001.

1. When a worker returns to work following an injury or illness and subsequently makes a claim which is accepted by the WCB as a "recurrence" of the original injury or illness with a real and substantial attachment to the labour force, the worker's net average earnings will be determined under policy 44.10.20.50.10, *Recurring Effects of Injuries or Illnesses (Recurrences)*. The worker's net average earnings at the time of the recurrence will be based on the tax credits and deductions he or she can claim at that time.
2. If the claim is accepted by the WCB as a continuing result of the original injury or illness without a real and substantial attachment to the labour force, the worker's net average earnings will be based on pre-injury net average earnings. When applicable, the WCB will apply any adjustments for indexing to the worker's average earnings to determine the current value of these net average earnings.

3. If the claim is accepted as a “new accident”, the worker’s net average earnings will be based on net average earnings at the time of the accident.

Recurrence decisions made prior to January 1, 2006 for accidents on or after January 1, 2001 will be determined under policy 44.10.20.50, *Recurring Effects of Injuries*.

(iv) Survivors’ Benefits to the Worker’s Spouse or Common-law Partner

This section (iv) applies only to accidents on or after January 1, 2006.

1. Where the worker’s date of accident is different from the worker’s date of death, the WCB may adjust the worker’s net average earnings in determining the amount of compensation payable to the worker’s surviving dependants.
2. In most cases, where the worker was working just prior to his or her death, the WCB will base the monthly payments payable under subsection 29(1)(a)(ii) of the *Act* on the worker’s net average earnings at the date of death. However, if the worker’s net average earnings at the date of death do not accurately represent the worker’s probable earning capacity had the accident not occurred, the WCB may adjust the worker’s net average earnings to an amount that does represent the worker’s probable earning capacity on the date of death had the accident not occurred.
3. Where the worker was receiving wage loss benefits at the time of his or her death, the WCB will base the monthly payments payable under subsection 29(1)(a)(ii) on the worker’s current net average earnings.

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.

Removal of Claim Costs

Schedule B of policy 31.05.10, *Cost Relief/Cost Transfer - Class E*, provides cost relief to Class E employers for the additional compensation costs that arise when the WCB adjusts the worker's net average earnings under this policy.

B. REFERENCES

The Workers Compensation Act, subsections 1(12.1), 29(1)(a)(ii), 39(1), 40(1), and 40(3)

WCB Policy 31.05.10 *Cost Relief/Cost Transfer- Class E*

WCB Policy 44.80.10.10, *Average Earnings*

WCB Policy 44.80.30.10, *Establishing Post-Accident Earning Capacity*

WCB Policy 44.10.20.50.10, *Recurring Effects of Injuries and Illnesses (Recurrences)*

WCB Policy 44.10.20.50, *Recurring Effects of Injuries*

History:

1. Policy 44.80.10.40 established by Board Order 45/91 on December 17, 1991.
2. Policy amended by Board Order 20/93 on June 28, 1993, to cease effect on June 30, 1993. Re-issued to Policy Manual as 44.80.10.40.02
3. Policy 44.80.10.40 approved by Board Order 20/93 on June 28, 1993 to reflect amendments to the federal *Income Tax Act* effective July 1, 1993. Re-issued to Policy Manual as 44.80.10.40.01
4. Policy 44.80.10.40 approved by Board Order 13/2000 on April 27, 2000. Policy renamed Net Average Earnings. The major changes to the policy include the addition of tax deductions that a worker may claim and a revised method for determining net average earnings when a recurrence occurs. Effective January 1, 2001 for accidents on or after January 1, 2001.
5. Policy was amended by Board Order 31/2003 on October 30, 2003, to reflect a wording change to Point A. (i) 2. Administrative Guidelines have been added to this policy and the name of a policy in the “References” section has been corrected.
6. Updated July 1, 2005 – Bill 41 effective July 6, 2001 redefined “spouse” and added a separate definition of “common-law partner”. The change in the policy adds the phrase “or common-law partner” after “spouse”.
7. Policy 44.80.10.40 approved by Board Order 28/05 on September 29, 2005. The revised policy’s effective date is January 1, 2006. The application of the policy is dependent on decision and accident dates. The key revision to the policy is the adjustment of a deceased worker’s net average earnings in some circumstances.
8. Policy amended by Board Order 28/05, on September 29, 2005 to rescind Board Order 13/00 effective January 1, 2006. The rescinded policy will continue to apply to net average earning decisions made on accidents from January 1, 2001 to December 31, 2005. The recurrence provisions apply to recurrences from January 1, 2001 to December 31, 2005. This policy will still apply to any reconsiderations and appeals that derive from these decisions/accidents. Re-issued to policy manual as 44.80.10.40.01.
9. Policy 44.80.10.40 approved by Board Order 24/07 on June 20, 2007. The application of the policy is dependent on decision and accident dates. Effective July 1, 2007, the Board of Directors approved the WCB’s practice to use the dependent child tax credit in the calculation of a worker’s probable income tax payable.
10. Board Order 28/05 was rescinded effective July 1, 2007.
11. Policy 44.80.10.40 approved by Board Order 32/07 on October 30, 2007. The application of the policy is dependent on decision and accident dates. Effective January 1, 2008, the Board of Directors approved the WCB’s practice to not use the spouse or common-law partner tax credit in calculating a worker’s probable income tax payable if the spouse/partner is employed. This practice was incorporated into the policy.
12. Board Order 24/07 was rescinded effective January 1, 2008.
13. Minor formatting and grammatical changes were made to the policy June 27, 2012.
14. Policy updated November 10, 2017 to reflect Schedule B of policy 31.05.10, *Cost Relief/Cost Transfer - Class E* which provides cost relief to Class E employers for additional claim costs involving higher net average earnings for deceased workers.