

Section	Policy
40	44.80.30.10

Section Title: Benefits Administration - Wage Loss
Subject: Establishing Post-Accident Earning Capacity
Effective Date: January 1, 2006

POLICY PURPOSE

Since January 1, 1992, the Workers Compensation Board (WCB) of Manitoba has operated on the basis of a wage-loss system. A wage-loss system pays a worker based upon the difference between the worker's average earnings before the accident and what the WCB determines the worker is capable of earning after the accident. This policy describes the methods that will be used to calculate the worker's post-accident earning capacity. It applies to workers with accidents occurring on or after January 1, 1992.

Post-accident earning capacity may also affect calculation of benefits payable to workers who were disabled as a result of an accident that occurred prior to January 1, 1992. This would occur when the worker is receiving rehabilitation benefits, temporary partial disability benefits, or Special Additional Compensation (SAC). This policy is designed to ensure that his or her post-accident earning capacity is based on similar principles applied to workers who have accidents on or after January 1, 1992.

A. POLICY

1. Basic Principles

A complete list of the components of post-accident earnings is not realistic because of the variety of ways that a worker is compensated in today's workplace. The guiding principles to be used in any situation when the specific item is not described later in the policy include:

- The worker's earning capacity will be based on earnings that *best represent* the amount the worker is capable of earning after the accident.
- Post-accident earnings may include either actual or estimated earnings.
- When a worker has actual earnings, the actual earnings will be used unless the WCB demonstrates that the worker is capable of earning more than the amount actually earned.
- The types of income used to calculate post-accident earnings should be consistent with the types of income that may be used to calculate pre-accident earnings.
- Except where they are excluded below, employment benefits earned or accrued while receiving WCB benefits will be included in post-accident earnings.
- Employment benefits earned or accrued prior to receiving WCB benefits will not be included in post-accident earnings.

2. Sources included in Actual Post-Accident Earnings for workers with accidents on or after January 1, 1992

A wage-loss policy that deals with a loss of earning capacity must calculate post-accident earnings more comprehensively than a lay definition of earnings. The WCB may use either actual or estimated earnings. For the purpose of this policy, actual earnings will include:

- a) Earnings from employment
 - i) Any income, less CRA probable deductions for business expenses, which the worker earns from employment.
 - ii) The real value of any goods or services that the worker receives in lieu of wages, such as free or subsidized rent or food.
 - iii) The real value of anything that would be a taxable benefit under the *Income Tax Act*.
- b) Reductions in Income Tax, CPP Contributions and EI Premiums while receiving non-taxable wage-loss benefits.

The Workers Compensation Act (The Act) recognizes that someone who receives non-taxable wage loss benefits for part of the year pays less tax than someone who earns taxable income during the entire year.

The Act permits the WCB to deem any entitlement to a refund or reduction of the probable income tax, Canada Pension Plan (CPP) contributions or Employment Insurance (EI) premiums payable by the worker to be earnings that the worker is capable of earning after the injury. The WCB refers to this deemed entitlement as a sheltered income benefit.*

Post-accident earnings will include this sheltered benefit amount. The WCB will determine an amount to represent:

- i) the probable income tax that the worker will not pay while receiving non-taxable wage loss benefits; and
- ii) the probable refund or reduction of CPP contributions and EI premiums while receiving non-taxable wage loss benefits.

**While wage-loss benefits are non-taxable, the amount of wage-loss benefits is included in line 236 (Net Income) of the worker's income tax return. This net income level is used to determine eligibility for certain tax credits and other benefit programs.*

The WCB will calculate the sheltered benefit amount using a standard formula based on the following assumptions:

- i) All workers will be assumed to receive wage loss benefits for 3 months and employment income for 9 months in each calendar year.
- ii) Some workers, who receive wage-loss benefits for 40 weeks or more in a single calendar year, may be adversely affected by the standard formula used to calculate the sheltered benefit amount. To prevent an inequity, the WCB will recalculate the sheltered benefit amounts for workers who have received wage-loss benefits for 40 weeks or more in a

single calendar year. This annual recalculation may result in some of these workers receiving a refund of their sheltered benefit amount.

Accidents on or after January 1, 2006

- iii) The sheltered benefit calculation will apply to workers who have received wage-loss benefits for 104 weeks or longer. As a result, the sheltered benefit amount will be included in these workers' post-accident earnings.

Accidents from January 1, 1992 to December 31, 2005

- iv) The sheltered benefit calculation will not apply to workers who have received wage-loss benefits for 104 weeks or longer. As a result, the sheltered benefit amount will not be included in these workers' post-accident earnings.

c) Collateral Benefits

When the worker receives benefits for the same work-related injury or illness from the WCB and other sources, the WCB may adjust the amount of wage-loss benefits paid to a worker. These other sources of benefits may be called collateral benefits.

Under subsection 41(1) of the Act, collateral benefits are defined as:

- (a) any periodic benefit the worker is entitled to receive under the Canada Pension Plan, the Quebec Pension Plan, the Employment Insurance Act (Canada), and a policy of disability insurance;
- (b) any payment to the worker by the worker's employer, including a gratuity or allowance; and
- (c) any other statutory benefit prescribed by the board by regulation.

If these collateral benefits are not specifically excluded in section 4, they will be included in post-accident earnings if they were earned or accrued while the worker receives wage loss benefits.

Some employers supplement or "top-up" the wage-loss benefits paid to workers in order to allow these workers to receive roughly the same take-home pay they earned prior to the workplace injury or illness. This collateral benefit is commonly referred to as "employer top-up".

Accidents on or after January 1, 2006

Workers with accidents on or after January 1, 2006, will not have their wage-loss benefits adjusted if the combination of wage-loss benefits and collateral benefits does not exceed 100% of their actual loss of earning capacity. If the worker receives an employer top-up, the WCB will not perform a detailed calculation but will assume that the combination of employer top-up payments and wage-loss benefits does not exceed 100% of the worker's actual loss of earnings.

If other collateral benefits are received, the WCB will do a calculation to determine whether the combination of wage-loss benefits and collateral benefits exceeds 100% of the actual loss of earning capacity. Once this threshold of 100% is exceeded, the WCB will reduce the amount of wage-loss benefits paid to a worker to ensure that this threshold is not exceeded with a combination of wage-loss benefits and collateral benefits.

Accidents from January 1, 1992, to December 31, 2005

Workers with accidents from January 1, 1992, to December 31, 2005, will not have their wage-loss benefits adjusted if the combination of wage-loss benefits and collateral benefits does not exceed 90% of their actual loss of earning capacity. Once this threshold of 90% is exceeded, the WCB will reduce the amount of wage-loss benefits paid to a worker to ensure that this threshold is not exceeded with a combination of wage-loss benefits and collateral benefits.

If a worker's average earnings exceed the maximum covered earnings at the time of the accident, collateral benefits will affect the calculation of wage-loss benefits. In these situations, the WCB will:

- i) Calculate the worker's wage-loss entitlement based on the statutory maximum.
- ii) Calculate what the worker's wage-loss entitlement would have been if there were no statutory maximum.
- iii) Calculate the net collateral benefit.
- iv) Reduce the worker's wage-loss benefit by the amount, if any, where i) plus iii) exceeds ii).

Policies 44.80.30.10.10, *Post-Accident Earnings – Collateral Benefits (Allowable Top-Up)*, and 44.80.30.10.20, *Post-Accident Earnings – Collateral Benefits (Unallowable Top-Up)*, will determine whether employer top-up payments will have an impact on wage-loss benefits paid to workers with accidents from January 1, 1992, to December 31, 2005. In general, workers' wage-loss benefits will not be adjusted if the criteria under policy 44.80.30.10.10 are met and employer top-up is allowed. Where the criteria are not met, the wage-loss benefits paid to workers may be adjusted under Policy 44.80.30.10.20.

3. Sources included in Actual Post-Accident Earnings for workers with accidents prior to January 1, 1992

The WCB may use either actual or estimated earnings. For the purpose of this policy, actual earnings will include:

- a) Earnings from Employment
 - i) Any income, less CRA probable deductions for business expenses, which the worker earns from employment.
 - ii) The real value of any goods or services that the worker receives in lieu of wages, such as free or subsidized rent or food.
 - iii) The real value of anything that would be a taxable benefit under the *Income Tax Act*.

- b) Injury-related Benefits

A worker may sometimes receive insurance or other benefits from other sources as a result of his or her injury. If those benefits are not specifically excluded in section 4, they will be included in post-accident earnings if they were earned or accrued while the worker received benefits from the WCB.

4. Specific exclusions from Actual Post-Accident Earnings regardless of the Date of Accident

The principles described earlier in this policy are generally used when determining whether to include a source of income in the worker's post-accident earnings. However, some income sources are excluded. These exclusions apply regardless of the date of accident. They are listed below:

- a) Any type of income, such as foster parents' payments, which is specifically excluded from average earning calculations.
- b) Retirement pension benefits.
- c) An annuity or pension payment from the WCB that the worker receives as a result of a previous compensable injury.
- d) CPP Disability Child benefits.
- e) Vacation pay cash-out or severance pay.
- f) Insurance benefits that are designated for mortgage or loan payments.

5. Estimated or Deemed Earnings

The WCB may use deemed earnings, rather than actual earnings, under circumstances described in Policy 44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*. These earnings include any income that the WCB deems the worker capable of earning, even though the worker is not actually earning this income.

Deemed earnings will be treated as taxable earnings for workers with accidents on or after January 1, 1992.

When a worker has actual post-accident earnings, the WCB may still conduct a review under policy 44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*. When the worker's actual earnings are less than the worker's deemed earnings, the WCB will use the actual earnings, *unless the WCB demonstrates* that the worker is capable of earning more than the amount actually earned.

The WCB will consider whether the actual earnings are a fair reflection of the worker's earning capacity or whether the actual earnings are lower due to factors unrelated to the worker's injury. These unrelated factors could include such things as the lower earnings are due to the worker's choice of occupation or that they are due to a non-compensable condition.

Workers who have accidents on or after January 1, 1992, will have their post-accident earnings determined in a specific manner if they have deemed earnings and collateral benefits other than employer top-up.

In the situation when the worker's deemed earnings exceed his or her CPP collateral benefits, the full amount of the worker's CPP collateral benefits is included in the worker's post-accident earnings. In addition, the difference between the worker's deemed earnings and CPP collateral benefits is also included in the worker's post-accident earnings.

In the situation when the worker's deemed earnings are less or equal to his or her CPP collateral benefits, only the worker's CPP collateral benefits are included in the worker's post-accident earnings.

B. REFERENCES

The Workers Compensation Act, sections 27(20), 40(2), and 44(2) **(Prior to January 1, 1992)**

The Workers Compensation Act, sections 39(5), 40(1) and 41 **(On or after January 1, 1992)**

The Workers Compensation Act, sections 39(5), 40(1) and 41 **(On or after January 1, 2006)**

Related WCB Policies:

44.60.20, *Date of Retirement*

44.60.30, *Special Additional Compensation*

44.80.10.10, *Average Earnings*

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

44.80.80.20, *Loss of Earning Capacity Reviews*

44.80.30.10.10, *Post-Accident Earnings – Collateral Benefits (Allowable Top-Up)*

44.80.30.10.20, *Post-Accident Earnings – Collateral Benefits (Unallowable Top-Up)*

History:

1. Policy 44.80.30.10 established by Board Order 46/91, approved December 17, 1991.
2. Policy amended by Board Order 21/93, on June 28, 1993, to adjust threshold for refund of probable income tax deduction to 40 weeks, retroactive to January 1, 1992.
3. Policy amended by Board Order 15/00 on May 30, 2000, effective January 1, 2001. Amendments include having this policy apply to accidents before January 1, 1992, on a forward-going basis, and establishing principles for determining post-accident earnings for all claims. Former policy re-issued as 44.80.30.10.01.
4. Board Order 15/00 amended by Board Order 27/00 on November 29, 2000. Policy re-issued as amended effective January 1, 2001.
5. Policy amended by Board Order 13/01 on April 27, 2001, effective January 1, 2001. Amendments include excluding retirement pensions from post-accident earnings for accidents before January 1, 1992, and using actual earnings instead of deemed earning capacity in certain circumstances. Former policy re-issued as 44.80.30.10.01 and policy 44.80.30.10.01 re-numbered 44.80.30.10.02.
6. Policy 44.80.30.10 approved by Board Order 29/05 on September 29, 2005. The revised policy is effective for decisions/accidents on January 1, 2006. Revisions to the policy include: clarifying the sheltered income process and the impact of collateral benefits in general, and top-up payments specifically.
7. Policy amended by Board Order 29/05, on September 29, 2005, to rescind Board Order 13/01 effective January 1, 2006. The rescinded policy will continue to apply to all loss of earning capacity reviews on or after January 1, 2001, to December 31, 2005. This policy will still apply to any reconsiderations and appeals that derive from these decisions/accidents and re-issued as policy 44.80.30.10.01.
8. Minor formatting and grammatical changes were made to the policy June 27, 2012.
9. Policy was amended by Board Order 42/15 on October 29/15 effective January 1, 2016. The policy was revised to remain consistent with Policy 44.80.10.10 *Average Earnings*. The amendment incorporates the impact of adding Attachment E Line 229 Deductions - CRA probable business expenses to the Average Earning policy and revises the phrase, "Any income that the worker earns from employment" to "Any income, less CRA probable deductions for business expenses, which the worker earns from employment."