

**Operational
Policy**

Section

Loss of Earnings (LOE) (Accidents from 1998)

Subject

**Loss of Retirement Income Benefits (Accidents on or after
January 1, 1998)**

Policy

If a worker receives loss of earnings (LOE) payments for 12 continuous months, the WSIB will set aside an additional amount equal to 5% of every subsequent LOE payment for the loss of retirement income (LRI) benefit.

The worker may also voluntarily contribute 5% of every subsequent LOE payment toward the LRI benefit. The decision to make voluntary contributions is irrevocable.

At 65 years of age, a worker is entitled to the amount contributed and the investment income earned.

A worker who is 64 years or older on the date of the injury is not eligible for the LRI benefit.

Guidelines

Definitions

12 continuous months - 12 months in which there is no single interruption for 31 days or more.

The 12 months of LOE are still considered continuous, even if the worker's earnings are fully restored for 30 days or less, or for multiple days or weeks that together add up to more than 30 days. The 12 months are not considered continuous if the worker's earnings are fully restored for 31 days or more. In these cases, if the worker again receives LOE benefits, 12 months must be counted from the most recent loss of earnings to be considered continuous.

Account balance - the sum of the funds set aside by the WSIB for a worker and funds contributed by the worker, if any, and the investment income it has earned.

Annuity payment scheme - a set of monthly payments that distributes the account balance based on the payment option selected by the worker.

LOE Payment - the actual amount of monies paid to the worker (prior to any redirection, see 18-01-06, Redirected Benefit Payments). This amount is equal to 85% of the difference between the worker's pre-injury net average earnings and the post-injury net average earnings which include any Canada/Quebec Pension Plan disability payments the worker may receive for the injury or disease. See 18-01-13, Calculating CPP/QPP Offsets from FEL/LOE Benefits.

Maximum amount of average earnings - determined annually by calculating 175 percent of the average industrial wage for Ontario for the year.

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For a definition of “spouse,” “dependent child,” “other dependants,” or “survivor,” see 20-01-02, Definitions and Application Dates.

Before 12 continuous months

Before the worker has received LOE benefits for 12 continuous months, the WSIB sends the worker an *Optional 5% Election Form* as well as a *Designation of Beneficiary Form*, and asks that both forms be completed, signed, and returned to the WSIB.

Worker between 63 and 64 on day of injury

If a worker is between 63 and 64 years of age on the day of injury and continues to receive LOE benefits for up to two years, the worker may become eligible to receive the LRI benefit after his or her 65th birthday.

For these cases, all references to the worker's 65th birthday refer to the date the worker becomes eligible to receive the LRI benefit.

Types of payment for LRI benefit

At age 65, a worker will receive the LRI benefit as either a lump sum or an annuity payment scheme (monthly payment) depending on the worker's account balance at age 65. The worker does not have the option of selecting a lump sum or an annuity payment scheme.

Lump sum

If the worker's account balance will pay an annual benefit of **less** than the maximum amount of average earnings for the year in which the worker turns 65, it will be paid as a lump sum.

Annuity payment scheme

If the worker's account balance will pay an annual benefit of **more** than the maximum amount of average earnings for the year in which the worker turns 65, it will be paid monthly, according to the annuity payment scheme the worker selects. The payment schemes are

1. Joint and survivor annuity
2. Life annuity with return of worker account balance
3. Life annuity with guarantee to age 70.

For more information on the annuity payment schemes, see *Ontario Regulation 562/99*, as amended.

If a worker is entitled to an annuity payment scheme, the WSIB will send the worker a *Loss of Retirement Income* Information package a few months before a worker's 65th birthday. Workers must complete the forms, indicate their choice of annuity payment scheme, indexing factor, sign them, and send the forms to the WSIB on or before their 65th birthday.

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**Loss of Retirement Income Benefits (Accidents on or after
January 1, 1998)****Death before age 65****Non-work-related**

If a worker dies before age 65 of a non-work-related injury or disease, the WSIB pays the pre-retirement death benefit (the amount of mandatory contributions plus investment income), and the supplementary pre-retirement death benefit (the amount of voluntary contributions, if any, plus investment income), to the worker's

1. surviving spouse, if there is one
2. living dependent children (in equal shares), if there is no spouse
3. other living dependants (in equal shares), if there is no spouse and no dependent children
4. designated beneficiary (as selected by the worker), if there is no spouse, no dependent children or any other living dependants,
5. estate, if there is no spouse, no dependent children, no other living dependants or a designated beneficiary.

Work-related

If a worker dies before age 65 of a work-related injury or disease, the WSIB pays the supplementary pre-retirement death benefit (the amount of voluntary contributions plus investment income), and survivor benefits to the worker's

1. surviving spouse, if there is one
2. living dependent children (in equal shares), if there is no spouse
3. other living dependants (in equal shares), if there is no spouse and no dependent children

However, these individuals are not entitled to receive the pre-retirement death benefit (the amount of mandatory contributions plus investment income).

If there are no survivors, the WSIB pays the pre-retirement death benefit and the supplementary pre-retirement death benefit, if there is one, to the designated beneficiary,

1. the worker's estate, if there is no designated beneficiary.
2. Types of payment for LRI death benefit(s)

Types of payment for LRI death benefit(s)

The WSIB normally pays the pre-retirement death benefit (and the supplementary benefit, if there is one) as a lump sum.

If there is a surviving spouse, and the benefit can generate an annual payment of at least \$1,142.20* the spouse may choose to receive it as a life annuity with return of survivor account balance.

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If the worker's surviving spouse is eligible for an annuity, the WSIB will inform the spouse. To receive the annuity, the spouse must send a signed request to the WSIB within 90 days of learning of the option.

*This is the 1998 amount from Ontario Regulation 562/99. This amount may vary due to annual indexing.

Special circumstances**LOE commutations**

Under certain conditions a worker may have his or her LOE benefit commuted to a lump sum, see 18-03-05, Commutations. When this occurs, the WSIB makes a one-time mandatory contribution based on 5% of the lump sum LOE benefit. Similarly, the worker can make a one-time voluntary contribution based on 5% of the lump sum LOE benefit. However, the LRI benefit is still not paid until the worker reaches age 65.

NOTE

If the LOE benefit is commuted **before** the worker is paid for 12 continuous months, the WSIB would make a one-time contribution based on 5% of the commuted value of the amount that would have been paid from the 13th month to the worker's 65th birthday.

Retroactive increases to LOE benefit

If the WSIB retroactively increases the LOE benefit, and has already

- paid an LRI benefit or a pre-retirement death benefit as a lump sum, or
- started making monthly annuity payments

the WSIB pays the additional LRI benefit or pre-retirement death benefit as a lump sum.

Assignments, garnishments, and support deduction orders

LRI benefits are subject to assignments, garnishments, and support deduction orders only when the LRI benefit is payable to the worker at age 65 or the worker's estate. The policies on redirected benefit payments, see 18-01-06, Redirected Benefit Payments, and automatic deduction for family support, see 18-01-07, Automatic Deduction for Family Support, apply in these circumstances.

Benefit-related debts

Benefit-related debts are recoverable from an LRI benefit account only at the time the LRI benefit or pre-retirement death benefit is payable. If anyone other than the worker or estate is entitled to the LRI benefit or pre-retirement death benefit, the worker's benefit-related debt cannot be recovered by the WSIB from any other recipient unless the recipient provides written authorization first. The policy on recovery of benefit-related debts, see 18-01-04, Recovery of Benefit-Related Debts, applies in these circumstances.

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**Loss of Retirement Income Benefits (Accidents on or after
January 1, 1998)****Account maintenance**

If mistakes are made in the maintenance of the LRI benefit account, i.e., incorrect entries or transfers, the WSIB may make corrective adjustments at any time. For example, the WSIB can correct an entry resulting from any LOE benefit adjustment at any time.

Multiple accounts

If a worker has more than one LRI benefit account at age 65, the WSIB combines these accounts before payment is made.

Application date

This policy applies to all LRI benefits payable on or after April 30, 2011, for all accidents on or after January 1, 1998.

Policy review schedule

This policy will be reviewed within five years of the application date.

Document history

This document replaces 18-03-07 dated October 14, 2009.

This document was previously published as:

18-03-07 dated April 7, 2008

18-03-07 dated October 3, 2007

18-03-07 dated July 3, 2007

18-03-06 dated January 3, 2007.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 45, 54, 62(2)

O. Reg. 562/99, as amended

Minute

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