

Coverage and entitlement for workers hired under the Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Program

The Government of Canada arranges for workers from the Commonwealth Caribbean and Mexico to enter Canada for temporary periods of time as farm labourers, to provide assistance during the agricultural season. These temporary foreign agricultural workers are hired under the “Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Program”.

When Temporary Foreign Agricultural Workers are Covered

WSIB coverage for temporary foreign agricultural worker begins as soon as they reach the agreed upon point of departure in their homeland, and remains in place until they return to their country.

When travelling in Ontario, the workers are covered

- while in transit to/from the airport to the employer’s premises
- when using transportation authorized by the employer
- when using a direct, uninterrupted route to or from the employer’s premises.

They are also covered during periods of leisure, meals and while sleeping while staying in employer-provided quarters.

When Temporary Foreign Agricultural Workers are not Covered

There is no coverage for temporary foreign agricultural workers involved in recreational activities away from the employer’s premises, or participating in activities unrelated to their employment.

Reporting Accidents

In all cases of work-related injury or illness, the employer must complete and submit the Employer’s Report of Injury/Disease (Form 7) and provide a copy to the temporary foreign agricultural worker’s relevant liaison office or consulate.

How Temporary Foreign Agricultural Workers File Claims and How Filing Affects the Payment of Initial Loss of Earnings (LOE) Benefits

In all cases of work-related injury or illness, workers are required to file a claim for benefits and consent to the disclosure of functional abilities information to the employer. Workers meet this dual requirement by completing the Worker’s Report of Injury/Disease (Form 6).

The payment of ongoing LOE benefit payments can be effected if the requirement to claim and consent is not met. A claim for benefits for a temporary foreign agricultural worker is subject to the following considerations

- the worker must complete a Form 6 to file a claim for benefits prior to leaving Canada
- if the worker does not file a claim for benefits before leaving Canada, the

Notice: This document is intended to assist WSIB decision-makers in reaching consistent decisions in similar fact situations and to supplement applicable WSIB policies and guidelines as set out in the Operational Policy Manual (OPM). This document is not a policy and in the event of a conflict between this document and an OPM policy or guideline, the decision-maker will rely on the latter.

worker's liaison officer is responsible for ensuring the Form 6 is completed

- the WSIB must be notified by the liaison office or consulate whenever the injured worker leaves Canada
- if the worker has not met the requirement to claim and consent by the time that the WSIB determines that the worker is eligible for benefits, the WSIB will only issue the initial LOE benefit payment. Further LOE benefit payments will not be issued until the claim and consent requirement has been met.

For further information related to workers' reporting obligations, see Policy 15-01-03, *Workers' Requirement to Claim and Consent*.

Initial Medical Treatment

A worker who sustains an injury is entitled to appropriate and sufficient health care for his or her injury, and is entitled to make the initial choice of health professional from among the following; chiropractors, physicians, physiotherapists, or registered nurses (extended class). In some cases, a worker may require immediate or emergency treatment, and he/she may not be able to "choose" a health professional. In this type of situation, the worker can choose a health professional for their follow up care.

Work Reintegration

Both employers and temporary foreign agricultural workers are required to cooperate with each other in the process of returning the worker to suitable work that is available.

Note: The employer's legislative obligation to re-employ does not apply to employers of temporary foreign agricultural workers due to the nature of the Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Program.

How Loss of Earnings Benefits are Calculated

LOE benefits are calculated based on 85% of the workers' net average earnings. For all other workers, net average earnings can include a monetary value assigned to room and board.

Under the Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Program, the farm employer provides the worker with adequate living accommodation and meals. If the worker chooses not to live in the farm employer-provided quarters, there is no

adjustment made to the worker's wage. Therefore, room and board is not included in the average earnings basis for temporary foreign agricultural workers.

Long Term Average Earnings Recalculation & the Inclusion of Probable Employment Insurance (EI) Income

A long term average earnings basis is recalculated when a worker receives LOE benefits for more than twelve (12) continuous weeks. Because foreign agricultural workers are "temporarily" employed, when the WSIB recalculates their earnings basis, the pattern of employment is considered as non-permanent. In these cases, long term average earnings are generally based on employment earnings in the 24 months prior to the injury. For further information about long-term earnings recalculations, see Policy 18-02-04, *Determining Long Term Average Earnings: Workers in Non-permanent Employment*.

Importantly, the long term earnings basis for temporary foreign agricultural workers also includes a special consideration to include probable employment insurance income in the recalculation. Policy 12-04-08, *Foreign Agricultural Workers*, outlines

Generally speaking, the WSIB calculates average earnings for foreign agricultural workers in the same manner as resident workers. However, in those cases where a long-term average earnings recalculation is required, decision-makers may use

- *the worker's actual earnings from employment outside of the agricultural employment agreement (i.e., work done outside Ontario during the Ontario agricultural 'off-season') and/or*
- *the probable Employment Insurance (EI) that would otherwise be payable to a resident worker because unlike (seasonal) resident workers, foreign agricultural workers are not eligible for EI.*

In cases where the temporary foreign agricultural worker does not have a prior earnings history (e.g., it is the worker's first job, or the worker has returned to the workforce after an absence of more than two years), Policy 18-02-04, sets out the following guidelines

If the accident job is seasonal or cyclical, and the duration of the lay-off period is established through past practice, the decision-maker can determine the long-term average earnings by using the long-term average earnings of another worker similarly employed by the accident employer.

If this information is not available, the decision-maker can use the worker's short-term average earnings multiplied by the number of weeks in the season or cycle and add the probable EI benefits payable. The calculation of probable EI benefits is derived from the basis benefit rate and maximum amount payable set out in the Employment Insurance Act, and as a result, is subject to change.

Loss of Earnings and Work Transition (WT) Services Following Repatriation

There may be cases where a worker is repatriated to his/her home country following a work-related injury/illness.

If the nature or seriousness of the injury completely prevents a worker from returning to any type of work, the worker is entitled to full LOE benefits, provided that the worker co-operates in health care measures as recommended by the treating health practitioner and approved by the WSIB.

Once the worker's condition improves such that he/she can return to suitable work, the WSIB must ensure that the worker's ongoing LOE benefit payments reflect earnings that the worker can earn in a suitable occupation (SO). Although repatriated workers are not able to participate in Work Transition (WT) services, the WSIB will identify a SO and use the current wages associated with that SO to estimate what the worker is capable of earning upon re-entering the labour market. When determining a SO, the WSIB has regard for the SOs available in the local Ontario labour market where the worker was employed at the time of the work-related injury/illness.

Generally, when an Ontario worker does not return to suitable and available work with the injury employer, that worker is provided with WT services. At minimum, those services include two (2) weeks of Job Search Training and ten (10) weeks of Employment Placement Services; for a total of twelve (12) weeks. Because temporary foreign agricultural workers are not able to participate in WT services, once a SO has been identified, the WSIB extends the provision of full LOE benefits for twelve (12) weeks, the equivalent period associated with job search training and employment placement services.

After the twelve (12) week period, the worker's LOE benefits are either adjusted or closed to reflect the difference between the worker's pre-injury earnings and the SO earnings.