

**Operational
Policy**

Section

Loss of Earnings (LOE) (Accidents from 1998)

Subject

Payment and Reviewing LOE Benefits (Prior to Final Review)

Policy

A worker who has a loss of earnings as a result of a work-related injury/disease is entitled to payment of loss of earnings (LOE) benefits beginning when the loss of earnings begins.

Benefits continue until the earliest of:

- the day on which the worker's loss of earnings ceases
- the day on which the worker reaches 65 years of age, if the worker was less than 63 years of age on the date of the injury
- two years after the date of injury, if the worker was 63 years of age or older on the date of the injury, or
- the day on which the worker is no longer impaired as a result of the injury.

Purpose

The purpose of this policy is to outline guidelines for paying and reviewing LOE benefits from the date of entitlement up to, but not including, the 72-month final review date.

Guidelines

LOE benefits are based on 85 per cent of a worker's pre-injury net average earnings (NAE). Pre-injury NAE are determined each time the amount of LOE benefits is calculated or recalculated in accordance with 18-02-07, Calculating Net Average Earnings.

Employers are responsible for paying workers their full wages for the day of injury, see 18-01-10, Wages and Employment Benefits for Day of Injury. Payment of LOE benefits begins the day after the day of the injury or on a later date if a worker's loss of earnings does not begin immediately following the day of the injury.

For information about how CPP/QPP disability benefits impact LOE benefits, see 18-01-13, Calculating CPP/QPP Offsets from FEL/LOE Benefits.

Full LOE

If the nature or seriousness of the injury/disease completely prevents a worker from returning to any type of work, or if the worker is able to return to some form of work but the WSIB determines no suitable work is available, the worker is generally entitled to full LOE benefits providing the worker co-operates in health care measures and all aspects of the return-to-work (RTW) process, see 19-02-08, RTW Co-operation Obligations, 19-02-09, Re-employment Obligations, and 22-01-03, Workers' Co-operation Obligations.

Payment

The amount of a full LOE benefit is 85 per cent of a worker's pre-injury NAE, see 18-02-07, Calculating Net Average Earnings.

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If 85 per cent of a worker's pre-injury NAE is less than the statutory minimum, the LOE benefit is paid in accordance with the minimum provisions outlined in the Appendix.

The minimum is indexed annually, see 18-01-02, Benefit Dollar Amounts - Accidents from 1998 for the minimum as indexed each year from 1998 onward.

Partial LOE

Workers who are able to return to some form of work, but who are unable to restore all of their pre-injury average earnings in suitable and available employment, are generally entitled to partial LOE benefits. Examples include but are not limited to:

- workers who return to work at reduced hours or wages, and
- workers who are capable of work in a suitable occupation (SO) at earnings that are less than pre-injury average earnings.

Payment

The amount of a partial LOE benefit is 85 per cent of the difference between a worker's pre-injury NAE and the NAE a worker earns or is able to earn in suitable and available employment or business after the injury (post-injury earnings). For information about pre-injury NAE, see 18-02-07, Calculating Net Average Earnings.

Post-injury earnings may be based on either actual employment earnings or determined earnings.

If the worker's pre-injury NAE or 85 per cent of a worker's pre-injury NAE are less than the statutory minimum, the LOE benefit is paid in accordance with the minimum provisions outlined in the Appendix.

The minimum is indexed annually, see 18-01-02, Benefit Dollar Amounts - Accidents from 1998 for the minimum as indexed each year from 1998 onward.

Actual employment earnings

Actual employment earnings are a worker's total earnings from all employment.

The circumstances in which the WSIB bases post-injury earnings on actual employment earnings include those where a worker:

- has returned to work or is participating in RTW activities with the injury employer
- has a wage loss upon completion of RTW program with the injury employer, regardless of the job being performed
- is employed in the identified SO with the injury employer or a new employer, even if the earnings are not consistent with current labour market wage information
- is employed in a job not identified in the SO, but the WSIB is satisfied the earnings come reasonably close to the SO-identified earnings, and represent the same or similar future earnings potential, or

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- is underemployed in the identified SO, but the WSIB is satisfied the worker is not voluntarily underemployed.

Determined earnings

Determined earnings are the earnings associated with the identified SO, and are based on current labour market wage information.

The circumstances in which the WSIB bases post-injury earnings on determined earnings include those where a worker:

- will not be provided with RTW services
- remains unemployed at the completion or closure of the RTW plan (with training)
- is underemployed in a job not identified in the SO, or
- is voluntarily underemployed in the identified SO.

Underemployed

A worker is considered to be underemployed when employed in a way that does not make full use of the worker's abilities, skills, and training in mitigating the loss of earnings resulting from the work-related injury/disease (e.g., employed in the identified SO at reduced hours, employed in a lesser paying job not identified in the SO).

In cases where a worker is employed in the identified SO but at reduced hours or lower wages than what was projected, the WSIB examines why the earnings and/or hours have been reduced to determine whether the worker is voluntarily underemployed. Factors that indicate the underemployment may not be voluntary include:

- unforeseen aspects arising from the type of employment
- probationary period, and/or
- changing work requirements or demands.

Reviewing LOE Benefits**Case management reviews**

The purpose of case management reviews is to ensure recovery and RTW goals are achieved and LOE benefits are paid correctly.

The WSIB conducts regular case management reviews while the worker is engaged in health care measures and RTW activities, after which time, the WSIB conducts annual reviews until the 72-month final review date.

Wage information used at annual reviews - determined earnings

In cases where a worker's post-injury earnings were based on determined earnings, if the WSIB originally used:

- entry-level wages to determine the post-injury earnings, updated entry-level wages are used, or

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- mid-range wages to determine the post-injury earnings, updated mid-range wages are used.

Material change reviews

Workers who may be entitled to receive LOE benefits must report any material change in circumstances to the WSIB, see 22-01-02, Material Change in Circumstances - Worker.

An LOE benefit may be confirmed, varied, or discontinued any time prior to the 72-month final review date for any material change or failure to report a material change effective from the date the material change occurred, whether reported on time or not.

Material change in post-injury earnings - significance test

LOE benefits are generally recalculated if the WSIB determines there is a material change in a worker's post-injury earnings.

To determine whether a change in post-injury earnings is "material", the WSIB compares the changed earnings with the post-injury NAE last used to calculate/recalculate the LOE benefit. If there is a significant difference (increase or decrease) between the two, usually 10 per cent or greater, it is considered material. This comparison is done each time the post-injury earnings change.

Annual indexing

On January 1 every year, the WSIB indexes ongoing LOE benefits by applying the indexing factor to the amount payable, see 18-01-14, Annual Indexing.

Reductions and redirections

All or a portion of the amount of an LOE benefit may be reduced or redirected as outlined in 18-01-07, Automatic Deduction for Family Support, and 18-01-06, Redirected Benefit Payments.

Blending benefits

An LOE benefit can be paid independently of and concurrently with the following WSIB benefits paid under separate claims:

- permanent disability benefits
- future economic loss benefit, and/or
- other LOE benefit.

Impact of zero per cent NEL rating on LOE benefits

In some cases, a NEL review may result in a zero per cent rating, which indicates there is no evidence of an assessable permanent impairment. In these cases, LOE benefits generally

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continue for a maximum of two weeks until the worker is notified in writing that there is no longer a loss of earnings as a result of the work-related injury/disease.

Application date

This policy applies to all decisions made for entitlement periods on or after March 1, 2021, for accidents on or after January 1, 1998.

Policy review schedule

This policy will be reviewed in 2023.

Document history

This document replaces 18-03-02 dated January 2, 2018.

This document was previously published as:

18-03-02 dated July 15, 2011

18-03-02 dated December 1, 2010.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 2.1, 23, 24, 40, 42(3), 43, 44, 47(13), 49, 52

Minute

Administrative

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Appendix**Minimum payment for full LOE**

If 85 per cent of a worker's pre-injury NAE are less than the statutory minimum, the amount of the full LOE benefit is the lesser of:

- the statutory minimum, and
- pre-injury NAE.

The minimum is indexed annually, see 18-01-02, Benefit Dollar Amounts - Accidents from 1998 for the minimum as indexed each year from 1998 onward.

Minimum payment for partial LOE

If a worker's pre-injury NAE are less than the statutory minimum, the amount of the partial LOE benefit is the difference between:

- pre-injury NAE, and

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- post-injury NAE.

If a worker's pre-injury NAE are greater than the statutory minimum, but 85 per cent of the worker's pre-injury NAE are less than the statutory minimum, the amount of the partial LOE benefit is the higher of:

- the difference between the statutory minimum and post-injury NAE, and
- 85 per cent of the difference between pre-injury NAE and post-injury NAE.

The minimum is indexed annually, see 18-01-02, Benefit Dollar Amounts - Accidents from 1998 for the minimum as indexed each year from 1998 onward.