

**Operational
Policy**

Section

Special Cases (Worker Coverage)

Subject

Foreign Agricultural Workers

Policy

Foreign agricultural workers who enter into employment agreements with Ontario agricultural employers under the "Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program" are workers with coverage under the *Workplace Safety and Insurance Act, 1997*.

The guidelines in this policy account for the limited and temporary access these workers have to Ontario's labour market and the material wage differences that exist between the labour markets in Ontario and these workers' home countries.

Purpose

The purpose of this policy is to set out coverage rules for foreign agricultural workers participating in the "Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program" and provide guidelines about:

- return-to-work (RTW)
- entitlement to loss of earnings (LOE) benefits, and
- determining average earnings, post-injury earnings, and insurable earnings.

Guidelines

Definitions

For the purpose of this policy, the definitions in this section apply.

Agricultural season means the duration of the employment agreement or employment agreements in a single calendar year between the foreign agricultural worker and Ontario agricultural employer(s).

Non-agricultural season means the period or periods of time outside of the agricultural season as defined in this policy.

Contract means the employment agreement or employment agreements between the foreign agricultural worker and Ontario agricultural employer(s) for a single calendar year, which is separate from and in addition to the contract for the Employment in Canada of Seasonal Agricultural Workers.

Intended work is work in the home country that the WSIB is satisfied the worker planned to engage in during the non-agricultural season. For the purpose of decisions about RTW, LOE entitlement and post-injury earnings, work in the home country that is similar in nature and wages to the intended work is considered to be intended work.

Rules for coverage

Coverage begins as soon as a worker reaches the agreed-upon point of departure in their home country and remains in place until they return to their home country.

**Operational
Policy**

Section

Special Cases (Worker Coverage)

Subject

Foreign Agricultural Workers

While travelling in Ontario, a worker is covered in any of the following circumstances:

- in transit from an airport in Ontario to the employer's premises
- using a means of transportation authorized by the employer, or
- following a direct and uninterrupted route to or from the employer's premises.

In addition to coverage while in the course of employment, a worker is also covered during periods of leisure, meals or while sleeping in employer-provided quarters.

Exception

A worker generally is not covered or considered to be in the course of employment while engaged in any of the following activities:

- recreational activities away from the employer's premises
- the repair of personal property, or
- activities not related to the employment, consistent with 15-03-08, Personal Activities/Removing Self From Employment.

Participating countries

Liaison officers of the countries whose workers are participating in the "Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program" are responsible for the workers' interests and for the workers' transportation needs to and from Canada.

Filing a claim

An injured worker should file a claim for benefits before leaving Canada. An injured worker who is leaving the country also must notify the WSIB of this before doing so, as outlined in 15-06-07, Leaving the Province/Country.

The worker's liaison officer may provide support to ensure that the Worker's report of injury/disease (Form 6) is completed by the worker and returned to the WSIB. Refer to 15-01-03, Workers' Requirement to Claim and Consent for information about filing a claim.

If the worker is entitled to benefits under the insurance plan, the WSIB issues the first benefit payment (up to two weeks of LOE benefits) even if the claim for benefits has not been received. However, no further benefits are provided until the claim for benefits is received, whether the worker is in or out of Canada.

RTW

When a worker suffers a work-related injury or disease, the workplace parties (worker and accident employer) work together with the WSIB to enable the worker's return to work. The WSIB prioritizes return to suitable and available work with the accident employer in Ontario during the agricultural season and within the scope of the worker's work permit. Refer to 19-

**Operational
Policy**

Section

Special Cases (Worker Coverage)

Subject

Foreign Agricultural Workers

02-08, RTW Co-operation Obligations for guidelines about workplace parties' co-operation obligations in the RTW process.

RTW assessment

If there are challenges that impact the worker's return to work that the workplace parties cannot resolve on their own, the WSIB conducts a RTW assessment. The WSIB uses the RTW assessment to determine whether the worker is, or will be, medically able to return to their pre-injury agricultural work in Ontario (with or without accommodation) or new suitable agricultural work in Ontario.

The WSIB may also assess whether the worker is, or will be, medically able to return to work in their home country labour market in either of the following two circumstances:

- The WSIB determines the worker will be permanently unable to return to agricultural work in Ontario due to the work-related injury or disease.
- The WSIB determines the worker will be able to return to part-time or full-time agricultural work in Ontario but will be unable to perform intended work during the non-agricultural season due to the work-related injury or disease.

For guidelines about RTW assessments, refer to 19-02-10, RTW Assessments and Plans. However, for assessments about RTW in the worker's home country, references to "labour market" mean the worker's home country labour market. For clarity, for return to work in Ontario, work outside the scope of the worker's work permit is not considered.

RTW plan

Following the RTW assessment, if necessary, the WSIB develops a RTW plan that outlines the assistance and services the worker requires to enable their return to agricultural work in Ontario.

In some cases, where specific criteria are met, the WSIB may also or instead develop a RTW plan that outlines the assistance and services the worker requires to enable their return to work in their home country labour market (local or broader).

If the WSIB determines the worker will be permanently unable to return to agricultural work in Ontario due to the work-related injury or disease, the WSIB reviews RTW opportunities in the worker's home country labour market with the goal of restoring the pre-injury average earnings. Consistent with 19-02-10, RTW Assessments and Plans, RTW opportunities may include jobs in the home country labour market for which the worker already has existing or transferable skills to be able to perform, or jobs in the home country labour market for which the worker requires training to be able to perform.

If the WSIB determines the worker will be able to return to part-time or full-time agricultural work in Ontario, the WSIB generally does not provide RTW assistance and services to return them to work in their home country labour market. The only exception to this is circumstances where both of the following criteria are met:

**Operational
Policy**

Section

Special Cases (Worker Coverage)

Subject

Foreign Agricultural Workers

- The WSIB is satisfied the worker intended to work in their home country during the non-agricultural season.
- The WSIB determines the worker will be unable to perform the intended work during the non-agricultural season due to the work-related injury or disease.

If both of the exception criteria are met, when assessing whether to provide RTW assistance and services, the WSIB considers the nature of the work-related injury or disease, duration of the non-agricultural season and extent of support required to return the worker to non-agricultural season work in their home country labour market. In cases where RTW assistance and services are provided, the goal is to restore the earnings associated with the intended work to the extent possible.

For guidelines about RTW plans, refer to 19-02-10, RTW Assessments and Plans. However, in circumstances where RTW assistance and services are being provided to enable a return to work in the home country, references to "labour market" and "National Occupational Classification system" mean the worker's home country labour market and home country National Occupational Classification system, where one exists.

LOE benefits: entitlement**Accident year agricultural season**

A worker generally is entitled to full LOE benefits for the remainder of the contract in the accident year agricultural season, if both of the following criteria are met:

- The nature or seriousness of the injury or disease completely prevents the 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 that is within the scope of their work permit is available.
- The worker co-operates in health care measures and all aspects of the RTW process.

A worker who is able to return to some form of work, but who is unable to fully restore their pre-injury average earnings in suitable and available employment, generally is entitled to partial LOE benefits.

Refer to 18-03-02, Payment and Reviewing LOE Benefits (Prior to Final Review) for guidelines about paying and reviewing LOE, with the exception of the "Actual employment earnings" and "Determined earnings" sections. For guidelines about determining pre-injury average earnings and post-injury earnings for the purpose of calculating LOE benefits, refer to the "Average earnings" and "LOE benefits: post-injury earnings" sections in this policy.

For guidelines about the worker's co-operation obligation, refer to 22-01-03, Workers' Co-operation Obligations.

**Operational
Policy**

Section

Special Cases (Worker Coverage)

Subject

Foreign Agricultural Workers

Non-agricultural season and future agricultural seasons

A worker may be entitled to LOE benefits during the non-agricultural season and/or future agricultural seasons if the WSIB determines or anticipates the worker will be permanently unable to return to agricultural work in Ontario due to the work-related injury or disease.

A worker who the WSIB determines or anticipates will be able to return to part-time or full-time agricultural work in Ontario, generally is not entitled to LOE benefits during the non-agricultural season. The only exception to this is circumstances where both of the following criteria are met:

- The WSIB is satisfied the worker intended to work in their home country during the non-agricultural season.
- The WSIB determines the worker will be unable to perform the intended work during the non-agricultural season due to the work-related injury or disease.

A worker who the WSIB determines or anticipates will be able to return to part-time or full-time agricultural work in Ontario may be entitled to LOE benefits during a future agricultural season if the WSIB determines they are experiencing a loss of earnings from agricultural work in Ontario that season due to the work-related injury or disease.

For a worker who the WSIB determines or anticipates will be permanently unable to return to agricultural work in Ontario:

- The worker may be entitled to full LOE benefits during the non-agricultural season and/or a future agricultural season if both of the following criteria are met:
 - The nature or seriousness of the injury or disease prevents the 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 co-operating in health care and the RTW process.
- The worker may be entitled to partial LOE benefits during the non-agricultural season and/or a future agricultural season if they are able to return to some form of work, but the WSIB determines they are unable to restore their pre-injury average earnings.
- The worker's loss of earnings ceases if the WSIB determines they are able to restore their pre-injury average earnings.

For a worker who the WSIB determines or anticipates will be able to return to part-time or full-time agricultural work in Ontario, but who is unable to perform intended work during the non-agricultural season:

- The worker may be entitled to full LOE benefits during the non-agricultural season if both of the following criteria are met:
 - The nature or seriousness of the injury or disease prevents the 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 co-operating in health care and the RTW process.

**Operational
Policy**

Section
Special Cases (Worker Coverage)

Subject
Foreign Agricultural Workers

- The worker may be entitled to partial LOE benefits during the non-agricultural season if they are able to return to some form of work, but the WSIB determines they are unable to earn the wages associated with the intended work.
- The worker's loss of earnings during the non-agricultural season ceases if the WSIB determines the worker is able to earn the wages associated with the intended work.

For a worker who the WSIB determines or anticipates will be able to return to part-time or full-time agricultural work in Ontario:

- The worker may be entitled to full LOE benefits during a future agricultural season if both of the following criteria are met:
 - The nature or seriousness of the injury or disease prevents the worker from returning to any type of agricultural work in Ontario, or if the worker is able to return to some form of agricultural work in Ontario but the WSIB determines no suitable work is available.
 - The worker is co-operating in health care and the RTW process.
- The worker may be entitled to partial LOE benefits during a future agricultural season if the WSIB determines they are able to return to some form of agricultural work in Ontario, but they are unable to restore their pre-injury average earnings.
- The worker's loss of earnings during a future agricultural season ceases if the WSIB determines they are able to restore their pre-injury average earnings.

Refer to 18-03-02, Payment and Reviewing LOE Benefits (Prior to Final Review) for guidelines about paying and reviewing LOE, with the exception of the "Actual employment earnings" and "Determined earnings" sections. For guidelines about determining pre-injury average earnings and post-injury earnings for the purpose of calculating LOE benefits, refer to the "Average earnings" and "LOE benefits: post-injury earnings" sections in this policy.

For guidelines about the worker's co-operation obligation, refer to 22-01-03, Workers' Co-operation Obligations.

LOE benefits: post-injury earnings

The WSIB bases post-injury earnings for the LOE benefit calculation on actual employment earnings if a worker:

- has returned to work or is participating in RTW activities with the accident employer
- has a wage loss upon completion of a RTW program with the accident employer, even if the job being performed with the accident employer is not the pre-injury job
- is employed in the identified Ontario suitable occupation (SO) with the accident employer, even if the earnings are not consistent with current labour market wage information
- is employed in the identified Ontario SO with an Ontario agricultural employer other than the accident employer
- is employed in the identified home country SO in their home country during the non-agricultural season, is not voluntarily underemployed and the wages can be validated, or

**Operational
Policy**

Section

Special Cases (Worker Coverage)

Subject

Foreign Agricultural Workers

- is employed in the intended work during the non-agricultural season, is not voluntarily underemployed and the wages can be validated.

The WSIB determines post-injury earnings for the LOE benefit calculation to be the earnings associated with the applicable SO, if the worker:

- will not be provided with RTW services
- remains unemployed at the completion or closure of a RTW plan for a SO in Ontario with an agricultural employer and/or in the home country, as applicable
- is underemployed in a job not identified as the SO in Ontario with an agricultural employer and/or in the home country, as applicable, or
- is voluntarily under-employed in the identified SO in Ontario with an agricultural employer and/or in the home country, as applicable.

For clarity, the WSIB may determine that the intended work is the home country SO when it is suitable and available.

In cases where the WSIB is unable to validate to its satisfaction, the worker's post-injury earnings from the home country SO or the intended work, the WSIB will use the minimum wage or average minimum wage as the post-injury earnings instead of the home country SO or intended work earnings.

Average earnings

The WSIB generally calculates average earnings for foreign agricultural workers in the same way as it does for resident workers.

The duration of the short-term average earnings cycle is different for foreign agricultural workers than for resident workers. This different short-term average earnings cycle means:

- the date from which LOE benefits are recalculated using the worker's long-term average earnings is also different for foreign agricultural workers than for resident workers, and
- the WSIB's model for comparing and selecting earnings to calculate LOE benefits in circumstances where a worker becomes entitled to LOE benefits as a result of the work-related injury or disease for a period that follows a period of no entitlement to LOE benefits (e.g., recovery followed by a recurrence of the work-related injury or disease) is also different for foreign agricultural workers than for resident workers.

Short-term average earnings

Short-term average earnings for foreign agricultural workers generally are calculated in the same way as for resident workers under 18-02-02, Determining Short-term Average Earnings.

For clarity, and consistent with the "Types of earnings and earnings bases" section of the appendix to 18-02-02, Determining Short-term Average Earnings, room and board generally

**Operational
Policy**

Section

Special Cases (Worker Coverage)

Subject

Foreign Agricultural Workers

are not included in the short-term average earnings calculation for foreign agricultural workers. The provision of room and board is a program requirement and typically does not impact the worker's wages (i.e., the worker's wages are the same whether they accept employer-provided accommodations or secure their own accommodations).

For foreign agricultural workers, the short-term average earnings apply for the remainder of the worker's contract, rather than for 12 weeks. This is the case whether the remainder of the contract is less than or greater than 12 weeks. Repatriation following a workplace accident and before a contract end date does not change the duration of the short-term average earnings cycle; the short-term average earnings apply for the remainder of the worker's contract.

Long-term average earnings

Long-term average earnings for foreign agricultural workers generally are calculated in the same way as for resident workers in non-permanent employment under 18-02-04, Determining Long-term Average Earnings: Workers in Non-permanent Employment. The WSIB bases LOE benefits on the long-term average earnings as of the day that immediately follows the end date of the worker's contract.

The pre-injury earnings period includes both the agricultural season and the non-agricultural season, consistent with the guidelines in the "Recalculation period" section of 18-02-04, Determining Long-term Average Earnings: Workers in Non-permanent Employment. Subject to these guidelines, the non-agricultural season is included in the recalculation period regardless of whether the worker has earnings from this period. In cases where a worker reports non-agricultural season earnings, the WSIB will have regard for the income reporting norms in the worker's home country when validating the reported earnings.

Comparing average earnings at date of accident and earnings from when most recently employed

When the WSIB determines a worker is entitled to LOE benefits as a result of the work-related injury or disease for a period that follows a period of no entitlement to LOE benefits (e.g., recovery followed by a recurrence of the injury or disease), the WSIB compares the worker's average earnings at the date of accident and earnings from when the worker was most recently employed. The WSIB bases LOE benefits on the higher of the two.

Accident year agricultural season: If the WSIB determines a worker is entitled to LOE benefits for a period during the accident year agricultural season (e.g., recovery followed by a recurrence of the injury or disease), for the remainder of the worker's contract the WSIB bases LOE benefits on the higher of the short-term average earnings at the date of accident and the short-term average earnings from when the worker was most recently employed. The WSIB recalculates LOE benefits using long-term average earnings as of the day that immediately follows the contract end date.

**Operational
Policy**

Section
Special Cases (Worker Coverage)

Subject
Foreign Agricultural Workers

For guidelines about recalculating to long-term average earnings refer to the "Recalculations following recurrences" section in 18-02-06, Determining Average Earnings - Recurrences". However, references to the short-term average earnings cycle mean the remainder of the worker's contract.

Non-agricultural season: If the WSIB determines a worker is entitled to LOE benefits for a period during the non-agricultural season (e.g., recovery followed by a recurrence of the injury or disease), the WSIB compares the long-term average earnings at the date of accident and short-term average earnings from when the worker was most recently employed. If long-term average earnings at the date of accident were not calculated at the end of the accident year agricultural season, the WSIB calculates them for the purpose of this comparison.

If the long-term average earnings at the date of accident are higher, these are the earnings on which the WSIB bases LOE benefits.

If the short-term average earnings from when the worker was most recently employed are higher, these are the earnings on which the WSIB bases LOE benefits until the next agricultural season begins or 12 weeks, depending on the facts of the case:

- If the WSIB is satisfied the worker intended to return to agricultural work in Ontario the next season, the WSIB recalculates LOE benefits using long-term average earnings as of the start date of that season.
- If the WSIB is satisfied the worker did not intend to return to agricultural work in Ontario the next season, the WSIB recalculates LOE benefits using long-term average earnings after 12 weeks of payments if:
 - the worker was in non-permanent employment, or
 - if the worker was in permanent employment and the WSIB determines it would be unfair to continue paying LOE benefits based on the short-term average earnings; it is considered unfair if the worker's short-term average earnings do not reflect their long-term average earnings profile.

For guidelines about recalculating to long-term average earnings refer to the "Recalculating to long-term average earnings" section in 18-02-06, Determining Average Earnings - Recurrences". However, references to the short-term average earnings cycle mean the period of time up to the start date of next agricultural season for a worker who the WSIB is satisfied intended to return to agricultural work in Ontario the next season.

Future agricultural season: If the WSIB determines a worker is entitled to LOE benefits during a future agricultural season, the WSIB compares the long-term average earnings at the date of accident and the short-term average earnings from when the worker was most recently employed.

**Operational
Policy**

Section
Special Cases (Worker Coverage)

Subject
Foreign Agricultural Workers

If the WSIB determines the long-term average earnings at the date of accident are higher, these are the earnings on which the WSIB bases LOE benefits.

If the short-term average earnings from when the worker was most recently employed are higher, these are the earnings on which the WSIB bases LOE benefits for the remainder of the contract. The WSIB recalculates LOE benefits using long-term average earnings as of the day that immediately follows the contract end date.

For guidelines about recalculating to long-term average earnings refer to the "Recalculating to long-term average earnings" section in 18-02-06, Determining Average Earnings - Recurrences". However, references to the short-term average earnings cycle mean the remainder of the worker's contract.

Average earnings for survivors

As with resident workers, where a foreign agricultural worker's death results from a work-related injury or disease, the WSIB generally uses the deceased worker's long-term average earnings to calculate periodic payments for their survivors. Refer to 18-02-09, Determining Average Earnings - Periodic Payments for Survivors for complete guidelines about identifying average earnings for the purpose of calculating periodic payments for survivors.

Insurable earnings

Employers calculate insurable earnings for foreign agricultural workers in the same manner as resident workers, subject to the guidelines in 14-02-08, Determining Insurable Earnings.

Application date

This policy applies to all decisions made on or after May 1, 2025, for accidents on or after May 1, 2025.

Document history

This document replaces 12-04-08 dated January 5, 2009.

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References**Legislative authority**

Workplace Safety and Insurance Act, 1997

Sections 13, 15, 22, 40, 42, 43, 53, 88

**Operational
Policy**

Section

Special Cases (Worker Coverage)

Subject

Foreign Agricultural Workers**Approval**

Approved by the President and CEO on March 25, 2025.

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