

Section	Policy
40	44.80.80.20

Section Title: Benefits Administration - *Wage Loss*  
Subject: Loss of Earning Capacity Reviews  
Effective Date: For All Reviews on or after January 1, 2001.

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## **A. POLICY PURPOSE**

Under *The Workers Compensation Act* (the Act), workers who are injured on or after January 1, 1992, are provided wage loss benefits based on their loss of earning capacity. This earning capacity may change several times during the period the worker is receiving benefits. This policy describes how, and under what circumstances, the loss of earning capacity will be reviewed and adjusted.

Workers injured prior to January 1, 1992, may also have their benefits adjusted as a result of a review. This would occur when the benefits are paid as rehabilitation benefits or temporary partial disability benefits under the Act as it existed prior to January 1, 1992. This policy describes how these reviews will be conducted.

## **B. POLICY**

### **1. Definitions**

The Indexing Date is the date that benefits are changed as required by the Act. For accidents that happened on or after January 1, 1992, the indexing date is the first day of the month following the second anniversary date of the accident and annually thereafter. For accidents that happened before January 1, 1992, the indexing date is February 1 of each year.

### **2. When loss of earning capacity reviews will be conducted for workers injured on or after January 1, 1992**

- i) During initial adjudication, and,
- ii) During the average earnings review conducted under WCB policy 44.80.10.10, *Average Earnings*, and,
- iii) At any time there is a significant change in circumstances that may affect the worker's actual or potential earnings; and
- iv) At the indexing date under subsection 40(2) of the Act. When the indexing date follows very shortly after a review due to a change in circumstances, the review can be completed at the time of the change in circumstances, but the date for the next annual review will still be the indexing date.

### **3. When loss of earning capacity reviews will be conducted for workers injured prior to January 1, 1992**

- i) At the time wage loss is initially established during rehabilitation, and,
- ii) At any time there is a significant change in circumstances that may affect the worker's actual or potential earnings, and,
- iii) At the indexing date under subsection 49(5) of the Act. When the indexing date follows very shortly after a review due to a change in circumstances, the review can be completed at the time of the change in circumstances, but the date for the next annual review will still be the indexing date.

#### **4. Purpose of the loss of earning capacity review**

- To adjust the previous benefits based on a comparison between the worker's actual loss of earning capacity at the date of the review and the loss of earning capacity estimated at the time of the previous review.
- To provide a new estimate of the loss of earning capacity to establish the worker's benefits until the next review.

#### **5. Adjustments to the previous year's benefits based on the comparison of actual to estimated loss of earning capacity for the previous year**

- When the actual post-accident earnings are within 5% of the estimated earning capacity, there will be no adjustment to the worker's benefit.
- When the actual post-accident earnings are less than the estimated earning capacity by 5% or more, the worker will receive a retroactive benefit payment.
- When the actual post-accident earnings are greater than the estimated earning capacity by 5% or more, the WCB will establish an overpayment.

#### **6. Estimating the new loss of earning capacity for the next year's benefits**

The factors that determine the new loss of earning capacity are the worker's pre-accident earnings and the worker's post-accident earning capacity. The worker's pre-accident average earnings will be adjusted according to the indexing provisions of the Act. The worker's post-accident earning capacity may be adjusted in any of the following ways:

- Establishing a new estimate of the worker's actual post-accident earnings based on knowledge of the worker's circumstances acquired through the annual review.
- Adjusting the post-accident earning capacity to reflect the effect that any other benefits, as described in WCB policy 44.80.30.10, *Establishing Post-Accident Earning Capacity*, have on the worker's post-accident earning capacity.
- Increasing the worker's deemed earning capacity based on information about the worker's capabilities acquired through the annual review. The determination of whether to use actual or deemed earning capacity is based on WCB policies 44.80.30.20, *Post-Accident Earnings – Deemed Earning Capacity*, and 44.80.30.10, *Establishing Post-Accident Earning Capacity*.
- If the WCB believes that the worker's earning capacity will remain stable until the next review, it will increase the earning capacity by the indexing factor used to index pre-accident average earnings. For workers injured on or after January 1, 1992, this will be an amount equivalent to the annual change in the Industrial Average Wage. For workers injured prior to January 1, 1992, this will be an amount equivalent to the annual change in the Consumer Price Index.
- If the worker has been deemed capable of earning the provincial minimum wage, the earning capacity will be adjusted to reflect changes to the provincial minimum wage.

#### **7. Worker Responsibility**

The worker is responsible for informing the WCB of any significant changes in circumstances which may affect the worker's actual or potential earnings. In addition, the worker must maintain adequate records to assist the WCB in comparing estimated to actual loss of earning capacity.

**C. REFERENCES**

*The Workers Compensation Act*, sections 27(20), 44(1), 44(2), 45 and 46 (Prior to January 1, 1992)

*The Workers Compensation Act*, sections 39(5)(a-c), 40(1), 40(2), 40(3), 41, 45(1), 45(2), 45(3), 45(4), 45(5), 46, 47, 48 and 49 (On or after January 1, 1992)

**Related WCB Policies:**

44.60.30, *Special Additional Compensation*

44.80.10.10, *Average Earnings*

44.80.30.10, *Establishing Post-Accident Earning Capacity*

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

44.80.80.10, *Wage Loss Benefits – Temporary Partial Disability*

**History:**

1. Policy 44.80.80.20 established by Board Order 5/92 on January 27, 1992, effective January 1, 1992.
2. Policy amended by Board Order 7/00 on February 22, 2000, effective for all wage loss reviews on or after May 1, 2000. Board Order 5/92 rescinded effective May 1, 2000.
3. Policy amended by Board Order 15/00 on May 30, 2000, for all loss of earning capacity reviews on or after January 1, 2001. Former policy re-issued as 44.80.80.20.01.
4. Administrative Guidelines have been added to this policy – March 2003.
5. References to the WCA changed effective January 1, 2006, to reflect the new legislation.
6. Policy updated to correct policy number in section A Policy, number 6, paragraph 3.
7. Minor formatting, wording, and grammatical changes were made to the policy June 27, 2012.
8. Minor formatting changes were made to the policy, July 2021.

**D. GUIDELINES**

1. The purpose and principles of this policy also apply to the annual loss of earning capacity reviews for workers who are receiving Special Additional Compensation (SAC). See WCB policy 44.60.30, *Special Additional Compensation*, for how and when annual reviews are conducted.