

Section	Policy
40	44.10.20.60

Section Title: Benefits Administration - Adjudication and Compensation
 Subject: Recurring Effects of Injuries and Illnesses (Recurrences)
 Effective Date: January 1, 2022 to December 31, 2022 (This policy applies to decisions made on accidents which occurred on or after January 1, 1992)

A. POLICY PURPOSE

Many workers return to employment after a workplace accident and later experience a renewal of symptoms or increase in permanent impairment. In these cases, the Workers Compensation Board (WCB) must determine whether the worker has experienced a recurrence of a previous workplace injury, or whether their current condition is caused by a new and separate intervening event. This policy explains how the WCB determines if the worker has experienced a recurrence. It also provides rules about the calculation of wage loss benefits for workers who have experienced a recurrence.

B. POLICY

Recurrence or New and Separate Intervening Event

The WCB will determine the worker's current condition to be a recurrence if the previous workplace accident is the dominant cause of the renewed symptoms or increase in permanent impairment. It makes this determination by considering the following questions:

- 1) **Was there an intervening incident, event or exposure ("intervening event") between the previous workplace accident and the renewal of symptoms or increase in permanent impairment (the "current condition")?** If there was no intervening event, the WCB is more likely to determine that there is a recurrence.
- 2) **If there was an intervening event, was it significant enough to be the cause of the worker's current condition?** If the WCB determines the intervening event was significant enough to cause the worker's current condition, there is no recurrence. The WCB will adjudicate the claim in the same manner it would a new workers compensation claim.
- 3) **Are there indicators that the worker's current medical condition is consistent with the injury caused by the previous workplace accident?** In making this determination, the WCB will look for evidence that:
 - the parts of the body or anatomical sites currently affected are the same as those affected by the previous workplace accident;
 - the physical or psychological functions affected are the same or similar as those affected by the previous workplace accident;
 - the degree to which physical or psychological functions are currently affected is similar to the degree to which they were affected by the previous workplace accident;
 - the worker is currently experiencing physical or psychological symptoms similar to those they had experienced after the previous workplace accident.
- 4) **Are there indicators of consistency between the worker's previous workplace accident and their current condition?** In making this determination, the WCB will look for evidence that:
 - the worker received additional or continued medical care since the previous workplace accident;

- the worker experienced continuing physical or psychological symptoms since the previous workplace accident.
- the worker reported concerns about their physical or psychological condition to supervisors, co-workers or others;
- the worker altered their regular activities after the previous workplace accident;
- the accident required work restrictions or job modifications.

The fact that a long time has elapsed between a worker's previous workplace accident and their current condition does not necessarily mean that there is no causal link between them. The WCB may, however, have more difficulty in establishing consistency between the previous workplace accident and the worker's current condition. If a long period of time has passed, it is more likely that other incidents, events or exposures could have occurred in the intervening period and caused the worker's current condition.

Compensation - Wage Loss Benefits

Where the WCB has determined that the worker has a loss of earning capacity resulting from a recurrence, they will be entitled to wage loss benefits. There are specific rules that apply in the calculation of wage loss benefits for a worker who has experienced a recurrence. The application of these rules will depend on whether the worker has returned to full employment following a previous workplace accident.

Worker Returned to Full Employment

The Act sets out rules for calculating wage loss benefits for a worker who has returned to full employment after a previous workplace accident and then experiences a recurrence. The WCB considers that a worker has returned to full employment if they have established a real and substantial attachment to the labour force. These conditions are met when:

- the worker has not been receiving full wage loss benefits for 12 weeks or more prior to the recurrence; or
- the worker's medical condition has stabilized and 12 weeks or more have elapsed from that date.

A worker's medical condition has stabilized when they have reached maximum medical recovery.

When the WCB determines that the worker has returned to full employment at the time of the recurrence, wage loss benefits are based on **whichever net average earnings figure is higher** – the pre-accident net average earnings figure that the WCB arrived at for the worker in respect of their previous workplace accident (indexed), or the worker's net average earnings as at the date of the recurrence.

The Act that is in force on the date of the previous workplace accident is the Act that applies to both of these calculations (pre-accident net average earnings at the time of the worker's accident and the worker's net average earnings as at the date of recurrence). If a worker's average earnings were subject to a maximum annual earnings level (i.e. a statutory cap on compensable earnings) at the time of the previous workplace accident, the WCB will apply that same maximum annual earnings level (indexed) when calculating net average earnings at the time of the recurrence. Similarly, if no maximum annual earnings level was in effect at the time of the previous workplace accident, no maximum annual earnings level will apply to the calculation of net average earnings in the recurrence year.

For workers with optional coverage, the same principles generally apply. If, at the time of the previous workplace accident, WCB policy restricted the amount of coverage these workers could purchase (i.e. set a maximum amount of coverage for these workers or policy cap), this maximum amount of coverage (indexed) will continue to apply when calculating the worker's net average earnings at the date of the recurrence.

As of January 1, 2022, the maximum compensable earnings level for those with optional coverage is \$549,900. This amount is indexed under section 47 of the Act and rounded to nearest \$10.

The only exception is in the case of workers with optional coverage at the time of their previous workplace accident who experience a recurrence at a time when they have mandatory coverage. In such cases, the WCB does not base wage loss benefits on the "higher of" the worker's net average earnings, even if the worker has returned to full employment. Instead, wage loss benefits are based on the worker's average earnings in respect of their previous workplace accident (indexed).

Appendix A of this policy sets out the statutory and policy cap levels by year of recurrence for specific previous workplace accident cohorts.

Depending on the individual circumstances of a worker's claim, the WCB may apply other policies to determine the level of wage loss benefits. For example, policy 44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*, describes the impact a recurrence has on the calculation and adjustment of a worker's net average earnings when they voluntarily reduce their earnings.

Worker Not Returned to Full Employment

When the WCB determines that the worker has not returned to full employment at the time of the recurrence, the WCB calculates the worker's wage loss benefits by applying any applicable indexing adjustments to the worker's average earnings before their previous workplace accident to determine their current value.

The worker's average earnings amount will be subject to any maximum average earnings level in effect on the date of the previous workplace accident. The WCB will apply indexing adjustments to this level to determine its current value.

Whether the worker has returned to full employment or not, other benefits, such as medical aid, may be available to the worker.

Removal of Claim Costs

In the circumstances described in Schedule B of Policy 31.05.10, *Cost Relief/Cost Transfer - Class E Employers*, some additional claim costs of a recurrence may be removed from the Class E accident employer's claim costs experience.

C. REFERENCES

The Workers Compensation Act, subsections 40(2), 40(3), 40(5) - (7), 81(1), sections 45 and 46
[January 1, 1992 to December 31, 2005]

The Workers Compensation Act, subsections 40(2), 40(3), 40(5) - (7), 81(1), sections 45, 46, 74 and 75
[January 1, 2006 to December 31, 2021]

The Workers Compensation Act, subsections 40(2), 40(3), 40(5) - (7), 81(1), sections 45 and 46
[On or after January 1, 2022]

Manitoba Regulation 132/2020, *Adjustment in Compensation Regulation*

Manitoba Regulation 196/2005, *Excluded Industries, Employers and Workers Regulation*
Adjustment in Compensation Tables

Related WCB Policies:

31.05.10, *Cost Relief/Cost Transfer - Class E Employers*
35.10.120, *Terms and Conditions of Optional Coverage*
44.05, *Arising Out of and in the Course of Employment*
44.80.10.10, *Average Earnings*
44.80.10.40, *Net Average Earnings*
44.80.30.10, *Establishing Post-Accident Earning Capacity*
44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*
44.90.10, *Permanent Impairment Rating*
44.120.10, *Medical Aid*
44.120.30, *Support for Daily Living*

History:

1. Policy 44.10.20.50 amended by Board Order 13/00 on April 27, 2000.
2. Administrative Guidelines have been added to this policy – November 2002.
3. Policy amended by Board Order No. 27/05, on September 29, 2005, to rescind Board Order 13/00 effective January 1, 2006. The rescinded policy 44.10.20.50 will continue to apply to recurrence decisions made from January 1, 2001 to December 31, 2005 and any reconsiderations and appeals that derive from these decisions.
4. Policy 44.10.20.50.10 approved by Board Order 27/05 on September 29, 2005. The revised policy is effective January 1, 2006. Revisions to the policy include: splitting policy 44.10.20.50 into two based on the compensation rate, clarifying that the date of accident will influence the level of net average earnings that the WCB may use to pay benefits and highlighting that claim costs may be removed in some situations.
5. Administrative guidelines were removed from this policy. The Board of Directors approve the policy while the administration approves the guidelines.
6. Minor formatting and grammatical changes were made to the policy, June 27, 2012.
7. Reference section updated to add Policy 44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*, April 1, 2014.
8. Policy updated November 10, 2017 to reflect consequential amendments to "Removal of Claim Costs" section to incorporate changes arising out of transition to the new rate setting model.
9. Policy amended by Board Order 11/21 on April 19, 2021 to be effective on January 1, 2022. The revised policy which was renumbered to 44.10.20.60 from the previous 44.10.20.50.10 will apply to recurrences for workers whose previous workplace accident occurred on or after January 1, 1992. Changes to the policy include explaining how the WCB determines if there has been a recurrence; identifying that dominant cause is the standard of causation applicable for recurrences (i.e. the previous workplace accident must be the dominant cause of the worker's current condition); and clarifying how the maximum annual earnings level is calculated in the event of a recurrence.
10. Policy 44.10.20.50.10, *Recurring Effects of Injuries and Illness (Recurrences)* was rescinded by Board Order 11/21 on April 19, 2021 effective January 1, 2022. The repealed policy was removed from the WCB Policy Manual.
11. In September 2022, the name of policy 31.05.10 was changed from *Cost Relief/Cost Transfer - Class E* to *Cost Relief/Cost Transfer - Class E Employers*.
12. Policy 31.05.10, *Cost Relief/Cost Transfer - Class E Employers*, was revised by Board Order No. 41/22 on December 15, 2022 effective for all decisions on or after January 1, 2023. As a result, a consequential change was made to this policy to clarify that cost relief is mandatory when the criteria in the various schedules in policy 31.05.10 have been met. The previous policy version was removed from the policy manual and archived December 31, 2021.

APPENDIX A

Maximum Annual Earnings Level (Statutory Cap) by Year of Recurrence
for Previous Accidents between January 1, 1992 and December 31, 2005

Recurrence Year	Maximum Level
2023	\$93,770
2022	91,700
2021	88,150
2020	85,710
2019	83,750

Workers with Optional Coverage -- Maximum Compensable Earnings Level
(Policy Cap) by Year of Recurrence for Previous Accidents between
July 1, 2009 and December 31, 2021

Recurrence Year	Maximum Level
2023	\$562,300
2022	549,900
2021	528,590
2020	513,990
2019	502,200

Maximum Annual Earnings Level (Statutory Cap) by Year of Recurrence
for Previous Accidents Occurring On or After January 1, 2022

Recurrence Year	Maximum Level
2023	\$153,380
2022	150,000