

Section	Policy
40	44.80.10.40

Section Title: Benefits Administration - Wage Loss
Subject: Net Average Earnings
Effective Date: For accidents on or after January 1, 2022

A. POLICY PURPOSE

Workers receive wage loss benefits based on a percentage of their loss of earning capacity, which is calculated as the difference between pre- and post-accident net average earnings. Certain benefits payable to a deceased worker's spouse or common-law partner are also based on a percentage of the worker's net average earnings.

The Workers Compensation Board (WCB) determines net average earnings by subtracting probable deductions for income tax, Canada Pension Plan (CPP) contributions and Employment Insurance (EI) premiums payable by the worker from their average earnings.

The policy outlines:

- how the WCB determines net average earnings for workers, and when it will adjust them;
- the types of probable deductions the WCB makes when calculating net average earnings;
- which eligible tax deductions and credits are used by the WCB when calculating the probable deductions; and
- when these tax deductions and credits are used by the WCB in the process of calculating the worker's net average earnings, and when they will be adjusted.

B. POLICY

I. Calculation of Net Average Earnings

Net average earnings are calculated in a two-step process:

- i. The WCB determines the worker's average earnings before the accident.
- ii. The process to determine average earnings is primarily described in Policy 44.80.10.10, Average Earnings, although The Workers Compensation Act (the "Act") and other WCB policies govern how average earnings are determined and adjusted for specific types of workers (e.g. apprentices, declared workers).
- iii. Once the worker's average earnings have been determined, the WCB calculates amounts representing probable deductions for income tax, Canada Pension Plan (CPP) contributions, and Employment Insurance (EI) premiums. The Act also mandates the deduction of "any other amount prescribed by regulation"; however, to date, no other deductions have been prescribed. These amounts are deducted from the worker's average earnings to arrive at a figure for net average earnings.

The method the WCB uses to arrive at probable deductions from average earnings is discussed in further detail below.

A worker's net average earnings are recalculated whenever their average earnings change.

II. Probable Deductions from Average Earnings

Probable income tax amounts are based on the worker's average earnings and the federal or provincial tax deductions and credits described in this policy that a worker is eligible to claim for income tax purposes. Workers who are not required to pay income tax do not have any probable income tax amounts deducted from their average earnings.

Probable deductions for CPP contributions and EI premiums are based on requirements of the *Canada Pension Plan Act* and the *Employment Insurance Act*. When determining probable amounts, the WCB considers the contribution levels required under those statutes.

In accordance with *Canada Pension Plan Act* and the *Employment Insurance Act*, some workers are not required to pay CPP contributions or EI premiums. In such cases, the WCB does not deduct these probable contributions or premiums from the worker's average earnings.

The WCB does not actually remit probable income tax, CPP or EI deduction amounts to the Canada Revenue Agency (CRA).

III. Tax Deductions and Credits

For the purposes of determining probable deductions for income tax, the WCB will reduce the worker's average earnings by the following tax deductions claimed by the worker:

- child care expenses, and
- spousal support payments.

Probable income tax payable is then determined on the adjusted average earnings.

For the purpose of calculating probable deductions for income tax, the worker may claim the following tax credits:

- basic personal amount,
- spouse or common-law partner amount,
- amount for an eligible dependant,
- amounts for dependent children who are under 18 at any time in the year, and
- amounts for infirm dependants age 18 or older.

However, the WCB will only include the tax deductions and credits outlined above if the worker qualifies for and claims these tax deductions and credits under the federal *Income Tax Act* and/or *The Income Tax Act* (Manitoba).

Pre-Accident Net Average Earnings

The tax deductions and credits that a worker can claim for the purpose of their pre-accident net average earnings are initially set at the date of accident. Deductions and credits used to calculate a worker's net average earnings will be adjusted:

- on the first day of the month following the second anniversary of the accident, and
- annually thereafter.

When the WCB inadvertently uses incorrect tax deductions and credits to determine a worker's net average earnings, it will make any necessary corrections.

Post-Accident Net Average Earnings

For the purpose of determining net average earnings after the accident, the WCB applies the same tax deductions and credits used to calculate the worker's most recent pre-accident earnings (initial or adjusted).

IV. Recurrences

A worker's net average earnings may be adjusted in the event of a recurrence of an injury arising from a previous workplace accident.

Policies 44.10.20.60, *Recurring Effects of Injuries of Illnesses (Recurrences)*, and 44.80.30.20, *Post-Accident Earnings – Deemed Earning Capacity*, provide guidance on the impact a recurrence has on the calculation and adjustment of a worker's net average earnings.

The WCB may determine that a worker has sustained a recurrence of the original injury or illness and that, at the time of recurrence, the worker had established a real and substantial attachment to the labour force. In such cases, the probable amount of income tax the WCB uses to calculate the worker's net average earnings at the time of the recurrence will be based on the tax deductions and credits the worker qualifies for and claims under the federal *Income Tax Act* and/or *The Income Tax Act* (Manitoba) at the time of recurrence.

V. Survivors' Benefits Payable to the Worker's Spouse or Common-law Partner

Certain benefits payable to a spouse or common-law partner of a worker who dies as a result of a workplace accident are based on the worker's net average earnings prior to their death.

Where the worker was receiving wage loss benefits at the time of their death, the WCB will base the payment(s) on the net average earnings figure used to calculate the worker's wage loss benefits.

Where the worker was not working just prior to their death, the WCB will apply any applicable adjustments to the worker's average earnings from the date of accident to determine the current level of these net average earnings.

However where the worker's date of accident is different from the worker's date of death, the WCB may adjust the worker's net average earnings to better reflect the worker's probable earning capacity on the date of death, had an accident not occurred, and base the spouse or common-law partner's benefits on this new figure.

When calculating the worker's net average earnings to determine survivors' benefits, the WCB applies the tax deductions and credits that a worker was entitled to claim as of the date of death.

VI. Removal of Claim Costs

Schedule B of policy 31.05.10, *Cost Relief/Cost Transfer - Class E Employers*, provides cost relief to Class E employers for additional compensation costs that arise when the WCB adjusts the worker's net average earnings under this policy.

C. REFERENCES

The Workers Compensation Act, subsections 28(1.1), 29(1)(a)(ii), 39(1), 40(1), 40(3), 40(5) and 40(6)

Related WCB Policies:

WCB Policy 31.05.10, *Cost Relief/Cost Transfer- Class E Employers*
WCB Policy 35.40.50, *Overpayment of Benefits*
WCB Policy 44.80.10.10, *Average Earnings*
WCB Policy 44.80.30.10, *Establishing Post-Accident Earning Capacity*
WCB Policy 44.80.30.20, *Post-Accident Earnings – Deemed Earning Capacity*
WCB Policy 44.80.30.30, *Prospective Earnings – Apprentices and Youthful*
WCB Policy 44.80.30.35, *Determining Average Earnings for Declared Workers*
WCB Policy 44.10.20.60, *Recurring Effects of Injuries and Illnesses (Recurrences)*

History:

1. Policy 44.80.10.40 established by Board Order 45/91 on December 17, 1991.
2. Policy amended by Board Order 20/93 on June 28, 1993, to cease effect on June 30, 1993. Re-issued to Policy Manual as 44.80.10.40.02
3. Policy 44.80.10.40 approved by Board Order 20/93 on June 28, 1993 to reflect amendments to the federal *Income Tax Act* effective July 1, 1993. Re-issued to Policy Manual as 44.80.10.40.01
4. Policy 44.80.10.40 approved by Board Order 13/2000 on April 27, 2000. Policy renamed Net Average Earnings. The major changes to the policy include the addition of tax deductions that a worker may claim and a revised method for determining net average earnings when a recurrence occurs. Effective January 1, 2001 for accidents on or after January 1, 2001.
5. Policy was amended by Board Order 31/2003 on October 30, 2003, to reflect a wording change to Point A. (i) 2. Administrative Guidelines have been added to this policy and the name of a policy in the "References" section has been corrected.
6. Updated July 1, 2005 – Bill 41 effective July 6, 2001 redefined "spouse" and added a separate definition of "common-law partner". The change in the policy adds the phrase "or common-law partner" after "spouse".
7. Policy 44.80.10.40 approved by Board Order 28/05 on September 29, 2005. The revised policy's effective date is January 1, 2006. The application of the policy is dependent on decision and accident dates. The key revision to the policy is the adjustment of a deceased worker's net average earnings in some circumstances.
8. Policy amended by Board Order 28/05, on September 29, 2005 to rescind Board Order 13/00 effective January 1, 2006. The rescinded policy will continue to apply to net average earning decisions made on accidents from January 1, 2001 to December 31, 2005. The recurrence provisions apply to recurrences from January 1, 2001 to December 31, 2005. This policy will still apply to any reconsiderations and appeals that derive from these decisions/accidents. Re-issued to policy manual as 44.80.10.40.01.
9. Policy 44.80.10.40 approved by Board Order 24/07 on June 20, 2007. The application of the policy is dependent on decision and accident dates. Effective July 1, 2007, the Board of Directors approved the WCB's practice to use the dependent child tax credit in the calculation of a worker's probable income tax payable.
10. Board Order 28/05 was rescinded effective July 1, 2007.
11. Policy 44.80.10.40 approved by Board Order 32/07 on October 30, 2007. The application of the policy is dependent on decision and accident dates. Effective January 1, 2008, the Board of Directors approved the WCB's practice to not use the spouse or common-law partner tax credit in calculating a worker's probable income tax payable if the spouse/partner is employed. This practice was incorporated into the policy.
12. Board Order 24/07 was rescinded effective January 1, 2008.
13. Minor formatting and grammatical changes were made to the policy June 27, 2012.
14. Policy updated November 10, 2017 to reflect Schedule B of policy 31.05.10, *Cost Relief/Cost Transfer - Class E* which provides cost relief to Class E employers for additional claim costs involving higher net average earnings for deceased workers.

15. Policy amended by Board Order No. 30/20, on November 26, 2020 effective for all accidents on or after January 1, 2022. Policy changes include stating that the probable deductions for income tax, CPP and EI are not actually remitted to the Canada Revenue Agency; modifying the manner in which the injured worker claims the spouse/partner tax credit; and eliminating the child-support tax deduction that a worker can claim.
16. 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*.