

Section	Policy
40	44.80.30.30

Section Title: Benefits Administration – *Wage Loss*
 Subject: Determining Average Earnings for Apprentices, Youthful Workers and Working Students
 Effective Date: For Accidents on or after January 1, 2023

A. POLICY PURPOSE

The Workers Compensation Act (the Act) provides the Workers Compensation Board (WCB) with discretion to adjust average earnings and wage loss benefits when the WCB determines that a worker's average earnings before the accident do not fairly represent their probable future earning capacity.

Apprentices, youthful workers and working students are three categories of workers who qualify for adjustments on this basis.

This policy outlines:

- how the WCB determines average earnings for apprentices, youthful workers and working students;
- when average earnings of these category of workers may be adjusted; and
- the amount of adjustment to these average earnings.

The policy also describes how average earnings are determined in cases where a person qualifies for more than one type of average earnings adjustment under the Act and other WCB policies.

B. POLICY

Definitions:

Eligibility under the policy is subject to the following definitions:

- a) i. **"Apprentice"** in a **trade** means someone who has signed a formal apprenticeship training agreement with their employer and has had that apprenticeship agreement registered with Apprenticeship Manitoba.
- ii. **"Apprentice"** in an **occupation** means a worker who in all circumstances must complete an "apprenticeship" in order to obtain the license or professional designation required to work in the occupation. Whether by legislation or the canons/by-laws of a self-governing body, the rules and regulations for the "apprenticeship" must be defined in a similarly strict manner as those contained in the legislation for an apprentice in a trade.
- iii. **"Apprentice"** in an **occupation** also means a worker who participates in a structured, employer-financed training program in order to work in the occupation.
- b) **"Industrial Average Wage" or "IAW"** For the purposes of this policy, when the term "IAW" is referenced, the IAW is the average of the industrial average wage for each of the 12 months before July 1 in the year before the accident or the date average earnings are adjusted. The wage amount figure is defined under subsection 47(1) of the Act.
- c) **"Long-Term Loss of Earning Capacity"** means a loss of earning capacity that extends beyond 24 months. This time period includes any week in a month in which full or partial wage loss benefits have been paid to the worker.

- d) **"Working Student"** means a worker who, at the date of their workplace accident:
- has average earnings less than the IAW; and
 - was enrolled in a post-secondary or private vocational institution in a recognized program of study. The program of study must be at least one academic year in length. It also must be a program likely to equip the worker with skills and competencies that would increase their future earning potential.
- e) **"Youthful Worker"** means a worker who, at the date of their workplace accident:
- has average earnings less than the IAW; and
 - has not yet reached 28 years of age.

Calculation of Probable Future Earning Capacity:

1. Apprentices

Initial Average Earnings

Apprentices' wage/salary rates are set by regulations made under *The Apprenticeship and Certification Act*. The rates are based on the provincial minimum wage rate multiplied by a percentage of the journeyperson rate. The WCB relies on these wage rates to set an apprentice's average earnings.

When the WCB initially determines that the apprentice is entitled to wage loss benefits, the worker's average earnings are based on the greater of:

- the training wage/salary and hours being worked for the year or portion of the apprenticeship program the worker was in at the date of the accident; or
- the worker's current earnings.

Adjustments to Average Earnings

On the first day of the month following the anniversary of the accident and annually thereafter, the WCB will adjust the worker's average earnings based on the training wage/salary and hours of work for each year or level of the worker's apprenticeship program. However, where the worker's current earnings exceeds the wage/salary rate set by regulation, the WCB will not adjust the worker's average earnings until the wage/salary rate exceeds the worker's current earnings.

Benchmark Average Earnings

Once the amount of the worker's average earnings has reached the prevailing wage/salary of a starting journeyperson or equivalent, the WCB will adjust the worker's average earnings in accordance with the indexing provisions of the Act.

2. Youthful Workers

Initial Average Earnings

Until youthful workers experience a long-term loss of earning capacity, their average earnings will be calculated using policy 44.80.10.10, *Average Earnings*.

Once a youthful worker experiences a long term loss of earning capacity (i.e. has been in receipt of

wage loss benefits for more than 24 months) the WCB will adjust their average earnings in accordance with this policy. The amount of the adjustment depends on the worker's age on the date of their workplace accident, and how much they were earning at that time. The WCB places youthful workers into the following four categories for adjustment purposes.

- a) *Those who were less than 25 years of age and earned less than 50% of the IAW on the date of the accident.*

Adjustments to Average Earnings

On the date that the worker reaches the long-term loss of earning capacity threshold, the WCB will adjust the worker's average earnings to 50% of the current IAW.

Each year, on this anniversary date, the worker's average earnings will be increased by 10% of the current IAW.

Benchmark Average Earnings

Once the amount of the worker's average earnings has reached the current IAW, the WCB will adjust the worker's average earnings in accordance with the indexing provisions of the Act.

- b) *Those who were less than 25 years of age and earned 50% or more of the IAW, but not more than the full IAW, on the date of the accident.*

Adjustments to Average Earnings

On the date that the worker reaches the long-term loss of earning capacity threshold and annually thereafter, the worker's average earnings will be increased by 10% of the current IAW.

Benchmark Average Earnings

Once the amount of the worker's average earnings has reached the current IAW, the WCB will adjust the worker's average earnings in accordance with the indexing provisions of the Act.

- c) *Those who were 25 years of age or older but were not yet 28 years of age, and earned less than 50% of the IAW on the date of the accident.*

Adjustments to Average Earnings

On the date that the worker reaches the long-term loss of earning capacity threshold, the WCB will adjust the worker's average earnings to 50% of the current IAW.

Each year, on this anniversary date, the worker's average earnings will be increased by 10% of the current IAW.

Benchmark Average Earnings

Once the amount of the worker's average earnings has reached the current IAW or the worker turns 30 years of age, whichever occurs first, the WCB will adjust the worker's average earnings in accordance with the indexing provisions of the Act.

- d) *Those who were 25 years of age or older but were not yet 28 years of age, and earned 50% or more of the IAW, but not more than the full IAW, on the date of the accident.*

Adjustments to Average Earnings

On the date that the worker reaches the long-term loss of earning capacity threshold and annually thereafter, the worker's average earnings will be increased by 10% of the current IAW.

Benchmark Average Earnings

Once the amount of the worker's average earnings has reached the current IAW or the worker turns 30 years of age, whichever occurs first, the WCB will adjust the worker's average earnings in accordance with the indexing provisions of the Act.

3. *Working Students*

Initial Average Earnings

Until working students experience a long-term loss of earning capacity, their average earnings will be calculated using policy 44.80.10.10, *Average Earnings*.

Once a working student experiences a long term loss of earning capacity (i.e. has been in receipt of wage loss benefits for more than 24 months) the WCB will adjust their average earnings in accordance with this policy. The amount of the adjustment depends on the amount that the working student was earning on the date of their workplace accident. The WCB places working students into the following two categories for adjustment purposes.

a) Those who earned less than 50% of the IAW on the date of the accident.

Adjustments to Average Earnings

On the date that the worker reaches the long-term loss of earning capacity threshold, the WCB will adjust the worker's average earnings to 50% of the current IAW.

Each year, on this anniversary date, the worker's average earnings will be increased by 10% of the current IAW.

Benchmark Average Earnings

Once the amount of the worker's average earnings has reached the current IAW, the WCB will adjust the worker's average earnings in accordance with the indexing provisions of the Act.

b) Those who earned 50% or more of the IAW, but not more than the full IAW, on the date of the accident.

Adjustments to Average Earnings

On the date that the worker reaches the long-term loss of earning capacity threshold and annually thereafter, the worker's average earnings will be increased by 10% of the current IAW.

Benchmark Average Earnings

Once the amount of the worker's average earnings has reached the current IAW, the WCB will adjust the worker's average earnings in accordance with the indexing provisions of the Act.

Establishing Average Earnings for Monthly Fatality Benefits

Determining what a worker's average earnings were before the accident is a preliminary step to determining certain fatality benefits payable to a surviving spouse or common-law partner.

Apprentices

The WCB uses the average earnings review process outlined in policy 44.80.10.10, *Average Earnings*, to set a deceased worker's average earnings. Where applicable, the WCB will also take into consideration any indexing adjustments and the worker's date of death.

Youthful Workers and Working Students

In the case of youthful workers or working students who die as a result of a workplace accident, the average earnings review process described in policy 44.80.10.10, *Average Earnings* does not apply. Instead, the WCB sets average earnings for these workers equal to the IAW at the date of their accident. Where applicable, the WCB will also take into consideration any indexing adjustments and the worker's date of death.

Dual Status

In some cases, a worker may be eligible for more than one type of average earnings adjustment under the Act and other WCB policies. When this occurs, the WCB applies the adjustment provisions to the worker's average earnings that best reflect the worker's characteristics and circumstances.

Vocational Rehabilitation

Apprentices, youthful workers and working students may be eligible for vocational rehabilitation under policy 43.00, *Vocational Rehabilitation*. Generally, vocational rehabilitation strives to return workers to the salary level they were earning before their workplace accident. In the case of apprentices, youthful workers, and working students, however, the goal will be to enable the worker to reach a wage/salary equivalent to the average earnings, as adjusted under this policy.

Removal of Claim Costs

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

C. REFERENCES

The Workers Compensation Act, sections 7(2), 28(1.1), 29(1)(a)(ii), 40(2), 45, 47(1), and 81(1)(c)(iv) [for accidents on or after January 1, 1992]
The Apprenticeship and Certification Act and Regulations

Related WCB policies:

31.05.10, *Cost Relief/Cost Transfer- Class E*
35.10.60, *Coverage under a Work Experience Program*
35.10.70, *Coverage for Volunteers*
43.00, *Vocational Rehabilitation*
44.80.10.10, *Average Earnings*

History:

1. Prospective earnings first provided for in *The Workers Compensation Act* for accidents on or after January 1, 1992.
2. Policy 44.80.30.30 established by Board Order 50/94, effective October 1, 1994, for decisions made on or after that date.
3. Procedural guidelines added January 29, 1998.
4. Policy amended by Board Order 13/00 on April 27, 2000, effective January 1, 2001, for existing youthful worker claims (as defined under the previous policy) and for new claims on or after January 1, 2001. Previous policy re-numbered 44.80.30.30.01.
5. Administrative Guidelines have been revised – March 2003.
6. Policy amended by Board Order 36/05 on October 26, 2005, effective January 1, 2006. Previous policy was re-issued as 44.80.30.30.01 effective January 1, 2001, for new claims and existing youthful-worker claims to December 31, 2005.
7. Policy amended by Board Order 04/12 on January 31, 2012, effective January 1, 2006. The 2012 revisions clarify existing practice and policy application.
8. Minor formatting and grammatical changes were made to the policy June 27, 2012.
9. 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 average earnings for apprentices and certain young workers.
10. Minor formatting changes were made to the policy, July 2021.
11. Policy amended by Board Order No. 15/22 on June 21, 2022, effective for accidents on or after January 1, 2023. Changes to the policy include establishing a new category of workers "working students" who, regardless of age, would be eligible for similar average earnings adjustments as "youthful workers"; applying the specific adjustment provisions to the worker's average earnings that best reflect their characteristics and circumstances when the worker is eligible for more than one adjustment to their average earnings; clarifying the long-term loss of earning capacity threshold; and referencing policy 43.00, Vocational Rehabilitation. Current policy 44.80.30.30, *Prospective Earnings - Apprentices and Youthful Workers*, will be archived and applies to accidents from January 1, 2006 to December 31, 2022 and any reconsiderations and appeals on these claims.