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Section Title: Benefits Administration – *Wage Loss*
Subject: Prospective Earnings - Apprentices and Youthful Workers
Effective Date: January 1, 2006 to December 31, 2022

A. POLICY PURPOSE

The Workers Compensation Act (the Act) allows the Workers Compensation Board (WCB) to adjust average earnings and wage-loss benefits from time to time when the WCB is satisfied that a worker's average earnings before the accident do not fairly represent his or her earning capacity. The WCB adjusts the probable earning capacity for apprentices and youthful workers.

Apprenticeship is seen as an educational pathway for Manitobans seeking entry into the workforce. The apprenticeship program combines on-the-job training with classroom instruction. As the apprentice progresses through the program, his or her wage increases. Upon graduation, the individual earns a Certificate of Qualification and journey person wages are paid.

Many youthful workers join the workforce in entry-level jobs and gain skills and experience over time. They move between jobs, get raises and promotions and, generally, establish career paths earning roughly the industrial average wage. The average earnings of an injured youthful worker at the date of the accident may not, therefore, reflect his or her true *long-term* loss of earning capacity.

This policy attempts to keep income levels of apprentices and youthful workers at par with their peers by paying benefits at a rate that approximates what they would likely have earned, were it not for the compensable injury or illness. The policy also attempts to address the work experience lost to these workers due to the compensable injury or illness by offering vocational rehabilitation.

This policy applies to apprentices and youthful workers with accidents on or after January 1, 2006. It does not apply to persons declared to be workers under the Act.

B. POLICY

Definitions:

1. 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 his or her 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) **"Youthful Worker"** means a worker who has not yet reached 28 years of age at the date of the accident and sustains a long-term loss of earning capacity.
- c) **"Long-Term Loss of Earning Capacity"** means a loss that extends beyond the second anniversary of the date of the accident.

- d) **"Industrial Average Wage"** is defined in the Act. Under this policy, the Industrial Average Wage (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 adjustment date.

Calculation of Prospective Average Earnings:

1. Apprentices

- a) Average earnings will initially be calculated on the basis 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.
- b) Average earnings will be adjusted on the first day of the month following the first anniversary of the accident and then in accordance with the training wage/salary and hours of work for each year or level of the worker's apprenticeship program.
- c) Once average earnings have reached the prevailing wage/salary of a starting journey person or equivalent, this policy will not apply and adjustments will be made in accordance with the indexing provisions of the Act.

2. Youthful Workers

For the purposes of this policy, youthful workers fall into four distinct categories. Average earnings will be adjusted differently for each of these four categories. These categories are:

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

Calculating Average Earnings

- a) Youthful workers who were less than 25 years of age and who earned less than 50% of the IAW on the date of the accident.
 - i) Until the indexing provisions of the Act apply, average earnings will be calculated based on WCB policy 44.80.10.10, *Average Earnings*.
 - ii) On the first day of the month following the second anniversary of the accident, current average earnings will be increased to 50% of the current IAW.
 - iii) Annually thereafter, on the first day of the month following the anniversary of the accident, current average earnings will be increased by 10% of the current IAW for the duration of the claim or until the average earnings equal the IAW as set forth in subsection 45(4) of the Act.
- b) Youthful workers who were less than 25 years of age and who earned 50% or more of the IAW, but not more than the full IAW, on the date of the accident.
 - i) Until the indexing provisions of the Act apply, average earnings will be calculated based on WCB policy 44.80.10.10, *Average Earnings*.

- ii) On the first day of the month following the second anniversary of the accident and annually thereafter, current average earnings will be increased by 10% of the current IAW for the duration of the claim or until the average earnings equal the IAW as set forth in subsection 45 (4) of the Act.
- c) Youthful workers who were 25 years of age or older, but not yet 28 years of age, and who earned less than 50% of the IAW at the date of accident.
 - i) Until the indexing provisions of the Act apply, average earnings will be calculated based on WCB policy 44.80.10.10, *Average Earnings*.
 - ii) On the first day of the month following the second anniversary of the accident, current average earnings will be increased to 50% of the IAW.
 - iii) Annually thereafter, on the first day of the month following the anniversary of the accident, current average earnings will be increased by 10% of the current IAW for the duration of the claim, or until the average earnings equal the IAW as set forth in subsection 45(4) of the Act, or the worker reaches the age of 30, whichever comes first.
- d) Youthful workers who were 25 years of age or older, but not yet 28 years of age, and who earned 50% or more of the IAW but not more than the full IAW, on the date of the accident.
 - i) Until the indexing provisions of the Act apply, average earnings will be calculated based on WCB policy 44.80.10.10, *Average Earnings*.
 - ii) On the first day of the month following the second anniversary of the accident and annually thereafter, current average earnings will be increased by 10% of the current IAW for the duration of the claim, or until the average earnings equal the IAW as set forth in subsection 45(4) of the Act, or the worker reaches the age of 30, whichever comes first.

Youthful Workers

- 1 If a youthful worker dies as a result of a work-related accident, the deceased worker's average earnings will be calculated on the basis of the current IAW in effect at the date of the worker's death.
- 2 When the claim continues after the average earnings equal the IAW or a youthful worker who was 25 years of age or more but not yet 28 at the date of the accident reaches 30 years of age, this policy will not apply and further adjustments to average earnings will be made in accordance with the indexing provisions of the Act.

Dual Status

- 3 If a worker is both an apprentice and youthful, average earnings will be calculated under the category which most benefits the worker. As well, if the worker would most benefit from having average earnings based on the earnings at the date of or before the accident, then subsections 45(3) and (4) of the Act will not be applied. In such cases, average earnings will be based on the earnings at the date of or before the accident, subject to WCB policy 44.80.10.10, *Average Earnings*, and the indexing provisions of the Act.

Vocational Rehabilitation:

- 1 Workers may be eligible for vocational rehabilitation under this policy when:
 - a) The worker was a youthful worker or apprentice and;
 - b) The compensable injury has produced a significant barrier to the worker attaining career goals and;

c) The WCB considers that the barrier will affect earning capacity over the long term.

2 *For Apprentices and Youthful Workers:*

a) Rehabilitation efforts will target the average earnings as adjusted under this policy.

b) In the case of youthful workers, when the WCB believes that the worker will suffer a long-term loss of earning capacity, rehabilitation efforts will target the average earnings as they would be adjusted in the future 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, subsections 1(4), 1(5), 1(8), 7(2), 40(2), 45(1) - 45(5), and 47(1) [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*

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. The previous policy 44.80.30.30, Prospective Earnings - Apprentices and Youthful Workers, has been archived and applies to accidents from January 1, 2006 to December 31, 2022 and any reconsiderations and appeals on these claims.

Archived