Section Title: Benefits Administration – *Wage Loss*
Subject: Determining Average Earnings for Declared Workers
Effective: Retroactive to January 1, 1994 to December 31, 2022

A. POLICY PURPOSE

This policy outlines:

- who qualifies as a declared worker under *The Workers Compensation Act* (the Act);
- how the Workers Compensation Board (WCB) determines average earnings for declared workers; and
- when the average earnings of declared workers may be adjusted.

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 applicable WCB policies.

B. POLICY

1. Who is a Declared Worker?

To be eligible to receive compensation in the event of a workplace accident, a person must meet the definition of "worker" under subsection 1(1) of the Act. The definition of worker includes several types of workers, including declared workers.

Declared workers are considered to be employed by the Province of Manitoba for assessment purposes, although they may not work for the province. The government determines who qualifies as a declared worker under the Act through regulation.

Examples of individuals who are considered declared workers under the Act include persons enrolled in specific educational training or work experience programs; persons performing work under approved programs pursuant to a court order; and persons appointed to a board, commission, agency or committee of the Manitoba Government who do not already have coverage under the Act.

A complete list of persons or classes of persons who are declared workers is provided in Schedule 1 of Manitoba Regulation (MR) 545/88 R, *Declaration of Workers in Government Employment Orders.*

2. Determining Average Earnings for Declared Workers

Many benefits under the Act, including wage loss benefits and some survivor benefits, are based on a worker's average earnings. In most cases, average earnings are calculated solely in accordance with section 45 of the Act. However, in the case of declared workers, section 77 of the Act specifies that average earnings are the greater of:

a) the worker's average earnings calculated under section 45; and

b) ½ of the average of the industrial average wage (IAW).

WCB policy 44.80.10.10, *Average Earnings*, is used to determine a worker's average earnings under section 45 of the Act. The IAW is established under the Act as the average of the industrial average wage for each of the 12 months before July 1 in the year before the accident.

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3. Adjusting Average Earnings for Declared Workers

Where a declared worker is involved in an accident that results in their death or in long-term loss of earning capacity, section 77 specifies that their earnings may be adjusted. In such cases, a declared worker's average earnings will be the greater of:

a) the worker's average earnings calculated under section 45; and

b) the average of the IAW.

The WCB considers a declared worker to have sustained a long-term loss of earning capacity after they have received 24 months of accumulated wage loss benefits.

Average earnings are also subject to any maximum average annual earnings level in effect at the date of accident.

4. Interaction with Other Policies

The Act and other WCB policies provide for adjustments to average earnings in some circumstances, for example a youthful worker adjustment for injured workers who meet certain conditions. In some cases, a worker may be eligible for more than one type of average earnings adjustment. When this occurs, the WCB will apply the adjustment most beneficial to the worker under the Act and applicable policies.

C. REFERENCES

The Workers Compensation Act, subsections 1(1) and 40(1), section 45, 46, 47 and 77 (For accidents on or after January 1, 1992)
Manitoba Regulation 545/88 R, *Declaration of Workers in Government Employment Orders*

Related WCB policies:

44.80.10.10, *Average Earnings*
44.80.30.30, *Prospective Earnings - Apprentices and Youthful Workers*

History:

1. Policy established by Board Order 20/96 on May 23, 1996, effective retroactive to January 1, 1994. No prior policy.
2. Minor formatting and grammatical changes were made to the policy June 27, 2012.
3. Reference section updated to reflect Manitoba Regulation 545/88 R, August 24, 2016.
4. Removed reference to rescinded policy 44.80.40, *Minors Earnings*.
5. Policy amended by Board Order 15/20 on June 18, 2020 to respond to the Legislative Review Committee's recommendation regarding the reinstatement of a cap on maximum average annual earnings. The effective date remains unchanged. The previous policy is renumbered to 44.80.30.35.01.
6. Minor formatting changes were made to the policy, July 2021.
7. Policy amended by Board Order No. 15/22 on June 21, 2022, effective for accidents on or after January 1, 2023. Consequential changes made to the policy include clarifying the long-term loss of earning capacity threshold; 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; and referencing the new title of the amended policy 44.80.30.30, Prospective Earnings - Apprentices and Youthful Workers, which is now the Determining Average Earnings for Apprentices, Youthful Workers and Working Students Policy. The previous policy 44.80.30.35, Determining Average Earnings for Declared Workers, has been archived and applies to accidents from January 1,

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1992 to December 31, 2022 and any reconsiderations and appeals on these claims.

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