

EMPLOYMENT EARNINGS CONSIDERED WHEN ESTABLISHING THE COMPENSATION RATE – SUMMARY – 2011

	Employment earnings considered when establishing the compensation rate	Legislation	Policy (if any)	Links (if any)
AB	<p>Prior to accident that fairly represents earnings at the time of the accident. In practice, rates for permanently employed workers are usually based on earnings at the time of the accident, with adjustments made for consistent patterns of overtime, shift differentials, etc. For both permanent and non-permanent workers, the WCB can use earnings from a different period of time if it appears reasonable to do so. Each claim is dealt with on a case-by-case basis.</p> <p>Workers whose jobs are subject to seasonal or work shortage lay-offs are considered to be non-permanent workers. The WCB sets a short-term rate, using earnings from the seasonal employment, and continues to pay compensation based on this rate until the end of the season (or the time the job was expected to end). The WCB then adjusts the rate to a permanent rate that is usually based on a minimum of 12 months earnings before the date of accident. The annual earnings of a similarly employed worker are used when there is no employment/earnings history.</p> <p>If a worker has a subsequent lay-off, the earnings base may change provided the worker meets the criteria for a recurrence of disability that begins more than 12 months following the date of accident. If the worker meets the criteria and the worker's earnings at the time of recurrence are higher than at the time of the accident, the higher earnings are used for calculating benefits based on actual earnings loss. The new, higher, rate does not apply to benefits such as the pre-1995 lifetime pensions that were based on the degree of clinical impairment.</p>		04-01, Part II, Application 1	
BC	<p>General rule for initial wage rate (first 10 weeks): time of injury earnings (section 33.1(1)). Exceptions to the general rule include:</p> <ul style="list-style-type: none"> (a) casual workers (wage rate is based on the 12 month period immediately preceding the date of injury and the rate is not reviewed after 10 weeks of short-term disability) (section 33.5); (b) non-earners (the Board has discretion to determine the average earnings of non-earners) (section 33.7); and (c) those who purchased personal optional protection (wage rate is the amount of coverage purchased with the 90% compensation factor applied) (section 33.6). <p>General rule for long term wage rate: average earnings are based on the worker's gross earnings for the 12 month period immediately preceding the date of injury (section 33.1(2)). Exceptions to the general rule include:</p> <ul style="list-style-type: none"> (a) casual workers (section 33.5), (b) apprentice/learner (long term wage rate is based on the earnings in the 12-month period immediately prior to the date of injury of a qualified person employed at the starting rate in the same trade, occupation or profession with the same employer) (section 33.2); (c) volunteers (policy item #67.30 – 67.31), (d) those who purchase personal optional protection (section 33.6); (e) those employed less than 12 months (long term wage rate is based on the earnings in the 12 month period immediately prior to the date of injury of a person of similar status employed in the same type and classification of employment by the same employer) (section 33.3); and (f) where the 12-month figure is inequitable (section 33.4). <p>In the event that the application of the general rule is inequitable due to a worker's exceptional circumstances, there are specific guidelines for determining the worker's long- term wage rate. Examples of exceptional circumstances include significant atypical absences and diminished future career options for students and young workers. See policy item #67.60.</p>	Workers Compensation Act (sections 33.1, 33.2, 33.3, 33.4, 33.5, 33.6, 33.7)	Rehabilitation and Services and Claims Manual (Policy items #67.30 – 67.31, #67.60)	

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	Employment earnings considered when establishing the compensation rate	Legislation	Policy (if any)	Links (if any)
MB	<p>Initial benefits for the first 12 weeks are based on pre-accident regular earnings or average yearly earnings. Thereafter, benefits are based on average yearly earnings or probable yearly earning capacity.</p> <p>Policy 44.80.10.10, Average Earnings, is designed to determine a worker's average earnings at the time of a compensable injury. Three formulas, Regular earnings, Average yearly earnings, and Probable yearly earning capacity, are used to set the average earnings level. The formula that best represents the worker's loss of earnings will be selected.</p> <p>In calculating a worker's pre-accident earnings, the WCB will first determine into which category a worker fits: (a) permanent full-time; (b) part-time or seasonal, or workers with irregular earnings patterns; (c) workers with irregular earnings patterns and significant changes in earnings from a previous year. A permanent full-time worker would receive benefits based on the regular earnings at the time of the accident or the average yearly earnings. If the worker is initially paid on the basis of regular earnings, he or she may request an average earnings review be conducted to pay benefits on the basis of average yearly earnings. Initial benefit payments to workers in categories (b) or (c) are based on regular earnings. The WCB will conduct a review of the average earnings of these workers prior to the thirteenth week of benefit payments. From this point, benefits will be based on average yearly earnings and probable yearly earning capacity for workers in categories (b) and (c), respectively.</p>		Policy 44.80.10.10, Average Earnings	
NB	<p>Section 38.1(1) of the <i>WC Act</i> identifies that:</p> <p>“average earnings” means the daily, weekly, monthly, or regular remuneration that the worker was receiving at the time of the injury or recurrence of the injury, or receiving previously, or at the time of the loss of earnings, or at the time of death, as may appear to the Commission best to represent the earnings of the worker, unless the worker was at the date of the accident under twenty-one years of age and it is established to the satisfaction of the Commission that under normal conditions the earnings would probably increase, in which case this fact should be considered in determining the worker's average earnings and in no case shall average earnings exceed the maximum annual earnings;</p> <p>WorkSafeNB reviews the initial determination of loss of earnings (based on Form 67) by: (a) re-evaluating the initial determination; (b) assessing whether there are changes in the claim or earnings; and (c) determining whether there is any new information that may affect the claim.</p> <p>This review allows WorkSafeNB to determine what best represents an injured worker's long-term earning pattern. This is especially important regarding injured workers employed in temporary, contract or seasonal industries where earnings may fluctuate throughout the year.</p> <p>WorkSafeNB reviews the initial determination of loss of earnings within the first 12 weeks using a period of up to 36 months pre-accident, when appropriate, and obtains earnings information from injured workers, employers, and/or the government department responsible for taxation. Depending upon the employment situation, remuneration may have been earned from: (a) the accident employer; (b) other employers (when injured workers are disabled from that employment as well); (c) employment insurance benefits; or (d) other sources of employment-related remuneration.</p> <p>If the 12-month period does not best represent injured workers' loss of earnings, WorkSafeNB may use a period of time up to 36 months to determine loss of earnings.</p>	Workers' Compensation Act (s. 38.1)	Policy No. 21-210 Calculation of Benefits	

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NL	Initial benefits for first 13 weeks based on the average weekly earnings for the four pay periods immediately preceding the injury, then average annual earnings used for up to 24 months earnings history. The adjustment of compensation after benefits have been paid for 13 consecutive weeks is to be applied where the earnings initially used are not representative of the worker's regular remuneration and an equitable compensation rate is needed.	Workplace Health, Safety and Compensation Act (s. 80)	Policy EL-01	
NT/ NU	<p>Full-time indeterminate positions or terms greater than one year: the annual remuneration is based on what the worker would have earned had the incident not happened, up to YMIR.</p> <p>Personal Optional Coverage: the annual remuneration is based on the amount of coverage that was purchased.</p> <p>Non-permanent of less than one year (term or seasonal employment):</p> <p>Initial rate calculation: The annual remuneration is the same rate as was being paid at the time of injury and continues until the end of the incident employment or contract. The rate can be extended of the worker had a longer period of employment in same or similar employment in the prior three years.</p> <p>Long term calculation:</p> <ol style="list-style-type: none"> If the worker had no other earnings in the injury year, the worker's annual remuneration will be adjusted to reflect what he would have earned throughout the contract or term. If the worker had no other earnings in the injury year but previous calendar year or years indicate a pattern of employment which could be applied to the injury year, those earnings are used in addition to total current year earnings with the contract or term. <p>If the worker has, no other earnings in the injury year but can demonstrate realistic or confirmable prospects for the balance of the year; we can consider this prospective remuneration in addition to the total current year earnings with the contract or term.</p>			
NS	Initial benefits for the first 26 weeks are based on the worker's 'normal' gross weekly earnings, less earnings-related expenses. Normal weekly earnings means the worker's normal rate of pay prior to the injury, as calculated over the worker's normal pay period (i.e. can be hourly, weekly, monthly). Normal weekly earnings include the following: (a) regular overtime; (b) commissions; (c) bonuses; (d) vacation pay; (e) a profit sharing arrangement with the worker's employer; (f) tips and gratuities; (g) taxable benefits, if reportable on a worker's T4 slip (only for injuries occurring on or after Jan 1, 2000); and (h) other types of employment income allowable on the "Employment Income" and "Other employment Income" lines of an individual tax return may be considered. As earning loss benefits are based on net earnings, net average earnings are calculated by deducting the following from the worker's gross earnings: 1) probable income tax payable by the worker; 2) the probable CPP premiums or QPP; and the probable EI premiums payable by the worker.	Workers' Compensation Act (s 37-47)	Policy 3.1.1R2 Calculation of Gross Earnings	
	After 26 weeks, the long term earning profile will be calculated over a period up to three years immediately preceding the worker's loss of earnings. The Board may choose any period that best represent the actual loss of earnings.			

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ON	<p>General policy rule: Short Term Earnings Basis (first 12 weeks) FROM ALL CURRENT JOBS: Base rate (hourly, daily or weekly); Shift differentials; Regular overtime; Regular production bonuses or commissions; tips.</p> <p>General policy rule: Long Term Earnings Basis (week 13+): Same as for Short term, plus: Irregular or sporadic overtime and bonus; EI benefits.</p> <p>If it is unfair to continue paying benefits using the worker's short-term average earnings beyond the 12-week mark, the general policy rule is that the worker's earnings are recalculated, using earnings for the 12-24 month period before the injury. These recalculated earnings are known as the long-term average earnings. The recalculation period used is subject to any breaks in the worker's employment pattern and any non-earnings periods that are not normally factored into the recalculation. The general policy rule does not apply to the following type of workers: workers with optional insurance; volunteers (the amount selected by the employer); emergency workers (actual earnings, or average industrial wage if the worker had no actual earnings at the time of injury); and apprentices, students and learners.</p>	<p>Workplace Safety and Insurance Act (s. 53, 55)</p>	<p>18-02-02, Determining Short-term Average Earnings</p> <p>18-02-03, Determining Long-term Average Earnings: Workers in Permanent Employment</p> <p>18-02-04, Determining Long-term Average Earnings: Workers in Non-permanent Employment</p>	
PE	<p>“Earnings” include: Salary, wages, commissions, gratuities, earnings for overtime, piecework, contract work, bonuses, allowances, board and lodging capable of being estimated [Section 1(j)] in terms of money, credits and any substitutes for money provided wholly at the expense of the employer.</p> <p>Employment Insurance payments are included as earnings. The Board calculates a worker's average earnings on such income from employment and employment insurance benefits, and over such period of time, as the Board considers fair and just, but the amount of average earnings shall not exceed the maximum annual earnings.</p>		<p>POL-86 Wage Loss benefits</p>	
QC	<p>From the fifteenth day of a worker's incapacity his gross revenue is determined on the basis of earning capacity. The general rule for the determination of the gross income refers to the gross income provided by the employment contract or, if it is more profitable for the worker, the gross income of the 12 months preceding the beginning of his invalidity. The worker must then prove he has drawn a higher gross income from: (a) the employment for the employer at whose service he was in when the injury occurred; or (b) from the same kind of employment for different employers during the 12 months preceding the beginning of his disability, including employment insurance benefits and the Quebec parental insurance plan.</p> <p>Special provisions apply in the following cases: seasonal or on-call worker; unemployed worker; worker suffering a relapse or an aggravation; worker occupying more than one job; independent worker considered as a worker; worker suffering a new injury while receiving an income replacement indemnity; worker occupying a job of a particular nature; and, worker unable to occupy his job for more than two years who can prove that he could have occupied a better paying job.</p> <p>Finally, the gross revenue of a person registered with Commission (independent worker, domestic, employer who is an officer or a director a of legal entity) is equal to the amount for which he is registered.</p>		<p>Policy 2.02</p>	

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SK	<p>The calculation of loss of earnings is based on the worker's "average weekly earnings", less any earnings the worker receives from employment during the time of earnings loss due to the injury. The "average weekly earnings" are the greater of:</p> <ul style="list-style-type: none"> ⇒ One fifty-second of the worker's gross earnings for the 12 months immediately preceding the time of earnings loss due to the injury; or ⇒ The rate of daily / weekly / monthly / other regular gross earnings that the worker was receiving at the start of the time of earnings loss due to the injury. <p>The average weekly earnings do not include any money given to the worker to cover special expenses that are part of the nature of employment.</p> <p>For workers whose pre-injury employment status was permanent full-time, the compensation rate is set by calculating 90% net of the average earnings over a 12 month period prior to the accident date. Net earnings are calculated by subtracting the estimated income tax payable, Canada Pension Plan premiums and Employment Insurance premiums from the gross average employment earnings. In determining net earnings, the SK WCB uses the information on the Canada Revenue Agency TD1 on file with the worker's employer. For those workers of alternate employment status (for example part-time, casual, seasonal), different methods of calculating the compensation rate can apply.</p>			
YT	<p>Policy EL-01 Loss of Earnings Benefits, effective July 1, 2008</p> <p>The Yukon Workers' Compensation Health and Safety Board (YWCHSB) calculates "average weekly earnings" upon such sources of earnings over such periods of time as the YWCHSB considers fair and just. Benefits for earnings loss are based on the worker's weekly loss of earnings. The weekly loss of earnings is the difference between:</p> <ul style="list-style-type: none"> • the worker's average weekly earnings before the work-related injury arose; and • the estimated average weekly earnings that the worker could, in the YWCHSB's opinion, earn from time to time, in a suitable occupation after the injury arose. <p>Short-term benefits. Payable for the first 90 days of earnings loss, and based on "regular earnings", which means the documented amount of earnings received by a worker in their occupation(s) during the period of time immediately before the work-related injury arose. The period of time shall be determined based on the hourly, daily, weekly, or other interval, not exceeding a month that is most beneficial to the worker.</p> <p>Short-term Extension. Short-term benefits may be extended for up to 180 days for a seasonal worker.</p> <p>Provisional Benefits. When it is difficult to obtain earnings documentation, the YWCHSB may determine a provisional rate of benefits based on the worker's terms and conditions of employment.</p> <p>The YWCHSB may pay provisional benefits for up to four weeks from the date of injury. Within these four weeks, the worker and the workers' employer shall provide the YWCHSB with documentation confirming the worker's earnings. If the documentation indicates the rate should be adjusted up or down, the YWCHSB shall adjust the rate.</p>		EL-01 Loss of Earnings Benefit	

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	<p>Long-term benefits. Where the loss of earnings benefits continue past the “short-term period” or the “short-term extension”, for seasonal workers only, the long-term benefit shall apply. The long-term benefit shall be based on the worker’s earnings from all employment over the two complete calendar years immediately prior to the date of injury. If the calculation for the short or long term benefit does not provide a reasonable representation of a worker’s earnings, the board shall use the average earning of workers in a similar Yukon occupation, or if a Yukon comparison cannot be made then in a similar occupation within Canada.</p> <p>Average weekly earnings for workers employed on a casual basis (outside the purposes of the employer's industry), persons acting in a religious function and volunteers (except those working on behalf of the Government of Yukon) who have optional coverage, are based on the greater of half the maximum wage rate and their actual proven earnings. The same rule applies to mine rescue workers, volunteers working on behalf of the Government of Yukon, emergency services workers, members of volunteer fire or ambulance brigades, auxiliary police, search and rescue workers, persons summoned to assist with a fire, etc.</p> <p>Average weekly earnings for employers, sole proprietors, elected officials of municipalities, and elected and appointed officials of First Nations who have purchased optional coverage are based on the lesser of the weekly equivalent of the amount of personal coverage in effect at the time of the disability and their actual proven earnings.</p> <p><u>When directors of corporations do not draw a wage, the YWCHSB determines the director’s value of service in computing average weekly earnings.</u></p>			

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