

Practice Directive 31

Overview of Amendments to the *Workers Compensation Act* and Amendments to Board Policies

Date: June 30, 2002

1. BACKGROUND

Effective June 30, 2002, the *Workers Compensation Act* (the "Act") was amended by Bill 49, the *Workers Compensation Amendment Act, 2002*. As a result, the Panel of Administrators approved amendments to the Board's policies concerning the following topics.

1. Transition Rules
2. Mental Stress
3. Composition of Average Earnings
4. Employment Insurance Payments in Composition of Average Earnings
5. Average Net Earnings
6. Duration of Benefits (Age 65)
7. Obligation of a Worker to Provide Information
8. Cost of Living Adjustments (formerly CPI)
9. Integrating CPP Pensions with Permanent Disability Awards

The Division has prepared 12 practice directives, including this directive, to guide staff in interpreting and applying the amended legislation and policies.

2. PURPOSE

This practice directive only provides a general overview of the amendments and related directives. Please refer to the topic-specific, individual practice directives for further information. They are as follows:

Practice Directive #32, *Net System of Compensation*
Practice Directive #33, *Average Earnings – Initial and Long-Term Wage Rates*
Practice Directive #34, *Actual Loss Payments*
Practice Directive #35, *Employment Insurance Payments*
Practice Directive #36, *Section 30 Benefits*
Practice Directive #37, *Income Loss Payments*
Practice Directive #38, *Effective Dates, Recurrences and Transition Rules*
Practice Directive #39, *Mental Stress*
Practice Directive #40, *Obligation to Provide Information*
Practice Directive #41, *Duration of Benefits – Age 65*
Practice Directive #42, *Appeals*

3. EFFECTIVE DATES

The new amendments and policies are effective June 30, 2002. This means that injuries occurring on or after June 30, 2002 are subject to the new legislation. (In the case of occupational diseases, where the date of disablement is on or after June 30, 2002.)

However, there are certain transitional situations where either the former or the new (current) provisions might apply. For example, where a worker suffers a recurrence of temporary disability on or after June 30, 2002, the current provisions will apply, despite that the original claim might have been compensated under the former provisions.

See Practice Directive #38, *Effective dates, Recurrences and Transition Rules*.

4. AVERAGE EARNINGS

Historically, the Board had very broad discretion to determine the average earnings of different types of workers for the purposes of both the initial payment period and the long-term wage rate. Section 33 now establishes two general rules: one for the initial payment period and one for long-term wage rates. The legislation provides three exceptions to each of these general rules. In the majority of cases, once a worker's employment circumstance meets the rule or exception, the legislation specifically stipulates how the worker's average earnings should be calculated.

As well, the previous eight-week rate review established by policy is now codified in the legislation but takes place at 10 weeks.

Also, the Board's policies and practices relating to compensation payments to self-employed persons have changed to a minor degree.

Please see Practice Directive #25, *Coverage and Compensation for Self-Employed Persons* and Practice Directive #33, *Average Earnings – Initial and Long-Term Wage Rates*.

5. EMPLOYMENT INSURANCE (“EI”) PAYMENTS IN COMPOSITION OF AVERAGE EARNINGS

Section 33(3.2) provides that EI payments received in the 12-month period prior to the date of injury may be added to the composition of average earnings. Due to the categorization method outlined in the legislation, EI cannot be considered for persons who have purchased Personal Optional Protection (“POP”); Apprentices or Learners; or Persons employed less than 12 months.

The Board has created policies outlining when EI payments may be included for workers not in those restricted categories. EI may be considered where, at the time of the injury, the worker was employed in a seasonal industry or occupation, or where the worker's employment results in temporary recurring interruptions. For workers meeting those eligibility requirements, the worker must also demonstrate an on-going attachment to that industry/occupation.

See Practice Directive #35, *Employment Insurance Payments*

6. NET SYSTEM OF COMPENSATION

In the past, a compensation factor of 75% was applied to a worker's gross average earnings, subject to the minimum and maximum, to produce a “net” wage loss amount.

The term “net” now refers to “average net earnings” after probable federal and provincial income taxes, Employment Insurance deductions and Canada Pension Plan contributions are deducted from a worker's gross average earnings.

For the first 10 cumulative weeks of temporary disability benefits, a Compensation Table is used to determine the probable allowable deductions. After 10 weeks, a more individualized approach is used. The legislation provides the rules for determining the applicable deductions relating to both initial and long-term average net earnings.

As well, once the average net earnings are determined, the compensation factor to be applied is 90% (subject to minimum).

See Practice Directive #32, *Net System of Compensation*.

7. SECTION 30 PAYMENTS

Section 30 of the *Act* has been amended to reflect the “net system of compensation”. Where a worker is partially disabled, actual or deemed earnings must still be deducted from wage loss benefits. However, because of the “net” system, these benefits must be calculated as follows:

100% of average net earnings (wage rate) MINUS 100% of average net earnings (earned/deemed), MULTIPLIED by 90%.

Furthermore, due to the method in calculating “net” after 10 weeks of cumulative temporary disability, the methods for calculating short-term and long-term section 30 payments are somewhat different.

See Practice Directive #36, *Section 30 Benefits*.

8. ACTUAL LOSS PAYMENTS

The Board’s practice of processing actual loss payments may continue. However, in accordance with the new legislation, these types of payments may not be made in certain cases. Actual loss payments may not be made for a workers classified as casual; non-earner; or who has purchased POP, or where the actual loss payment does not reflect time of injury earnings.

Actual loss payments are also subject to the net compensation rules.

See Practice Directive #34, *Actual Loss Payments*.

9. INCOME LOSS PAYMENTS

Although income loss payments are health care benefits, they are also subject to the net compensation rules.

See Practice Directive #37, *Income Loss Payments*.

10. DURATION OF BENEFITS - AGE 65

Section 23.1 of the *Act*, provides that compensation payable must be terminated at age 65, unless the Board is satisfied that a worker would have retired at a later date, in which case a worker can be paid to that date. If a worker was 63 years or older at the time of injury,

benefits may be paid to the later of 2 years past the date of injury, or the date the Board determines the worker would have retired.

Section 31.1 requires that benefits be terminated in all cases when temporary or permanent disability ceases.

See Practice Directive #41, *Duration of Benefits – Age 65*.

11. MENTAL STRESS

Section 5.1 has been added to the *Act*, relating to mental stress. As a result, *Rehabilitation Services and Claims Manual* (“RSCM”) Policy item #32.20 was deleted and RSCM Policy item #13.30, *Mental Stress*, has been added. The new policy does not significantly change prior Board practice, but more clearly outlines the requirements with respect to accepting claims for mental stress.

See Practice Directive #39, *Mental Stress*.

12. OBLIGATION OF A WORKER TO PROVIDE INFORMATION

Section 57.1 of the *Act* has been added. That section provides that the worker must provide the Board with the information that the Board considers necessary to administer the worker’s claim. If the worker fails to comply, the Board may reduce or suspend benefits.

While the Board will continue to work with the worker, employer and medical providers in order to obtain earnings/income tax information or medical information, the onus ultimately rests with the worker. Where the worker does not provide income tax information, the Board will generally apply those allowable deductions least favourable to the worker. Where insufficient earnings information is provided, the wage rate may be reduced. Where no earnings are provided, the claim may be suspended. While most medical practitioners have a duty to provide medical reports, where no duty exists, it is the ultimate responsibility of the worker to provide the necessary medical information.

See Practice Directive #40, *Obligation to Provide Information*.

13. COST OF LIVING ALLOWANCES (formerly known as Consumer Price Indexing)

Under the new legislation, benefits will be adjusted for inflation annually, at a rate of 1 percent less than inflation (CPI –1), to a maximum of 4 percent in a year.

As a result, workers, who may have been eligible for an adjustment on July 1, 2002, will not have their benefits indexed until January 1, 2003 (at the new rate).

This change applies to all workers, including those already receiving benefits and those injured in the future.

The new legislation will not change indexing of benefits for the surviving spouse of a deceased worker. Compensation benefits payable to the dependants will continue to be adjusted for inflation in January and July of each year.

14. PERMANENT DISABILITY AWARDS

Under the new legislation, the calculation of a permanent disability benefit will be based on a loss-of-function method of assessment. A loss-of-earnings award may only be granted in “so *exceptional*” cases.

There are some transitional considerations with respect to claims presently awaiting a pension assessment. The Board is currently developing new permanent disability compensation policies relating to the new legislation, which will be finalized approximately mid-July, 2002.

Workers in receipt of a pension before June 30, 2002 will continue to receive pensions for life. Under the new provisions, permanent disability awards will no longer be paid for life.

In addition to a permanent disability award, the Board will pay an amount of money equal to 5 percent of a worker’s monthly benefit into a special fund (“Post-Retirement Benefit”). When the worker turns 65, monthly benefits will end and he or she will receive this fund, including its accrued investment income, as a retirement benefit. As well, a worker may choose to contribute up to 5 percent of his or her own monthly award into the fund.

Every worker who has a permanent total disability will receive a special needs review six months prior to reaching age 65. For these workers, the Board will provide all services and personal supports that the Board considers necessary for the lifetime of the worker.

15. INTEGRATING CPP PENSIONS WITH PERMANENT DISABILITY AWARDS

Under the current legislation, permanent disability awards, relating to injuries that occurred prior to June 30, 2002, must be integrated with Canada Pension Plan (“CPP”) disability benefits. Therefore, where a worker has a CPP disability pension for the same condition/injury as the WCB condition/injury, 50% of the CPP benefit will be deducted from the WCB award.

16. Appeals

While the government has introduced draft legislation (“Bill 56”) relating to appeals, it has not yet announced the date on which the legislation will pass or the date the changes might come into effect. It is anticipated that these changes will be debated during the fall session of the Legislature. Therefore, there have been no changes in the Board’s policy relating to appeals. However, the Board has created an Internal Review process and continues to develop that process.

See Practice Directive #42, Appeals.