# Practice Directive #36

## Section 30 Benefits

**Date: June 30, 2002**

---

## BACKGROUND

On June 30, 2002, sections 30 and 33 of the *Workers Compensation Act* (the "*Act*"), relating to the calculation of average earnings and benefit payments, were 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 average earnings and the payment of section 30 benefits.

## PURPOSE

This practice directive provides an overview of the legislative and policy changes relating to the payment of section 30 benefits. It does not provide adjudicative guidance as to when a section 30 payment would be appropriate.

## EFFECTIVE DATES AND TRANSITION RULES

Please see Practice Directive #38, *Effective Dates, Recurrences and Transition Rules*.

## LAW

Section 30(1) of the *Act* provides the rules under which a payment may be made to a worker who has partial actual earnings or is deemed partially capable of generating earnings subsequent to the injury.

## POLICY

With the exception of point No. 1 in the Adjudicative Guidelines section below, the policies in the *Rehabilitation Services and Claims Manual* (the "RSCM") have not been amended with respect to the adjudicative considerations relating to section 30 benefits. There has, however, been a substantive change with respect to average net earnings. A full understanding of those polices and of Practice Directive #32, *Net System of Compensation* is necessary in order to process section 30 payments.

## PRIOR PROCESS

In the past, section 30 payments were determined based on the outcomes of two measures:

a. the average earnings before the injury, less the post-injury amount which the worker was earning; or

b. the average earnings before the injury, less the post-injury amount which the Board determined or deemed the worker was able to earn.

The amount then paid was 75% of the lesser of (a) and (b).

**NEW PROCESS**

While the rules in (a) and (b) above remain unchanged in concept, the amount payable must now be calculated in relation to average net earnings, as follows:

> 100% of average net earnings prior to injury, minus 100% of average net earnings (actual or deemed) after the injury, multiplied by 90%.

Furthermore, there are now two methods of calculating the net section 30 benefits payable, depending upon the length of time for which benefits have been paid:

1. Compensation Table based calculations are used for the first 10 cumulative weeks of temporary disability benefits, or until the effective date of a permanent disability award.
2. After 10 cumulative weeks of temporary disability benefits, or the effective date of a permanent disability award, a more individualized approach is taken through use of the "Individualized Net Wage Rate Calculator".

Each of these calculation methods is described in detail in Practice Directive #32.

**SECTION 30 PAYMENTS – FIRST 10 WEEKS**

The Compensation Table outlined in Practice Directive #32 should be used to determine the amount of a section 30 payment to a worker for the first 10 weeks of disability.

Board officers should enter the relevant earnings information and related time periods into the Automated Wage Loss (AWL) system which will, incorporating all of the relevant information and variables, calculate the payment due to a worker.

It is important to note that due to the rounding methodology and application of the minimum/maximum payment rules within the Compensation Table, the payment amount is not subject to a simple intuitive evaluation of the outcome. Therefore, care should be taken to ensure the accuracy of the information entered.

Formulas used within the AWL system to compute the section 30 payment are attached as Appendix A.

**SECTION 30 PAYMENTS - AFTER 10 WEEKS**

After the first 10 cumulative weeks of temporary disability benefits, the "Individualized Net Wage Rate Calculator" outlined in Practice Directive #32 should be used to determine the amount of a section 30 payment to a worker.

Board officers should enter the relevant earnings information and related time periods into the Individualized Net Wage Rate Calculator that will, incorporating all of the relevant information and variables, calculate the amount of payment due a worker. The resulting payment amount is then entered into the automated Wage Loss system as an "Actual Loss Payment".[1]

It is important to note that due to the inclusion of individual tax circumstances and application of the minimum/maximum payment rules within the Individualized Net Wage Rate Calculator, the payment amount is not subject to a simple intuitive evaluation of the outcome. Therefore, care should be taken to ensure the accuracy of the information entered.

## ADJUDICATIVE GUIDELINES

1. Where a worker has returned to his or her original (accident) employer on a section 30 basis, after 10 cumulative weeks of temporary disability benefits, the long-term wage rate is no longer adjusted to reflect the immediate loss. This means that there will no longer be a reversion to the initial wage rate.

2. Where a worker has purchased Personal Optional Protection ("POP"), section 30 benefits may be estimated on a percentage basis. In no case would there be any benefit payable where the estimated amount of work exceeded the amount of POP purchased.

3. Wherever possible, in order to maximize accuracy, earnings (actual or deemed) should be calculated and input into AWL or the Individualized Net Wage Rate Calculator on a weekly basis.

4. As an interim measure Board officers are required to forward all occurrences where a section 30 payment is required after 10 cumulative weeks of temporary disability benefits to the Long Term Rate Setting Unit for calculation of the payment amount. Please see business process document entitled *Long-term Rate Setting Unit – Interim Process - Section 30*, which provides the appropriate business process guidelines.

[1] This is not an "Actual Loss Payment" within the meaning of Practice Directive #34, *Actual Loss Payments*, but is simply a method for the AWL to issue a section 30 payment after 10 weeks.

**<u>Example of the new calculation:</u>**

- the claimant earns $22,132.13 per year effective August 2002 for a 5 day work week the claimant has a pension on same claim of $25.00 per week net
  - $424.45180 = the Gross Weekly Rate (22,132.13 / 365 * 7)
  - $343.78830 = the Pre-Pension Net Weekly Rate (CPI rate of 6.0584 * 90% Net Weekly Amount = 1.060584 * $324.15)
  - $63.75766 = the Daily Compensation Rate (($343.78830 -25.00) / 5)

the claimant works 2 weeks (10 work days over 14 calendar days) in August of 2005 and receives $421.00 gross from the employer and therefore the payment is: ------ -> 421.00 is below min

- **$637.5766** = Expected Payment for 10 work days ($63.75766 * 10)
- 90% of (100% of net - 100% of net paid by employer)

  90% of ((Expected Payment Amount **/** .9) - (100% Net Annual **/** # days worked in the period ***** # days work per week **/** 7 ***** 365))

  90% of (($637.5766 / .9) - ($421.00/10*5/7*365 = $10,976.07 = Rounded Gross of $11,000.00 = 100% Annual Net of $10,430.00/ 365*7/5*10))

  90% of ($708.41845 - $400.05479)

  90% of $308.36366
  **$277.53 = Net Payment Amount**

**$360.05** = Net Deduction = (Expected Payment Amount - Net Payment Amount = $637.58 - $277.53)