INTERVIEW QUESTIONS - WORKERS' COMPENSATION
COMPENSATION SERVICES ISSUES

JURISDICTION: MANITOBA

I. COMPENSATION SERVICES ISSUES

1. Is there a requirement, statutory or otherwise, requiring the regular review and potential readjustment of the rate of temporary wage loss benefit paid to an injured worker?

If yes, what is the basis for adjusting the temporary wage loss benefit (i.e., a different basis for calculating the rate; a change in circumstances or level of disability)? And, are there any statistics or data regarding how often the rate is adjusted down or up?

Wage loss benefits are paid for loss of earnings capacity: 90% of net average earnings for the first 24 months and 80% of net average earnings after 24 months of cumulative benefits.

By policy, the rate of wage loss benefit is reviewed at 12 weeks for workers with irregular earnings pattern (see attached policy 44.80.80.20, "Wage Loss Reviews" and policy 44.80.10.10, "Average Earnings"). As well, by policy, the wage loss benefit may be reviewed at any time if the board believes that there has been a change in loss of earnings status or at the request of the claimant.

There is automatic indexing of wage loss benefits on the first day of the month following the second anniversary of the accident and annually thereafter on the basis of changes in the industrial average wage.

2. Are permanent disability awards, both partial and total, subject to review and readjustment? For example, is there a requirement, statutory or otherwise, requiring the regular review and potential readjustment of the rate of permanent disability award?

If yes, what is the basis for adjusting the award (i.e., a different basis for calculating the rate; a change in circumstances or level of disability)? And, are there any statistics or data regarding how often the rate is adjusted down or up?

See above.

The functional impairment award is not subject to regular or periodic review, but may be adjusted at the request of the worker if the injured worker's condition has worsened; a worker may not apply for an adjustment within 24 months of last impairment rating.
There are no statistics available on the incidence of adjustment of either the wage loss benefit or the functional impairment award.

3. **Is there any prohibition in the workers' compensation legislation in your jurisdiction against "topping up" (i.e. purchasing private disability insurance which provides income in addition to workers' compensation payment??)**

   There is a prohibition against topping up in Manitoba (see attached Fact Sheet on "Collateral Benefits").

   A worker's wage loss benefit will be reduced by the value of other collateral benefits provided to the worker. This includes disability insurance benefits (private, CPP, UI), and any wages paid by the employer in addition to the wage loss benefits, which will be deducted from the wage loss benefit amount.

4. **What factors, if any, other than earnings, are used to determine workers' compensation benefits (for example what impact does age, marital status, number of dependents, retirement, education and training have on the calculation of benefits)?**

   Age has no impact on the calculation of wage loss benefits. However, the permanent impairment award and lump-sum survivor benefits are reduced by two percent for each year that the worker is over 45 to a maximum reduction of 40%.

   Marital status and number of dependents is indirectly taken into account in the calculation of wage loss benefits which are calculated based on gross income less deductions for probable tax, CPP, and UI (which takes into account number of dependents) (see attached fact sheet, "Calculation of Benefits").

5. **Is deeming used in either**

   1) **setting the duration of temporary benefits or**

   2) **as the basis for calculating permanent disability awards**

   *(where "deeming" means deeming a worker ready to return to work, and/or as capable of earning income at a particular income level, though the worker may not have actually returned to work or may be earning income at a lower level)*

   **And if yes, what are the prerequisites for applying deeming? And, are there any statistics or data regarding the frequency with which deeming is used?**

   Deeming is generally applied as a last resort after the worker has exhausted all reasonable and available vocational rehabilitation/re-employment options, including job search. In order to deem, the WCB must demonstrate that the worker

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1 Where topping up is provided in a collective agreement entered into prior to January 1, 1992, the employer may top up the worker's wage to 100%, but only for 24 months on each individual claim.
has the physical capacity, education and skills to competitively find and keep employment in the occupation of group of occupations on which the earnings capacity is based and that work exists. The WCB may also deem where the worker refuse to co-operate in or discontinues a suitable return or rehabilitation plan (See attached policy 44.80.30.20, Post Accident Earnings - Deemed Earnings Capacity).

There are no statistics available on the incidence of deeming.

6. **Does the jurisdiction have an electronic claim files system in place? When was it introduced? What are the perceived advantages and disadvantages of electronic claims files?**

   No.

7. **Have any research or studies been undertaken on the adequacy of benefits provided by the jurisdiction? Any research or studies on the issue of equity of benefits? Are these studies available to the Royal Commission?**

   No.

8. **Claims Statistics:**

   In 1997:

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<thead>
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<tr>
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<tr>
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   **Active Claims:**

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<tr>
<td>Total</td>
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II. **ADJUDICATION**

1. **How would you describe the basic approach to adjudication in your jurisdiction (for example, inquiry based approach or adversarial)?**

   An inquiry based approach is applied in Manitoba; there is ongoing evaluation of the claim and WCB decisions are open to reconsideration and review.
2. **In your jurisdiction is the function of adjudicators, at the first stage, similar to an insurance adjuster?**

   The function of adjudicators is to determine entitlement and provide appropriate services and benefits. For short-term serious claims, the focus is on prompt adjudication and payment of benefits. For longer term more serious claims, the focus is early intervention and developing appropriate rehabilitation and return to work strategies. Manitoba is in the process of moving to a case management model of adjudication.

3. **If new evidence is presented on a particular claim, is the claim sent back to the adjudicator for reconsideration?**

   If new evidence is presented, the information will go back to the original adjudicator for reconsideration.

4. **Are board policies binding on adjudicators? To what extent are adjudicators entitled to exercise discretion? Is discretion applied by an initial claims adjudicator reviewable?**

   Board policy is binding on adjudicators. There is room for the exercise of discretion and judgement by the adjudicator or decision maker in most board policies. Any decision made by the WCB is reviewable.

   **What, if any, mechanisms are in place to promote consistency in decision making?**

   There are two Quality Assurance units, one in the Claims Services department and the other in Rehabilitation which undertake spot or ad hoc audits. Staff consult with supervisors on complex issues. There is an internal audit function.

5. **Do workers and employers have access to their information in board files? If yes, is this because of a provision in the workers' compensation legislation or a result of the Freedom of Information and Protection of Privacy Act? Is further information found in sub-files which do not form part of the claim file? And if so, are the sub-files disclosed?**

   Is relevancy of material in a board file a prerequisite to its disclosure to the affected worker or employer? If so, who determines whether the information is relevant and on what basis? Does the worker or employer have the right to object to the relevancy of the information after it has been disclosed?

   The workers' compensation legislation contains access to information provisions which override provisions in the freedom of information legislation.
A worker has complete access to their claim file and an employer has complete access to their employer file (technically under the workers' compensation legislation, the worker or employer has access only when there is an issue under review, but to meet general rules of natural justice and access to personal information requirements, workers and employers are given access to their own file on request).

An employer has to be party to a reconsideration or an appeal to gain access to their worker's file. A worker has the opportunity to object to the release of information before it is disclosed. If the worker objects to the release of information the board determines what information is relevant and will release information "that relates to the matter at hand". The worker or employer can appeal a decision of the board to release or not release the information to the Appeal Commission (there is a 14 day time limit to object to the Appeal Commission).

6. Is there any "informal" review process for workers and employers regarding claims adjudication or assessment decisions (i.e. review by supervisor or manager prior to the formal internal reconsideration or review process and external appeal process, if any)?

If yes, are there any statistics available on the total number of issues reviewed and the allow/disallow rate for this informal review process (are there any statistics kept on the number of issues reviewed, and the allow/disallow rate broken down by type of issue - for example, assessment decisions, compensability, level of benefits)?

There is no specific "informal" review process. However, an objection to a WCB decision would be reviewed by the person who made the original decision and this review may include discussion of the issue with the supervisor or manager. If the original decision cannot be changed, the worker or employer would either be advised of the appeal process or the objection would be forwarded for formal internal reconsideration.

There is a process for a supervisory review of complex issues where there is an objection to a WCB decision. No statistics are available on the incidence of such reviews.

7. Is there a formal "complaints" review process in your jurisdiction, distinct from any internal review or external appeals process, to deal with complaints from clients of the board regarding the conduct of board officers and staff or service issues? If yes, is this process independent of the board?

Internal to the board is the office of the "Fair Practices Advocate". The Advocate is responsible for dealing with issues of fairness and natural justice. The Advocate has the power to recommend changes, but no power to overturn decisions of the board.

External to the board is the provincial Ombudsman.
GENERAL INFORMATION

In accordance with Section 40(1) of the Workers' Compensation Amendments and Consequential Amendments Act, effective January 1, 1992 the wage loss benefits payable to a worker will be determined by a worker's "loss of earning capacity" for accidents occurring on or after January 1, 1992. A "loss of earning capacity" is not static and requires that the Board establish a policy describing the means by which the calculation of "loss of earning capacity" will be maintained and updated. In the interests of consistency, the policy will also apply to wage loss rehabilitation benefits under Section 27(20) of the Worker's Compensation Act (1979) for accidents occurring prior to January 1, 1992.

A. POLICY

1. FOR ACCIDENTS OCCURRING ON OR AFTER JANUARY 1, 1992

"Loss of earning capacity" reviews will be conducted by the WCB according to the following criteria for accidents where claimants are receiving wage loss or rehabilitation benefits.

a) During the period in which the worker is entitled to wage loss benefits, "Loss of Earning Capacity" reviews will be conducted:

i) At the time of initial adjudication, and

ii) At the time of the average earnings review conducted under the average earnings policy, and

iii) At any time that there is a significant change in circumstances which may affect the worker's actual or potential earnings (a significant change in circumstances does NOT include changes in dependency status that occur before the second anniversary of the date of the accident), and
iv) At the annual anniversary date of the accident (where the anniversary date follows very shortly after a review occasioned by a change in circumstances, the annual review can be completed at the time of the change in circumstances, but the date for the next annual review will still be the anniversary date).

b) All reviews are intended to estimate the worker’s "loss of earning capacity" until the next review, and to compare the worker’s actual "loss of earnings" to date to the "loss of earning capacity" estimated at the time of the previous review. The comparison of estimated versus actual loss of earnings will result in either the worker receiving a retroactive upward adjustment (if the previous estimate was too low) or the establishment of an overpayment recoverable by the WCB (if the previous estimate was too high). In addition, the future estimate of loss of earnings will be adjusted as necessary.

c) Adjustments to the "loss of earning capacity" may be made at the time of any review and may include:

i) an adjustment to the worker’s earning capacity because the worker was considered to be an "apprentice in a trade or occupation" under Section 45(3) (beginning at the first annual review).

ii) an adjustment to the worker’s earning capacity due to the worker’s age under Section 45(4) (beginning at the first annual review).

iii) indexing provisions under Section 40(2) (applicable at the second annual anniversary date of the accident).

iv) an adjustment to reflect employment earnings which the WCB determined the worker is capable of earning at a suitable occupation. This would include both actual earnings from employment and earnings which the worker is deemed capable of earning.

v) an adjustment to reflect any collateral benefits to which the worker is entitled from the date for which eligibility is determined.

The worker is responsible for informing the WCB of any substantial changes in financial circumstances, and for the maintenance of adequate records to assist the WCB in its comparison of estimated and actual loss of earning capacity.
2. FOR ACCIDENTS OCCURRING PRIOR TO JANUARY 1, 1992

The following criteria will apply to "loss of earning capacity" reviews conducted by the WCB for those claimants receiving rehabilitation benefits.

a) Reviews will be conducted:

i) At the time of initial establishment of wage loss during rehabilitation.

ii) At any time that there is a significant change in circumstances which may affect the worker’s actual or potential earnings.

iii) At the annual anniversary date of the accident. (Where the anniversary date follows very shortly after a review conducted for any reason, the annual review can be completed at the time of the change in circumstances, but the date for the next annual review will still be the anniversary date).

b) All reviews are intended to estimate the worker’s "loss of earning capacity" until the next review, and to compare the worker’s actual "loss of earnings" to date to the "loss of earning capacity" estimated at the time of the previous review. The comparison of estimated versus actual loss of earnings will result in either the worker receiving a retroactive upward adjustment (if the previous estimate was too low) or the establishment of an overpayment recoverable by the WCB (if the previous estimate was too high). In addition, the future estimate of loss of earnings will be adjusted as necessary.

c) The calculation of the "loss of earning capacity" during rehabilitation will be based on the difference between the worker’s adjusted average earnings and the amount the worker is estimated to be capable of earning during the next twelve months (converted to an average weekly amount). When calculating the amount the worker is estimated to be capable of earning at a suitable occupation, the WCB will add an amount equivalent to the annual change in the Average Industrial Wage as used for the indexing provisions under Section 47(1) as a proxy for "normal" increases in the worker's income which, it is assumed, the worker would receive if the worker's employment status remains unchanged during that period.

The projected earnings will also reflect information in the worker’s individual rehabilitation plan.
The adjusted average earnings will include an adjustment for the maximum as provided in the policy on wage loss benefits arising from temporary partial disabilities.

The worker is responsible for informing the WCB of any substantial changes in his or her financial circumstances, and for the maintenance of adequate records to assist the WCB in its comparison of estimated and actual loss of earning capacity.

B. REFERENCES

Workers Compensation Act, Sections 27(20), 40(1), 44(1), 44(2), 45 & 46 (Prior to January 1, 1992)


WCB Policy 44.80.30—Average Earnings

WCB Policy 44.80.80.10—Wage Loss Benefits - Temporary Partial Disability
GENERAL INFORMATION

This policy applies:

a) to any average earnings review conducted on or after April 30, 1992 to establish an impairment award where there has been no previous average earnings review, regardless of the date of accident; and

b) to all initial adjudicative decisions made on or after April 30, 1992 for accidents occurring on or after January 1, 1991. Board Order No. 14/90 applied to all accidents occurring on or after January 1, 1991, until superseded by this policy on April 30, 1992.

This policy is designed to determine the worker's average earnings at the time of a compensable accident. Section 45 of the Workers Compensation Act as it existed prior to January 1, 1992 and Section 45(1) and 45(2) of the Act post- January 1, 1992 both refer to the method by which the WCB establishes average earnings. The two sections (post January 1, 1992) provide some discretion in the area of average earnings. This policy ensures that the same method of calculating average earnings is available regardless of the date of accident. Any WCB decisions about subsequent changes to the worker's average earnings as a result of wage adjustments, inflation, etc., are not affected by this policy. Any definitions of earnings for the establishment of earnings before the accident shall be applied consistently in the establishment of post-accident earnings.

A. POLICY

1. Formulas

The establishment of a worker's average earnings under either section 45 of the Worker's Compensation Act as it pertains to workers injured prior to January 1, 1992 or Sections 45(1) and 45(2) of the Workers Compensation Act as it pertains to workers injured on or after January 1, 1992, shall be governed by the same formulas. These formulas include either regular earnings at the time of accident, or average yearly earnings or probably yearly earning capacity.
2. Definitions

Regular Earnings:

Regular earnings are the amount of earnings the worker would normally receive as remuneration in the occupation(s) in which the worker was employed at the time of injury. Regular earnings are based on the normal payment schedule (daily, weekly, monthly, annually, etc.) converted to a weekly amount.

Regular earnings do not normally include overtime, special reimbursements for employment expenses or bonuses which are not regularly paid. Regular earnings includes earnings in other non-covered employment which are reduced or eliminated due to an accident in a covered industry.

Average Yearly Earnings:

Average yearly earnings are the worker’s earnings for any documentable consecutive twelve month period during the one or two years preceding the commencement of the loss of earnings as a result of the injury. Average yearly earnings include any remuneration which the worker received as a result of the employment.

Probable Yearly Earning Capacity:

Probable yearly earning capacity is the worker’s projected earnings for the next twelve months. It is based on the worker’s regular earnings at the time of accident as applied to the worker’s established work pattern. Consistent with Section 45 as it applies after January 1, 1992 the probable yearly earning capacity must be based on the worker’s earnings before the accident but may be based on "income from employment and employment insurance benefits, and over such period of time, as the board considers fair and just."

3. First Payment:

At the time of first payment, the WCB will apply the average earnings formula which, on the basis of verifiable information readily available to the WCB, allows for:

a) Expeditious payment of benefits; and

b) Reasonable approximation of the worker’s average earnings at the time of the accident.
In most cases this formula will be the regular earnings at the time of accident, although the WCB may use the average yearly earnings if they have sufficient documentation and the resultant average earnings would be greater.

4. Average Earnings Review:

An average earnings review occurs whenever the worker's average earnings previously established by the WCB are recalculated. The WCB may review and adjust the worker’s average earnings amount on any claim where receipt of further documentation is received which indicates that a recalculation would result in a more accurate presentation of the "actual loss of earnings."

The WCB will initiate a review of the Average Earnings for any claim where:

a) the employer or the worker has indicated an irregular earnings pattern on their accident report form; or

b) information provided to the WCB indicates an irregular earnings pattern;

Adjustments arising from a) or b) will be effective as of the date of accident if it represents an increase and effective the thirteenth week of benefit payments if it results in a decrease in the workers average earnings.

c) the worker requests the review;

The WCB will advise all workers of the option to request an average earnings adjustment based on "average yearly earnings" and, where the worker requests a review, will provide reasonable assistance to the worker to secure documentation in support of same.

The resultant adjustment, if any, is retroactive to the time of accident if it results in an increase and effective at the date of review if it results in a decrease in the worker's average earnings.

d) Pension benefit entitlement is being calculated;

Where a pension is to be established and there has been no average earnings review then one will be conducted. The effective date for the revised average earnings is the same as the effective date for the pension.

e) Rehabilitation services are to be provided;
Where rehabilitation services are to be provided and there has been no average earnings review, then one will be conducted. The effective date is the date of confirmation of the service.

f) Recurrence;

Where there is a recurrence and there has been no average earnings review from the original accident, there will be an average earnings review on the same date as if the date of the recurrence was the date of the new accident.

5. **Concurrent Employment:**

Where a worker is concurrently employed with more than one employer and is injured while working at a covered job, the average earnings calculation based on "regular earnings at the date of accident" will include earnings from all the occupations in which the worker was employed at the time of the injury.

The WCB will use the formula for each source of income which best represents the loss of earnings.

6. **Schedule of Exceptional Circumstances:**

The WCB will develop administrative schedules to allow for the consistent application of this policy in specific industries and occupations or for special circumstances of the worker to identify how the average earnings calculations are to take into account these special circumstances.

Administrative schedules to this policy require the approval of the Executive or Senior Director responsible and/or Chief Executive Officer and may be altered from time to time in response to changes in the occupation or industry.

7. **Policy Application:**

This policy will ordinarily result in the following applications:

a) Permanent, full-time employee:

Payments will be based on the greater of the regular earnings at the time of the accident or the average yearly earnings. Regular earnings at the time of the accident will be used unless there is documentation available indicating that a calculation based on average yearly earnings would result in higher average earnings for the worker.
Review: The worker may request a review based on the average yearly earnings.

b) Part-time or seasonal workers or workers with irregular earnings patterns:

Initial payments would be based on the regular earnings at the time of accident.

Review: The WCB will initiate an average earnings review effective from week 13 onwards and it will be based on average yearly earnings.

c) Workers with irregular earnings patterns and significant changes in earnings from previous year:

The initial payments will be based on the regular earnings at the time of the accident.

Review: The WCB will initiate an average earnings review effective from week 13 onwards and it will be based on probably yearly earnings capacity.

B. REFERENCES

Section 45 of the Workers Compensation Act before January 1, 1992 and Section 45(1) and 45(2) on or after January 1, 1992.

WCB Policy 44.80.30.10 - Post-Accident Earnings

History:
2. Clarification of Board Order 77/85 approved by Board Order 87/86 on May 14, 1986.
3. Policy 44.80.30 approved by Board Order 14/90 on June 21, 1990.
4. Policy 44.80.10.10 approved by Board Order 18/92 on April 30, 1992.
5. Effective dates and application of policy 44.80.30 and 44.80.10.10 clarified by Board Order No. 17/93 on April 30, 1993.

Updated: May 20, 1994
COLLATERAL BENEFITS

What Are Collateral Benefits?

Collateral benefits are any additional benefits you are entitled to receive for a workplace accident under the Canada Pension Plan, the Quebec Pension Plan, the Employment Insurance Act, a disability insurance plan, and (as of January 1, 1995) employer "top-up benefits".

What do collateral benefits have to do with workers compensation benefits?

Collateral benefits you receive along with your workers compensation benefits will either be deducted from your wage loss benefits or will be considered earnings after the accident, depending on whether the benefits are taxable or non-taxable. The reason collateral benefits are deducted from your compensation benefits is to ensure that the total amount of benefits you receive from the various sources does not add up to more than 90% of your actual loss of earning capacity.

But my collective agreement says I am entitled to top-up benefits from my employer?

Since January 1, 1995, employer top-up benefits have been treated as collateral benefits and are deducted from your compensation benefits. However, if you had a collective agreement in effect on January 1, 1992 that provided for top-up benefits, the top-up will not be deducted from your workers compensation benefits as long as the following criteria are met:

♦ the collective agreement that provides for the employer to pay top-up benefits must have been in force since January 1, 1992; and

♦ the top-up provision has remained in each collective agreement since January 1, 1992 without interruption; and

♦ the employer must have been a self-insured employer as of December 31, 1991; or
if the employer was not self-insured as of December 31, 1991, the employer applied to the WCB and received approval to pay top-up benefits.

If you do have a collective agreement that provides for payment of top-up benefits, and you have met the above criteria, you can expect the following limitations:

♦ top-ups are allowed as long as they don’t provide you with more than 100% of your actual loss of earning capacity;

♦ top-ups are limited to the first 24 months of accumulated benefits after January 1, 1995 or 24 months from the date of the accident, whichever date is later;

♦ after the 24 months, top-ups will be considered collateral benefits and will be deducted accordingly from existing or future wage loss benefits.

What’s the point in having top up benefits at work if they are just deducted from my WCB benefits?

It is important to note that collateral benefits are deducted from your compensation benefits only when the collateral benefits, plus wage loss benefits add up to more than 90% of your actual loss of earning capacity. This is important if your income is more than the WCB’s maximum insurable earnings which are $52,380 in 1998.

Are there any exemptions to what is considered a collateral benefit?

Yes, there are several exemptions. You are not required to report:

♦ mortgage or loan interest paid directly to your financial institution;

♦ capital gains income, investment income or rental income;

♦ RRSP or RRIF income; and

♦ any survivor benefit you are receiving.
If you are unsure whether or not income you are receiving is a collateral benefit, call us at 954-4922 or toll free at 1-800-362-3340, extension 4922.

This publication is provided for general information. For more specific information see The Workers Compensation Act of Manitoba and Regulations, available through Statutory Publications by calling (204) 945-3101. WCB Policies are available by calling (204) 954-4395.
CALCULATION OF BENEFITS

What can I expect from the WCB if I get hurt at work?

If you lose time from work due to an injury or occupational disease, the WCB will provide benefits and services to replace lost income and help you with related medical expenses. In some cases, the WCB can also help you go back to work.

How does the WCB calculate my loss of income?

Workers compensation wage loss benefits are calculated as 90% of your net loss of earning capacity. If you have a regular yearly income, calculating these benefits is not hard. But many workers have additional income during the year, such as overtime, bonuses, occasional or regular layoffs, income from other sources and self-employment income that must be considered.

The first step in determining 90% of net is for the WCB Payments staff to calculate your gross weekly average earnings before the accident. Then, probable deductions will be subtracted from that amount.

Probable deductions will include:

♦ income tax, calculated using your income from employment and Employment Insurance (EI) benefits, and your basic personal tax credits or exemptions, and where appropriate, tax credits or exemptions for a dependant under the Income Tax Act as of the date of the accident; and

♦ Canada Pension Plan premiums or Quebec Pension Plan premiums payable; and

♦ Employment Insurance premiums payable; and

♦ any other deductions the WCB establishes by regulation
NOTE: These basic deductions are only used to establish your net income. These deductions are not taken off your benefit entitlement.

2. Compensation payments are then based on 90% of your net loss of earnings capacity for the first 24 months. If the claim continues for more than a total of 24 months, payments will be reduced to 80% of your net loss of earnings capacity.

3. When calculating your loss of earnings capacity, the WCB also considers the length of time you will receive wage loss benefits during the year and how much lower your income tax, CPP premiums, QPP premiums or EI premiums are as a result. The reason we take this into consideration is because we are all taxed based on progressive rates.

If your annual income is a combination of taxable employment income and tax-free wage loss benefits, the taxable employment income will be subjected to a lower tax rate then if the entire year had been comprised of taxable income. Your loss of earning capacity is recalculated based on those considerations. We take this tax adjustment into consideration when calculating your loss of earning capacity. This is called sheltering.

Sheltering results in the reduction of your loss of earning capacity and therefore, your entitlement to wage loss benefits is also reduced. However, this is a more accurate reflection of your yearly loss of earning capacity.

How do you arrive at the amounts of probable deductions?

Deductions are calculated based on the following (which determine your dependency status):

♦ Basic personal exemption
♦ Married exemption if your spouse is not working
Dependent children

Equivalent to married exemption if you are single with dependant(s)

Exemption for infirm dependants

Please note the following:

Family allowance is not considered

the code you use on your TD1 form cannot be used as the basis for reporting dependency status

The dependency status as of the date of the accident will remain in place for the first two years, even if your status changes during that time.

One exception is if your dependency status is unavailable at the time the claim is accepted. Your classification will be single until the information is received. Payments will be adjusted at that time, retroactive to the date of the accident. This ensures that the lack of dependency status does not delay payments on a claim. If you are unwilling to supply the dependency information, you will be classed as single and no adjustment will be made for the two year period.

Support payments do not qualify in determining dependants.

Are there any exceptions to the procedure used to calculate loss of earning capacity?

Yes. ‘Apprentices’, ‘youthful’ workers and ‘declared workers’ are the only exceptions. In certain cases, the Workers Compensation Act allows us to look to the future to establish average earnings based on your probable loss of earning capacity. This approach can only be applied in the exceptional circumstances found with apprentices and youthful workers (someone under 25 who sustains a long-term loss in earning capacity).
Declared workers are any persons or class of persons declared to be workers employed by the government and covered under the Workers Compensation Act. Benefit entitlement in this case will be based on no less than the Industrial Average Wage at the time of the injury.

**Note:** All of the sections relating to calculations of benefits relate only to accidents occurring after January 1, 1992, and for recurrences that related to injuries that occurred after January 1, 1992. All pre-1992 injuries and recurrences that relate to pre-1992 injuries will continue to be paid at 75% of gross and all policies and procedures that predate Bill 59 will continue to apply.

(For additional information about the calculation of benefits, see the Benefit Adjustments fact sheet.)
SAMPLE BENEFIT CALCULATIONS
Using 1998 tax year

90% OF NET

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<th>Gross Weekly Wage</th>
<th>Gross Annual Wage</th>
<th>Weekly Net Earnings</th>
<th>90% of Net Sheltered</th>
</tr>
</thead>
<tbody>
<tr>
<td>$400</td>
<td>$20,800</td>
<td>$348</td>
<td>$301</td>
</tr>
<tr>
<td>$600</td>
<td>$31,200</td>
<td>$474</td>
<td>$405</td>
</tr>
<tr>
<td>$800</td>
<td>$41,600</td>
<td>$579</td>
<td>$485</td>
</tr>
<tr>
<td>$875</td>
<td>$45,500</td>
<td>$619</td>
<td>$522</td>
</tr>
</tbody>
</table>

It is extremely important you report the correct dependency status to the Workers Compensation Board because of the significant difference in the benefit calculation.

This publication is provided for general information. For more specific information, see the Workers Compensation Act of Manitoba and Regulations, available through Statutory Publications by calling (204) 945-3101. WCB policies are available by calling (204) 954-4395.

March 1998
POLICY PURPOSE

Wage loss benefits are paid to a worker when a compensable injury results in a loss of earning capacity. Loss of earning capacity is the difference between the worker’s average earnings before the accident (i.e., pre-accident earnings) and what the worker is determined or deemed to be capable of earning after the accident (i.e., post-accident earning capacity). For example,*

Worker’s pre-accident earnings {as a truck driver}  $30,000
Less: Worker’s post-accident earning capacity {as a dispatcher}  20,000
Equals: Worker’s loss of earning capacity  10,000

This policy specifically describes:

1. When the earnings a worker is deemed capable of, but not actually earning will be included in the loss of earning capacity calculation.

2. How the deemed earning capacity will be determined for individual claims (i.e., it must be demonstrated that a deemed earning capacity is reasonable and realistic).

Where deemed earning capacity is used, it means that wage loss benefits will be paid as if the worker were actually earning the deemed amount.

This policy is a companion to the broader Policy 44.80.30.10, Post Accident Earnings which describes other post-accident earnings which may be included in the loss of earning capacity calculation.

*Note: This example is intended to illustrate deemed earning capacity only. It does not take into account other factors in calculating loss of earning capacity such as the maximum insured earnings, the impact of calculating benefits at 75% of gross or 90% or 80% of net earnings, or tax sheltering.

A. POLICY

1. DEEMED EARNING CAPACITY AND REHABILITATION:

   a. Deemed earning capacity will typically be demonstrated in the context of vocational rehabilitation activity. Generally, vocational rehabilitation is designed to maximize the worker’s post-accident earnings and keep the loss of earning capacity to a minimum.
Detail on the goal and process for vocational rehabilitation within the WCB is provided in Policy 43.00, *Vocational Rehabilitation*.

b. The decision to use deemed earning capacity will be secondary to the more important consideration of developing and completing an effective vocational rehabilitation plan. Deemed earning capacity will generally be used as a last resort after all reasonable or available vocational rehabilitation/re-employment options have been exhausted.

2. **PRESUMED EARNING CAPACITY:**

A worker’s post-accident earning capacity will be equal to her/his actual earnings unless the WCB demonstrates that the worker is capable of earning more than the amount actually being earned. In such a case, the worker’s earning capacity will be deemed to be the higher amount.

3. **REQUIREMENTS FOR WCB TO DEMONSTRATE DEEMED EARNING CAPACITY:**

a. The WCB must demonstrate (through adequate vocational assessment, plan development, and documentation) that the worker is capable of competitively finding, competing for, obtaining, and keeping employment in the occupation or group of occupations on which the earning capacity is based.

b. The WCB must demonstrate that the worker has the physical capacity, education, skills, aptitudes, interests, and personal qualities needed to obtain and keep employment in the occupation or group of occupations in the labour market.

c. The WCB must demonstrate that work exists for the occupation or group of occupations on which the earning capacity is to be based.

d. The WCB will use the Individualized Written Rehabilitation Plan (or similar format) as described in Policy 43.00, *Vocational Rehabilitation* as the basis for collecting and weighing information about the worker’s earning capacity. At a minimum, the rationale presented in the initial plan must:

i. State and describe the occupation or group of occupations the worker is qualified to work in. The description of the occupation will be based on nationally-recognized methods of occupational classification. Where applicable, the description will include any community-specific features of the occupation as determined through *job analysis*;

ii. Clearly show how the identified occupation matches the worker’s vocational profile (i.e., physical capacity, education, skills, work history, aptitudes, training, interests, personal and important occupational traits). Analysis of the worker’s
transferable skills will be based on methods clearly recognized in the field of vocational rehabilitation. This analysis and its results will be documented; and,

iii. Describe the methods used to establish that there is a labour market in which the worker can compete for the chosen occupation. As well, the results of this labour market analysis must be described.

4. DEEMED EARNING CAPACITY FOLLOWING COMPLETION OF A PLAN:

a. Deemed earning capacity will be used in the loss of earning capacity calculation where:

i. The worker has completed the training part of the vocational rehabilitation plan designed to help the worker obtain new skills or improve current skills;

ii. The worker has been given reasonable job search assistance (i.e., separate from the training part of the plan); and,

iii. The information the plan was based on, including labour market analysis, has not substantially changed;

Training (i.e., skills obtained or improved upon) is not necessarily provided in all cases. If a worker does not receive training, then deemed earning capacity must still be clearly demonstrated in accordance with section three of this policy.

b. The minimum length of job search assistance which will be provided before the deemed earning capacity is used in calculating the loss of earning capacity will be determined by:

i. The unemployment rate in Manitoba for the worker's level of education at the end of the written plan (e.g., less than high school education, high school education, etc.) multiplied by;

ii. A figure representing the number of weeks of job search generally needed for each percentage point in Manitoba's unemployment rate at the time the worker is going to start a job search.

This minimum length of job search for each educational category is presented in Schedule A, and represents the cumulative length of job search for a worker. The schedule will be reviewed each year to update unemployment rates and their effect on the length of minimum job search.

c. The minimum weeks of job search assistance as calculated above must be provided before the deemed earning capacity may be imposed. However, minimum job search times may be extended based on the merits of individual cases (e.g., the labour market is tighter than anticipated, the worker presents special needs).
d. Continuation of job search assistance is subject to Policy 44.10.30.60, Practices Delaying Workers Recovery. In order to be fully eligible for benefits and services, the worker must be a very active and cooperative participant in the job search process.

e. The type and amount of job search assistance given by the WCB will be in accordance with Policy 43.00, Vocational Rehabilitation.

f. Deemed earning capacity will be based on the established actual earnings for a given occupation. This amount will be presumed to be the minimum of the range for an occupation as established at the time of the Individualized Written Rehabilitation Plan and as confirmed after completion of the Plan. The exception occurs when it is demonstrated that the worker would be placed higher in the range due to his/her current vocational profile and the usual practices of the industry in question.

5. INTERRUPTION OR DISCONTINUATION OF A PLAN THROUGH NO FAULT OF THE WORKER:

Sometimes a plan is stopped and not expected to re-start in the foreseeable future through no fault of the worker (e.g., the worker becomes unable to participate due to a non-compensable medical condition). When this happens, the deemed earning capacity will be based on the worker’s earning capacity at the time of the non-compensable intervening event.

6. CHANGE IN CIRCUMSTANCES UPON COMPLETION OF A PLAN:

   a. If the information on which the plan was based has changed, the deemed earning capacity will be based on the worker’s new (changed) earning capacity and not the earning capacity originally anticipated by the plan.

   b. If this change results in an earning capacity which is lower than first expected, the WCB may continue (i.e., where vocationally appropriate for the worker and cost-effective for the WCB) full or partial wage loss benefits together with more vocational rehabilitation efforts.

7. SPECIFIC INSTANCES WHERE IMPLEMENTATION OF DEEMED EARNING CAPACITY WILL RESULT

   a. Deemed earning capacity will be used in the loss of earning capacity calculation where:

      i. The worker refuses an actual job offer which is consistent with the Individualized Written Rehabilitation Plan and the WCB has demonstrated that all requirements in section three of this policy have been met. In such a case, the deemed earning capacity will be the salary or wage of the refused job where it is comparable to the earning capacity expected upon completion of a written plan; or,
ii. The worker discontinues a job which is consistent with the Individualized Written Rehabilitation Plan, and the WCB has demonstrated that all requirements in section three of this policy have been met. In such a case, the deemed earning capacity will be the salary or wage being earned by the worker where it is comparable to the earning capacity expected upon completion of a written plan.

b. If the salary or wage of the refused or discontinued job is not comparable to the earning capacity expected upon completion of the written plan, deeming will be based on the salary or wage of the refused or discontinued job unless the WCB can demonstrate a different earning capacity ("comparable" means that the salary or wage, over time, will roughly equal the earning capacity expected upon completion of the written plan).

c. The deemed earning capacity will be determined and applied at the time the worker refuses an actual job offer or discontinues a job.

8. RELATIONSHIP WITH WCB POLICY ON PRACTICES DELAYING THE WORKER’S RECOVERY:

a. Deemed earning capacity will be used under the WCB’s broader policy on mitigation (Policy 44.10.30.60, Practices Delaying Worker’s Recovery) where:

i. The worker voluntarily leaves the workforce by expressing that he/she is not interested in looking for any work. In this case, the deemed earning capacity will be the worker’s earning capacity at the time of leaving unless it is demonstrated that the worker is capable of, through rehabilitation, a higher earning capacity. The WCB must be prepared to undertake this rehabilitation (i.e., must offer it to the worker).

ii. The worker refuses to cooperate in or complete a program of vocational rehabilitation. In this case, the deemed earning capacity will be the earning capacity expected upon completion of the vocational rehabilitation plan.

iii. The worker refuses to participate or cooperate to a degree that it is impossible to undertake adequate vocational assessment/plan development and reasonably/accurately determine an anticipated earning capacity. In this case, it will be presumed that the worker has no loss of earning capacity until the worker demonstrates a willingness to cooperate in the development of a plan.
9. PERIODIC REVIEW OF DEEMED EARNING CAPACITY:

A deemed earning capacity will be reviewed periodically in accordance with Policy 44.80.80.20, Wage Loss Reviews.

10. PART-TIME WORKERS AND DEEMED EARNING CAPACITY:

While this policy generally applies to workers who were working part-time before the accident, Policy 43.20.30.10, Rehabilitation Services for Part-Time Workers provides specific direction for the management of these unique cases.

B. REFERENCES

Workers Compensation Act. Sections 27(15), 27(20), 40(2), and 44(2) [prior to January 1, 1992]

Workers Compensation Act. Sections 22, 27(20), 39(1), 39(2), and 40(1) [after January 1, 1992]

Workers Compensation Policies:

43.00 Vocational Rehabilitation
43.20.30.10 Rehabilitation Services for Part-Time Workers
44.10.60.30 Practices Delaying Workers Recovery
44.80.10.10 Average Earnings
44.80.30.10 Post Accident Earnings
44.80.80.20 Wage Loss Reviews

History:
2. Board Directive of December 4, 1985 confirms deeming may apply during summer months for workers in institutional programs.
5. Board Order 35/93 clarifies, on September 30, 1993, that Board Order 32/92 applies to all decisions on or after June 22, 1992 regardless of the date of accident.
6. Policy 44.80.30.20 replaced by Board Order No. 06/96 on February 29, 1996, effective for all decisions on or after April 1, 1996 regardless of date of accident. Former policy amended to reflect that it ceases effect on March 31, 1996 and re-numbered 44.80.30.20.01.

ATTACHMENTS

Schedule "A" - Minimum Length of Job Search Assistance Required Before Deeming May Occur
### SCHEDULE A
**MINIMUM LENGTH OF JOB SEARCH ASSISTANCE REQUIRED BEFORE DEEMING MAY OCCUR**
**USING 1996 LABOUR FORCE SURVEY DATA**
(In Weeks)

<table>
<thead>
<tr>
<th>Level of Education at the end of the Individualized Written Rehabilitation Plan (IWRP)</th>
<th>Comments</th>
<th>Length of Job Search Assistance (^1) (specific unemployment rate (X) statistical factor) (^2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No training</td>
<td>Claimant has less than high school graduation</td>
<td>13.1 (\times) 2.3 = 30 weeks</td>
</tr>
<tr>
<td>No training</td>
<td>Claimant graduated from high school</td>
<td>7.7 (\times) 2.3 = 18 weeks</td>
</tr>
<tr>
<td>Training-on-the-job</td>
<td>Claimant has less than high school graduation</td>
<td>13.1 (\times) 2.3 = 30 weeks</td>
</tr>
<tr>
<td>Training-on-the-job</td>
<td>Claimant graduated from high school</td>
<td>7.7 (\times) 2.3 = 18 weeks</td>
</tr>
<tr>
<td>Some courses not leading to post-secondary certificate, diploma, or university degree. Example: computer training (Lotus, Wordperfect, dbase)</td>
<td>Claimant has less than high school graduation</td>
<td>13.1 (\times) 2.3 = 30 weeks</td>
</tr>
<tr>
<td>Some courses not leading to post-secondary certificate, diploma, or university degree. Example: computer training (Lotus, Wordperfect, dbase)</td>
<td>Claimant graduated from high school</td>
<td>7.7 (\times) 2.3 = 18 weeks</td>
</tr>
<tr>
<td>Some post-secondary - Injured worker took some courses leading to a post-secondary certificate, diploma, or university degree but did not complete due to personal, medical reasons, etc.</td>
<td>7.9 (\times) 2.3 = 18 weeks</td>
<td></td>
</tr>
<tr>
<td>Graduation with post-secondary certificate or diploma</td>
<td>5.1 (\times) 2.3 = 10 weeks Minimum threshold of 12 Weeks applies</td>
<td></td>
</tr>
<tr>
<td>Graduation with university degree</td>
<td>3.9 (\times) 2.3 = 9 weeks Minimum threshold of 12 Weeks applies</td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) Minimum threshold of 12 weeks provided for all categories
\(^2\) Rounded to the nearest week