

PRACTICE DIRECTIVE #34

ACTUAL LOSS PAYMENTS

Effective date: March 3, 2003

The Legislature has enacted the *Workers Compensation Amendment Act (No. 2), 2002* ("Bill 63"), which amends the *Workers Compensation Act* (the "Act"). As a result this practice directive was amended on March 3, 2003.

BACKGROUND

On June 30, 2002, section 33 of the "Act" relating to the calculation of average earnings 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 average earnings, which affect actual loss payments.

PURPOSE

This practice directive provides an overview of the legislative and policy changes relating to the calculation and processing of actual loss payments.

LAW

Sections 33, 33.1 to 33.9 and 33.91 of the *Act* set out the requirements for establishing wage rates for initial and long-term claims. These amendments have impacted upon the Board's policies with respect to the payment of actual loss benefits.

POLICY

Rehabilitation Services and Claims Manual ("RSCM") Vol. II, Policy item #66.11, *Variable Shift Workers*, has been amended to delete the specific reference to actual loss payments. However, the Board's ability to process an actual loss payment remains, for those situations noted below.

EFFECTIVE DATES AND TRANSITION RULES

See Practice Directive #38A , *Effective Dates and Transition Rules*.

ADJUDICATIVE GUIDELINES/INSTRUCTIONS

1. Actual loss payments may be made to workers who are employed on a regular basis and who have returned to full duties, where:

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- the worker's cumulative disability is for a very short period of time (generally less than two weeks); or
 - the disability encompasses variable, non-repeating shifts and is no greater than two-weeks.
2. Actual loss payments cannot be paid where:
 - a worker is categorized as casual, non-earner or has purchased Personal Optional Protection, as a longer period of time must be used for the calculation of average earnings;¹
 - the actual loss amount is not based on the amount of average earnings of a worker at which he or she was remunerated at the time of injury; or
 - the claim is reactivated and benefits are reinitiated, due to a recurrence and there is an existing wage rate on the claim.
 3. Actual loss payments are subject to the statutory minimum and maximum.
 4. Actual loss payments are deemed to be a reflection of the worker's day of injury earnings. If a worker's claim is later reactivated, and an actual loss payment had previously been calculated under the new legislation, the daily equivalent of the actual loss payment would then represent the average earnings at the time of injury, for the purposes of the initial payment period.

PRIOR PROCESS

In the past a worker's gross average earnings lost, multiplied by a 75% compensation factor, were entered into the Board's Automated Wage Loss System ("AWL"). The "net" cheque was then processed to the worker.

NEW PROCESS

As categorization is now part of the legislative framework, regard must be had to a worker's category before considering whether an actual loss payment may be made. The adjudicative guidelines described above should be followed.

Furthermore, as noted in Practice Directive #33, *Net System of Compensation*, the term "net" now has a new meaning. It refers to average net earnings after probable allowable deductions for federal and provincial income taxes ("Taxes"), Employment Insurance ("EI") deductions and Canada Pension Plan ("CPP") contributions are deducted from a worker's gross average earnings. These are collectively known as "allowable deductions". This means that, subject to minimum and maximum rules, a worker's

¹ See Practice Directive #33, *Average Earnings – Initial and Long-Term Wage Rates*

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gross average earnings² must be converted to average net earnings. As well, a compensation rate of 90% is applied to the average net earnings³. The following steps should achieve this result:

1. Once it is established that the guidelines permit an actual loss payment, in order to convert the gross actual loss figure into a net actual loss amount, the Board officer should contact the worker and/or employer to obtain the following information:

- (a) Gross earnings lost;
- (b) Number of hours/days lost; and
- (c) Normal number of hours/days the worker would have worked per week.

2. The Board officer enters this information into the Actual/Income Loss Calculator. For E-File claims this is located in E-File. For paper claims, this is located in BoardNet. The Actual/Income Loss Calculator converts the information into gross annualized earnings. These earnings are not a worker's true annual earnings, but are an estimate based on the loss he or she has incurred.

3. Once a worker's gross annualized earnings are calculated, the annual allowable deductions are also calculated. This is automatically done by the AWL system using the Actual/Income Loss Calculator. Please note that the Actual/Income Loss Calculator also adjusts for the 90% compensation factor.

4. In actual loss cases, a worker is only disabled for a short period of time. Therefore, the annual allowable deductions must be prorated to reflect this. The Actual/Income Loss Calculator will prorate the annual allowable deductions and arrive at a percentage/ratio to apply to the short-term loss. It performs this function by dividing the 90% annual earnings by the gross annualized earnings to arrive at a percentage/ratio. In other words, the "relationship" between a worker's gross earnings and the worker's 90% net average earnings is determined. That percentage/ratio is then applied to the gross lost earnings. The result is a 90% "net" actual loss figure.

For example, if a worker earns \$10,000 annually, with 90% net annual earnings of \$8,500, then the percentage/ratio is 85%. This percentage is transferable to a short-term loss: if the gross wages lost only amounted to \$100, then the worker's short-term 90% net would be \$85. (In this example, the statutory minimum was not considered.)

5. The Actual/Income Loss Calculator will display the final calculations.

6. A log entry can be generated from the Actual/Income Loss Calculator. It is important that the calculations be included in the E-File log along with any other relevant

² gross average earnings were defined under the prior legislation as "Average Earnings".

³ net average earnings are now defined under the new legislation as "Average Net Earnings".

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comments. In the case of paper claims, the screen should be printed and placed in the memo section of the paper file.

7. Once the final figure is obtained, the Board officer enters it into the AWL system. As noted above, the allowable deductions include the 90% reduction factor and therefore, the amount entered into the AWL will be the exact amount of the actual loss cheque.