

## EMPLOYMENT INSURANCE PAYMENTS

### BACKGROUND

On June 30, 2002, section 33 of the *Workers Compensation Act* (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 and the inclusion of Employment Insurance (“EI”) payments in certain situations.

### PURPOSE

This practice directive provides an overview of the legislative and policy changes relating to the inclusion of EI payments in the composition of average earnings.

This Practice Directive does not provide guidance for determining a worker's average net earnings. Please see Practice Directive #32, *Net System of Compensation* and Practice Directive #33, *Composition of Average Earnings – Initial and Long-Term Wage Rates*.

### EFFECTIVE DATES AND TRANSITION RULES

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

### LAW

Section 33(3.2) of the *Act* states, in part, that:

*...the Board may include, in determining the amount of average earnings of a worker, income from employment benefits payable to the worker under the Employment Insurance Act (Canada) during the period for which average earnings are determined, only if, in the Board's opinion, the worker's employment during that period was in an occupation or industry that results in recurring seasonal or recurring temporary interruptions of employment.*

### POLICY

Prior to June 30, 2002, Board policy precluded the inclusion of EI payments when calculating a worker's average earnings.

*Rehabilitation Services and Claims Manual* (“RSCM”) Volume II, Policy item #68.40, *Employment Insurance Payments*, provides that, where there is verified evidence from an independent source that the worker received employment insurance benefits due to the worker's employment in an occupation or industry that results in recurring seasonal or temporary recurring interruptions of employment, those payments may be included in calculating a worker's earnings.

**A. EI CANNOT BE CONSIDERED FOR THE FOLLOWING CATEGORIES:**

- Persons who have purchased Personal Optional Protection (“POP”) (section 33.6 )
- Apprentices or Learners (section 33.2)
- Persons employed less than 12 months (section 33.3)

**B. EI CAN BE CONSIDERED FOR THE FOLLOWING CATEGORIES:**

**1. Initial Wage Rate Categories**

EI payments may be considered when setting the initial wage rate where a worker is categorized as casual. Also, where the worker is a non-earner and has secondary employment there is discretion to determine average earnings and therefore, include EI. (For the non-earner and casual worker, there is no average earnings review at 10 weeks).

**2. Long-Term Wage Rate Categories**

EI payments may be considered when setting the long-term wage rate where a worker is categorized as a regular worker (greater than 12 months with accident employer).

**C. ELIGIBILITY**

If the worker is in one of the above categories (“B”), EI may be added to the composition of average earnings. Only if the worker is employed in a:

- a) seasonal industry;
- b) seasonal occupation; or
- c) industry or occupation that results in temporary recurring interruptions of employment.

**D. HISTORY/PATTERN OF RECURRING INTERRUPTIONS**

If the worker meets the above minimum requirement, it does not follow that EI is included in every case. Board officers should note the use of the word “may” in the legislation. Therefore, in order to include EI in the calculation of average earnings, the worker must also demonstrate a history/pattern of the above (“a”, “b” or “c”) interruptions before the Board will actually include the EI in average earnings. The worker must offer evidence – i.e., a written statement that he/she has been in the occupation or industry for at least two years (although not necessarily with the accident employer). The Board will confirm the worker’s evidence by looking at copies of the statement of benefits from HRDC for the two years preceding the date of injury.

**ADJUDICATIVE GUIDELINES / INFORMATION**

1. With respect to determining whether an industry or occupation is seasonal (see “a” and “b” under “Eligibility”), policy provides for lists of applicable industries and occupations

that result in recurring seasonal interruptions of employment. These lists will be available on BoardNet on the Policy & Practice homepage and will be amended periodically by the Board's Statistical Services Department.

2. A Board officer will determine on a case by case basis if a worker's employment is in an industry that results in recurring temporary interruptions of employment. (see "c" under "Eligibility".) Recurring temporary interruptions in employment show a repeating pattern but are not seasonal in nature. For example, workers employed in the field of education who are laid off and receive EI benefits on a regular annual basis.
3. If all the eligibility criteria described above are met, EI payments will be added to gross average earnings, subject to the statutory maximum. Any EI payments received within the 12 months preceding the date of injury may be used to calculate average earnings. This means that payments can be included even if they are for two or more separate periods of unemployment.
4. Information regarding EI for casual workers or non-earners is requested at the outset of a claim. Information relating to EI payments for regular workers is requested by the Board officer at 5 weeks of short-term disability.
5. The EI statement of benefits from HRDC does not indicate why a worker was laid off. It does, however, indicate whether or not a worker was receiving EI due to medical disability. If a worker was receiving EI due to medical disability, the payments should not be included in the composition of the worker's earnings for the purposes of section 33(3.2).

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## Seasonal Industries - British Columbia (November, 2004)

This table provides the listing of seasonal industries referred to in Practice Directive #35 "Employment Insurance Payments".

Please note that the listing is not conclusive. Decision makers may exercise discretion in determining whether a specific industry results in recurring seasonal or recurring temporary interruptions of employment.

### 7010 — Agriculture

701001	.....	Artificial Insemination or Animal Breeding
701002	.....	Apiary
701003	.....	Berry Farming
701004	.....	Composting
701005	.....	Dairy Farming
701006	.....	Egg Farming
701007	.....	Exotic Poultry Farming
701008	.....	Farm Labour Supply or Farm Services
701009	.....	Feed Lot or Stockyard
701010	.....	Fur Bearing Animal Farming
701011	.....	Grain Farming
701012	.....	Greenhouse
701013	.....	Hay or Seed Farming
701014	.....	Hog Farming
701015	.....	Hunting or Trapping
701016	.....	White Mushroom Farming
701017	.....	Orchard
701018	.....	Ornamental Nursery
701019	.....	Poultry Catching
701020	.....	Poultry Farming
701021	.....	Poultry Hatchery
701022	.....	Ranch ..... 6.00
701023	.....	Riding Academy, or Boarding, or Raising Horses
701024	.....	Sod or Turf Nursery
701025	.....	Vegetable Farming
701026	.....	Vineyard
701027	.....	Wild Plant Harvesting

### 7020 — Fishing Subsector

702001	.....	Fin Fish Farming
702002	.....	Fish Hatchery
702004	.....	Shell Fish Farming
702005	.....	Dive Fishing
702006	.....	Gillnet and Troll Fishing
702007	.....	Longline and Trap Fishing
702008	.....	Seine Fishing

702009 ..... Trawl Fishing  
702010..... Fish Packing and Hand Picking

### 7030 — Forestry Subsector

703001 ..... Chemical Brushing and Weeding, or Chemical Tree Thinning or Spacing  
703002 ..... Brushing and Weeding or Tree Thinning or Spacing (not elsewhere specified)  
703003 ..... Cable or Hi-Lead Logging  
703004 ..... Dry Land Sort  
703005 ..... Forest Fire Fighting  
703006 ..... Ground Skidding, Horse Logging, or Log Loading  
703008 ..... Integrated Logging  
703009 ..... Log Booming  
703011..... Log Processing  
703012..... Logging Road Construction or Maintenance  
703013..... Manual Tree Falling and Bucking  
703014..... Mechanized Tree Falling  
703015..... Shake Block Cutting  
703016..... Tree Planting or Cone Picking

### 7040 — Oil and Gas or Mineral Resources Subsector

704001 ..... Clay, Peat, Soil, or Topsoil Digging or Processing  
704002 ..... Oil or Gas Drilling  
704003 ..... Oil or Gas Field Servicing (by means other than service rigs)  
704004 ..... Oil or Gas Well Servicing (by means of service rigs)  
704005 ..... Open Pit Coal Mining  
704006 ..... Open Pit Metal or Mineral Mining  
704007 ..... Placer Mining  
704008 ..... Quarry  
704009 ..... Seismic Exploration  
704010..... Diamond Drilling, Seismic Drilling, or Shot Hole Drilling  
704011..... Stone Crushing  
704012..... Underground Coal Mining  
704013..... Underground Metal or Mineral Mining  
704015..... Geological, Geophysical, or Geochemical Field Work  
704016..... Oil and Gas or Mineral Exploration, or Prospecting

### 7220 — Heavy Construction Subsector

722001 ..... Bridge, Overpass, or Viaduct Construction or Repair  
722002 ..... House Raising, or Structural Moving of Buildings or Heavy Equipment  
722003 ..... Pier, Wharf, or Dry Dock Construction or Repair  
722004 ..... Pile Driving  
722005 ..... Steel Frame Erection or Structural Repair of Steel Frames  
722006 ..... Steel Frame Painting, Bridge Painting, or Bridge Cleaning

722007 ..... Structural Concrete Reservoir, Flume, Dam, Dyke, Causeway, or  
Jetty Construction or Repair  
722008 ..... Tunneling



H7	transport equipment operators	22
H2	electrical trades and related	22
H1	construction trades	20

**VANCOUVER ISLAND LESS EXCLUDING VICTORIA (A,Y)**

I	logging occupations	26
I	fishing occupations	22
H6	heavy equipment operators	20

The occupations listed in the regional tables are those that represent a statistically supportable highly seasonable variation percentile = 20.

Those occupations listed in the "All BC" table represent those occupations that represent the highest seasonal variation percentiles that account for 5% of claims.

The sv% = 20 cutoff for the regional tables is derivative of the "All BC" table.

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