

2005/07/19-03

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**RESOLUTION OF THE BOARD OF DIRECTORS****Re: Changes to Average Earnings Policies
In the *Rehabilitation Services & Claims Manual, Volume II*****WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors ("BOD") must set and revise as necessary the policies of the BOD, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Pursuant to section 33 of the *Act*, the Workers' Compensation Board ("WCB") must compensate a worker with reference to the worker's average earnings and earning capacity at the time of the worker's injury;

AND WHEREAS:

Some workers are paid by employers for supplying and operating equipment, and the WCB must compensate such workers on the labour component of their earnings;

AND WHEREAS:

Guidance on the deduction of equipment expenses from a worker's gross earnings is set out in policy items #68.61, #68.62 and #68.63 of the *Rehabilitation Services & Claims Manual, Volume II* ("*RS&CM*");

AND WHEREAS:

Policy items #68.61 and #68.62 direct application to labour contractors only but in practice the policies are applied more broadly to those workers who deduct equipment expenses for tax purposes;

AND WHEREAS:

Under policy item #68.61, there is currently no provision to address workers who supply "light" equipment when establishing short-term average earnings;

AND WHEREAS:

The BOD has been made aware of concerns that the current method of using straight-line depreciation to represent the supply of equipment in a worker's long-term average earnings causes inequitable results in certain cases;

AND WHEREAS:

Adoption of the Canada Revenue Agency's method of depreciating equipment to a maximum of 15 percent of the purchase price would limit the inequitable results of the current approach to setting long-term average earnings;

AND WHEREAS:

The Policy and Research Division has undertaken stakeholder consultation on this issue;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Policy items #68.61, #68.62 and #68.63 of the *RS&CM* are deleted and replaced by new policy items #68.61 and #68.62, as set out in Appendix A.
2. To reflect the change to policy item #68.62, a minor change to policy item #65.03 of the *RS&CM* is approved to properly cross-reference policy item #68.62, as set out in Appendix A.
3. This resolution is effective October 1, 2005 and applies to injuries that occur on or after October 1, 2005.

DATED at Richmond, British Columbia, August 8, 2005.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**

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#65.03 Fishers

The date of injury earnings for fishers whose remuneration is based on a share of the catch, the value of which may only be determined at a future date, will be based on the earnings over the 3-month period immediately preceding the date of injury. Where earnings information is not available for that three-month period, the worker's average earnings may be based on the 12-month period immediately preceding the worker's date of injury. See also policy item ~~#68.63~~ #68.62 for information on a fisher's composition of average earnings where the fisher is self-employed **deducts equipment and/or operating expenses from gross income for business or taxation purposes** and owns a vessel **or other equipment used to harvest fish**.

~~#68.61 — Labour Contractor Without Coverage under Section 2(2) — Short-Term Average Earnings~~

~~This policy enables the Board to determine the labour component of a labour contractor's remuneration for short-term average earnings where the labour contractor does not have coverage under section 2(2) of the Act.~~

~~A labour contractor's contract may include payment for any wages paid by the labour contractor to his/her employee(s) and/or equipment.~~

~~In calculating the labour component of a labour contractor's date of injury earnings, the amount of wages paid by the labour contractor to his/her employees is deducted from the gross contract value. In addition, where a contract involves the payment of monies for the supply of equipment, the monies paid with respect to equipment may be deducted from the gross contract value as follows:~~

~~Where medium equipment is supplied, the gross figure will be converted to gross wages by applying the following percentages:~~

(a) — Medium Equipment	— Equipment	— 40%
	— Wages	— 60%

~~Examples: Motor vehicles used for pilot car or local delivery services, minor excavating equipment, e.g. two-wheel drive agriculture-type tractors, complete with backhoe attachments and/or front-end loader attachment.~~

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Where heavy equipment is supplied, the gross figure will be converted to gross wages by applying the following percentages.

(b) — Heavy Equipment	— Equipment	— 75%
	— Wages	— 25%

Examples: Logging trucks, skidders, bulldozers, line haul trucks.

~~#68.62 — Labour Contractor Without Coverage under Section 2(2) — Long-Term Average Earnings~~

~~In determining a labour contractor's long-term average earnings where the labour contractor's earnings include revenue-generating equipment and the labour contractor does not have coverage under section 2(2) of the Act, the Board depreciates any revenue-generating equipment in order to determine the labour component of the labour contractor's remuneration.~~

~~Operating costs or expenses will be deducted from the gross business income to obtain the business net income (the worker's average earnings). When asked to provide earnings information, the labour contractor will also be asked to list the purchase price of the piece of equipment.~~

~~The capital cost allowance or depreciation figure listed on the labour contractor's data will not be used. In place of this figure, a percentage will be selected from the straight-line depreciation tables set out below which most closely represents the piece of revenue-generating equipment involved. This percentage will then be applied to the purchase price of the item and the resulting figure will, along with the other operating costs or expenses of the business, be deducted from the gross to compute the worker's average earnings.~~

Equipment Type	Annual Rate
Road Construction	
Track-type — Lesser than 200 HP	11%
Tractor — Greater than 200 HP	6%
Motor Grader	7.5%
Excavator	11%
Track Loader	11%
Backhoe (R/T Tractor)	18.5%
Logging	
Track-type — Lesser than 200 HP	11%
Tractor — Greater than 200 HP	6%
Skidder	11%
Loader — Boom Type	7.5%
Loader — Front-end Type	11%

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Log Truck and Trailer	8%
Transportation	
Line Haul Tractor	10%
5-ton Truck	10%
1-ton Truck/Van	8%
Automobile	12.5%
Gravel Truck	17%

~~#68.63~~ *Fishers*

~~In order to determine the labour component of a fisher's remuneration, where a fisher owns the fishing vessel used to generate income, the fishing vessel is depreciated.~~

~~When asked to provide earnings information, the fisher will also be asked to list the purchase price of the vessel. In deducting operating costs or expenses from the gross figure to obtain the worker's average earnings, the capital cost allowance or depreciation figure listed on the worker's data will not be used. In place of this figure, the straight-line depreciation percentage set out below will be used. This percentage will then be applied to the purchase price of the vessel and the resulting figure will, along with the other operating costs or expenses, be deducted from the gross business income to compute the worker's average earnings.~~

All Vessels 7.5%

~~Interest accrued (whether or not paid) as the result of an indebtedness, in respect of a fishing vessel used and owned by a commercial fisher, is considered an operating cost. The accrued interest is deducted from the gross income. The purchase of food as an operating cost is not deducted from the gross income as it is considered a direct benefit to the fisher and is measurable return from the activities of fishing. The purchase of fuel, fishing nets, etc., plus costs incurred in the maintenance of the vessel and its equipment are deducted from the gross income as operating costs. See also policy item #65.03.~~

#68.61 Workers Deducting Operating and/or Equipment Expenses

A worker's earnings may include payment for equipment and/or other operating expenses. Section 33(1) of the Act provides that the Board must determine a worker's average earnings with reference to the "worker's average earnings and earning capacity at the time of the worker's injury".

This policy enables the Board to determine the labour component of a worker's earnings where the worker receives payment for providing

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services, out of which the worker must pay for any operating costs and/or equipment that is a required component of the contract of service. Such equipment is normally required to fulfill the contract, and represents a portion of the worker's costs in providing the service.

The portion of the earnings that remains after deductions for operating costs and equipment represents the labour component of the worker's earnings, on which average earnings are calculated.

(a) Short-Term Average Earnings

In calculating the short-term average earnings of a worker who for business or taxation purposes deducts operating and/or equipment expenses, the labour component of the worker's date of injury earnings must be determined as follows:

(i) Light Equipment

Where light equipment is supplied, the gross figure will be converted to gross wages by applying the following percentages.

Equipment	Wages
15%	85%

Examples of light equipment include chain saws, lawn mowers, and portable welding equipment and compressors not permanently mounted on vehicles.

(ii) Medium Equipment

Where medium equipment is supplied, the gross figure will be converted to gross wages by applying the following percentages.

Equipment	Wages
40%	60%

Examples of medium equipment include motor vehicles used for pilot car or local delivery services, and minor excavating equipment (e.g. two-wheel drive agriculture-type tractors, complete with backhoe attachments and/or front-end loader attachment).

(iii) Heavy Equipment

Where heavy equipment is supplied, the gross figure will be converted to gross wages by applying the following percentages.

Equipment	Wages
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75%

25%

Examples of heavy equipment include logging trucks, skidders, bulldozers, and line haul trucks.

b) Long-Term Average Earnings

In calculating the long-term average earnings of a worker who for business or taxation purposes deducts operating and/or equipment expenses, operating costs or expenses will be deducted from gross earnings to determine the labour component of the worker's gross earnings.

To calculate such a worker's long-term average earnings, the worker will be asked to provide the purchase price for any equipment that is a required component of the contract of service. The purchase price of such equipment is usually the invoiced value of the asset(s), including applicable taxes. Where a worker trades in another asset in order to purchase a new asset, the trade does not reduce the value of the acquired asset for the purposes of determining the purchase price.

The capital cost allowance or depreciation amount for equipment that is a required component of the contract of service will be deducted from gross earnings where it does not exceed 15 percent of the purchase price of the equipment.

Where the capital cost allowance or depreciation amount exceeds 15 percent of the purchase price, 15 percent of the purchase price will be deducted from gross earnings instead of the capital cost allowance or depreciation amount.

Where the worker does not declare a capital cost allowance or a depreciation amount for equipment that is a required component of the contract of service, the Board will not make a deduction from gross earnings for that equipment.

Interest accrued (whether paid or not) as the result of debt in respect of equipment owned by a worker that is a required component of the contract of service is considered an operating cost. The accrued interest is deducted from gross income.

#68.62 Fishers

In calculating the earnings of a fisher who, for business or taxation purposes, deducts operating and/or equipment expenses, operating costs or expenses will be deducted from gross earnings to determine the labour component of the fisher's gross earnings.

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To calculate a fisher's earnings, the fisher will be asked to list the purchase price of the vessel or the other equipment used to harvest fish. The purchase price of a vessel or equipment used to harvest fish is the invoiced value of the asset(s), including applicable taxes. Where a fisher trades in an equipment asset in order to purchase a new equipment asset, the trade does not reduce the value of the acquired equipment asset for the purposes of determining the purchase price.

The capital cost allowance or depreciation amount for a vessel or equipment used to harvest fish will be deducted from gross earnings where it does not exceed 15 percent of the purchase price of the equipment.

Where the capital cost allowance or depreciation amount exceeds 15 percent of the purchase price, 15 percent of the purchase price will be deducted from gross earnings instead of the capital cost allowance or depreciation amount.

Where the fisher does not take a capital cost allowance or a depreciation amount for a vessel or equipment used to harvest fish, the Board will not perform a deduction from gross earnings for that equipment.

Interest accrued (whether paid or not) as the result of debt in respect of a fishing vessel used and owned by a commercial fisher is considered an operating cost. The accrued interest is deducted from gross income.

The purchase of food as an operating cost is not deducted from gross income as it is considered a direct benefit to the fisher and is a measurable return from the activities of fishing. The costs of maintenance for the vessel or other equipment used to harvest fish, fuel, fishing nets, and other appropriate expenses are deducted from gross income as operating costs. See also policy item #65.03.