

2005/10/06-03

**THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA****RESOLUTION OF THE BOARD OF DIRECTORS****RE: Changes to the Casual Workers Policy In the  
*Rehabilitation Services & Claims Manual*****WHEREAS:**

Pursuant to section 82 of the Workers Compensation Act, RSBC 1996, Chapter 492 and amendments thereto ("Act"), the Board of Directors ("the 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 must determine the amount of average earnings and earning capacity of a worker with reference to the worker's average earnings and earning capacity at the time of the worker's injury;

**AND WHEREAS:**

Section 33.5 of the Act provides an exception to the general rule for determination of average earnings where the worker had a pattern of employment at the time of the injury that was casual in nature;

**AND WHEREAS:**

General guidance on the categorization of workers with a casual pattern of employment is provided in the Rehabilitation Services & Claims Manual policy item #67.10;

**AND WHEREAS:**

Concerns have been raised that policy item #67.10 does not adequately guide the proper categorization of workers with a pattern of employment at the time of the injury that is casual in nature;

**THE BOARD OF DIRECTORS RESOLVES THAT:**

1. To provide additional guidance as to the categorization of workers with a pattern of employment at the time of the injury that is casual in nature, changes to Policy Item #67.10 are approved, as per the attached Appendix "A".
2. This resolution is effective January 1, 2006, and applies to all decisions made on or after January 1, 2006.

DATED at Richmond, British Columbia, October 6, 2005.

**By the Workers' Compensation Board**

---

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

## APPENDIX A

### #67.10 Casual Workers Pattern of Employment

Section 33.5 of the *Act* provides:

If a worker's pattern of employment at the time of the injury is casual in nature, the Board's determination of the amount of average earnings under section 33.1 from the date of the injury must be based on the worker's gross earnings, as determined by the Board, for the 12 month period immediately preceding the date of injury.

This is an exception to both general rules for determining a worker's average earnings. ~~For a casual worker,~~ The Board officer must use the worker's gross earnings for the 12-month period immediately before the date of the injury to establish the worker's average earnings. There is no 10-week average earnings review. Thus, the worker's average earnings determined at the outset of the ~~casual~~ worker's claim are also the worker's long-term average earnings.

**This provision is applied in those situations where, due to the unpredictable, sporadic and/or transitory pattern of the worker's employment, the initial rate general rule would not provide an appropriate representation of a worker's loss of earnings. In these situations, it is considered that earnings over the 12-month period immediately before the date of injury more appropriately reflect the worker's loss of earnings.**

~~A casual worker is a worker who has a short-term/sporadic attachment to employment. Generally the employment lasts less than three consecutive months. A worker who works "on call" for one or more employers may also be a casual worker.~~

**Determination of whether a worker's pattern of employment is casual in nature involves a two-step investigation.**

1. **The first step involves a consideration of the nature of the worker's job at the time of the injury. This will identify:**
  - (a) **those workers to whom the section 33.1 general rule should apply;**
  - (b) **those workers who are an apprentice or learner, to whom the section 33.2 exception applies;**
  - (c) **those workers who are employed, on other than a casual or temporary basis, by the employer for less than 12 months**

## APPENDIX A

immediately preceding the date of the injury, to whom the section 33.3 exception applies; and

- (d) those workers who have purchased coverage under section 2(2) of the Act, to whom the section 33.6 exception applies.

Certain workers will not clearly fall within the above categories. An indicator that a worker may fall within the section 33.5 exception is that their job at the time of injury was not permanent and/or was scheduled to last less than three months. However, this is not conclusive of the issue and the second step of the investigation must then be undertaken.

2. Where a worker does not clearly fall within the above categories, the second step involves consideration of the worker's pattern of employment over a longer period of time. In order to determine whether the worker's pattern of employment is casual, it may be necessary to consider the worker's employment activities in the period prior to the injury. Normally, one year would be the maximum period of inquiry.

The following are factors or characteristics that may favour categorization of a worker's pattern of employment as casual in nature:

- The worker has uncertain or unpredictable working hours.
- The worker has a significant variation in weekly earnings.
- The worker has the option to accept or reject requests to work without penalty.
- The worker works "on call" for one or more employers. In certain cases, however, a worker who works on call for one or more employers may have predictable, consistent working hours which may reflect a regular pattern of employment for which the section 33.1 general rule might apply.

An employer's reference to a worker as a "casual worker" is not conclusive of the worker's categorization. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be considered.

After a decision-maker has considered the worker's attachment to employment, he or she must weigh the evidence to determine whether the

## APPENDIX A

**worker's pattern of employment at the time of the injury was casual in nature.**

~~Fishers are treated as workers engaged in casual employment. However, this rule cannot be rigidly applied without regard to the particular circumstances of the case. For instance, it is conceivable that a particular fisher could be employed 52 weeks a year, five days a week. The fisher would then have to be treated as a regular worker rather than a casual worker. Where a job is to last more than three months, the worker is generally regarded as a regular worker rather than a casual worker. Regulation 3 of the *Fishing Industry Regulation* addresses the calculation of earnings for compensation benefits~~

~~**EFFECTIVE DATE:** March 18, 2003~~

~~**APPLICATION:** To adjudicative decisions on or after the effective date.~~

**EFFECTIVE DATE:** January 1, 2006

**APPLICATION:** The amended policy applies to all decisions on or after January 1, 2006.