

2006/06/20-02

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**RESOLUTION OF THE BOARD OF DIRECTORS****RE: Average Earnings and Worker Expenses****WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, 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:

The Board of Directors has been made aware of concerns that there is insufficient guidance on the deduction of operating costs or expenses from workers' and fishers' gross earnings in policy items #68.61 and #68.62 of the *Rehabilitation Services & Claims Manual*, Volume II ("*RS&CM*");

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 and #68.62 are amended as set out in Appendix A of this resolution.

2. This resolution is effective August 1, 2006, and applies to injuries that occur on or after August 1, 2006.

DATED at Richmond, British Columbia, June 20, 2006.

By the Workers' Compensation Board

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

APPENDIX A

PROPOSED CHANGES TO THE *RS&CM* WORKERS DEDUCTING OPERATING AND/OR EQUIPMENT EXPENSES AND FISHERS POLICIES

#68.61 *Workers Deducting Operating Business 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."~~

A worker's earnings may include payment for business expenses or costs associated with equipment. Such a worker's average earnings are calculated based on the labour component of the worker's earnings, which is the portion of the earnings that remains after deductions for business expenses and/or costs associated with equipment.

This policy enables the Board to determine the labour component of a worker's earnings where the worker receives payment for providing services, out of which the worker must pay for any ~~operating costs~~ **business expenses** and/or **costs associated with** 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.~~

Generally, where a worker may deduct business expenses and/or costs associated with equipment from his or her earnings for business or tax purposes, this suggests that the worker's earnings include payment in respect of such costs and/or expenses. This policy does not apply to a worker receiving separate special expense reimbursements or allowances from an employer; the Board considers such payments under policy item #68.23 *Special Expenses or Allowances*.

(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:~~

Business expenses (that is, expenses not associated with equipment) are generally not considered in a worker's short-term average earnings.

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To calculate short-term average earnings for a worker who for business or taxation purposes deducts costs associated with equipment, the Board does not consider the worker's actual costs at the time of the injury.

The Board determines the labour component of such a worker's short-term average earnings by applying a percentage that represents the costs of supplying the appropriate category of equipment from the worker's date of injury earnings, set out 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
75%	25%

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

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(b) Long-Term Average Earnings

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

In determining whether the Board will deduct a business expense or a cost associated with equipment from a worker's gross earnings, the Board considers the following questions as appropriate:

- 1) Did the worker's gross earnings for the time period under review include payment in respect of the expense?**
- 2) Did the worker incur the expense directly as a result of supplying equipment and/or materials to the employer?**
- 3) Did the expense result from the worker operating his or her business?**
- 4) Would the worker incur the expense regardless of the nature of the employment?**

To calculate ~~such a worker's long-term average earnings~~ **the amount the Board will deduct as an expense for equipment depreciation**, 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.

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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 **for equipment depreciation** 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~~ **business expense**. The accrued interest is deducted from gross income.

#68.62 *Fishers*

Generally, where a fisher may deduct business expenses and/or costs associated with equipment from his or her earnings for business or tax purposes, this suggests that the fisher's earnings include payment in respect of such costs. In calculating the earnings of a fisher who, for business or taxation purposes, deducts ~~operating~~ **business expenses and/or costs associated with** equipment expenses, **the Board decides which** ~~operating~~ costs **and/or** expenses will be deducted from gross earnings to determine the labour component of the fisher's gross earnings. **This policy does not apply to a fisher receiving separate special expense reimbursements or allowances from an employer; the Board considers such payments under policy item #68.23 *Special Expenses or Allowances*.**

In determining whether the Board will deduct a business expense or a cost associated with equipment from a fisher's gross earnings, the Board considers the following questions as appropriate:

- 1) Did the fisher's gross earnings for the time period under review include payment in respect of the expense?
- 2) Did the fisher incur the expense directly as a result of supplying equipment and/or materials for fishing activities?
- 3) Did the expense result from the fisher operating his or her business?
- 4) Would the fisher incur the expense regardless of the nature of the employment?

To calculate a fisher's earnings ~~the amount the Board will deduct as an~~ **expense for equipment depreciation**, 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

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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 **for equipment depreciation** 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~~ **business expense**. The accrued interest is deducted from gross income.

The purchase of food as an ~~operating cost~~ **business expense** 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~~ **costs** are deducted from gross income as ~~operating~~ **costs associated with equipment**. See also policy item #65.03.