

## **Additions in Bold; Deletions Strikethrough**

[NOTE: TO BE ADDED TO THE END OF CHAPTER 9, AVERAGE EARNINGS]

### **#71.00 AVERAGE NET EARNINGS**

Effective June 30, 2002, compensation is based upon 90% of a worker's average net earnings.

Before calculating a worker's average net earnings, the Board determines the worker's average earnings. The process for determining a worker's average earnings is described in Chapter 9.

The Board establishes a worker's average net earnings by deducting the following items from the worker's average earnings:

- (a) probable EI premiums;
- (b) probable CPP contributions; and
- (c) probable income taxes.

The Board does not consider the actual amounts deducted from a worker's paycheque for the items listed in (a) – (c) above. Instead, the Board considers the probable deductions for these items.

Under sections 33.8 and 33.9 of the *Act*, the Board calculates a worker's average net earnings at two stages in the claim process as described below.

### **#71.10 Short-term Average Net Earnings**

Under section 33.8 of the *Act*, short-term average net earnings apply to the period that begins on the date of the worker's injury and ends on the earlier of:

- (a) the date temporary disability benefits have been payable to the worker for a cumulative period of 10 weeks; or
- (b) the effective date of a permanent disability award.

#### **Schedule of Deductions**

Effective January 1<sup>st</sup> each year, the Board implements a schedule of deductions ("Schedule") for earning levels up to the statutory maximum. The Schedule reflects the federal and provincial income tax rates and the levels of CPP contributions and EI premiums in effect for the immediately

preceding calendar year. As a result, any changes to these items during a calendar year are not reflected in the Schedule until January 1<sup>st</sup> of the following year.

The Board uses the Schedule to determine the CPP contributions, EI premiums and income taxes applicable to a worker's average earnings. As a result, all workers with the same average earnings have the same deductions made for CPP contributions, EI premiums and income taxes.

When calculating a worker's short-term average net earnings, the Board uses the Schedule in effect on the date of the worker's injury.

#### Probable CPP and EI

Deductions for probable CPP contributions and EI premiums are based on the requirements of the *Canada Pension Plan Act* and the *Employment Insurance Act*. When determining these deductions, the Board considers the contributions and premiums required under those Acts for the worker's average earnings. The Board does not consider the actual CPP contributions and EI premiums deducted from the worker's paycheque.

#### Probable Income Taxes

In estimating probable income taxes for short-term average net earnings, the Board applies only the following tax credits under the *Income Tax Act* and the *Income Tax Act (Canada)*:

- (a) credits based on the basic personal amounts, multiplied by 1.5; and
- (b) credits for the probable CPP contributions and EI premiums payable for the worker's average earnings.

All workers receive tax credits equaling 1.5 times the basic personal amounts, regardless of actual tax status. As well, deductions for probable income taxes are made regardless of whether the worker is required to pay taxes under the *Income Tax Act* and the *Income Tax Act (Canada)*.

### **#71.20 Long-term Average Net Earnings**

Under section 33.9 of the *Act*, long-term average net earnings apply to the period commencing on the earlier of:

- (a) the first day after the date temporary disability benefits have been payable to the worker for a cumulative period of 10 weeks; or
- (b) the effective date of a worker's permanent disability award.

### Formulas for Deductions

Effective January 1<sup>st</sup> each year, the Board implements formulas, based on those used by the Canada Customs and Revenue Agency, to calculate long-term average net earnings. The formulas reflect the federal and provincial income tax rates and the levels of CPP contributions and EI premiums in effect for the immediately preceding calendar year. As a result, any changes to these items during a calendar year are not incorporated into the formulas until January 1<sup>st</sup> of the following year.

When calculating long-term average net earnings, the Board uses the formulas to determine the CPP contributions, EI premiums and income taxes applicable to a worker's average earnings.

When calculating a worker's long-term average net earnings, the Board uses the formulas in effect on the earlier of the first day after the date temporary disability benefits have been payable to the worker for a cumulative period of 10 weeks; or the effective date of a worker's permanent disability award.

### Probable CPP and EI

Deductions for probable CPP contributions and EI premiums are determined in a similar manner as for short-term average net earnings. When determining these deductions, the Board considers the contributions and premiums required under the *Canada Pension Plan Act* and the *Employment Insurance Act* for the worker's average earnings. The Board does not consider the actual CPP contributions and EI premiums deducted from the worker's paycheque.

### Probable Income Taxes

In estimating the worker's probable income taxes, the Board allows only the following tax credits as determined under the *Income Tax Act* and the *Income Tax Act (Canada)*:

- (a) credits based on the basic personal amounts;
- (b) credits for EI premiums and CPP contributions; and
- (c) spousal credit or wholly dependent person credit and/or infirm dependant credit.

When establishing income tax credits for dependants, the Board will assume that the dependants have no income. As a result, where the worker qualifies for any of the credits under item (c) above, the worker will receive the maximum amount under the *Income Tax Act* or the *Income Tax Act (Canada)* for that credit.

## Exceptions

Workers who are not required to pay CPP contributions under the *Canada Pension Plan Act* or EI premiums under the *Employment Insurance Act* do not have these probable contributions or premiums deducted from their average earnings when long-term average net earnings are established. For instance, workers under the age of 18 years do not have probable CPP contributions deducted, as these workers do not contribute under the *Canada Pension Plan Act*. As well, independent operators who do not pay into the EI scheme do not have probable EI premiums deducted when long-term average net earnings are calculated.

Workers who are not required to pay income taxes under the *Income Tax Act* or the *Income Tax Act (Canada)* do not have probable income taxes deducted when the Board calculates their long-term average net earnings. For example, workers who have Registered Indian Status under the *Indian Act (Canada)* and work on a reserve do not pay taxes on their employment income. As a result, no deductions for probable income taxes will be made when calculating the long-term average net earnings of these workers.

### **#71.30      Insufficient Information**

A worker has an obligation under section 57.1 of the *Act* to provide the Board with the information that the Board considers necessary to administer the worker's claim. Where a worker fails to comply with this obligation, the Board may reduce or suspend payments to the worker until the worker complies. The worker's obligation to provide information is discussed in policy item #93.26.

Where the Board has insufficient information about a worker's tax status at the time that long-term average net earnings are calculated, the Board will assume that only the basic personal credits under the *Income Tax Act* and the *Income Tax Act (Canada)* apply.

In addition, where the Board has insufficient information about whether a worker is required to pay contributions under the *Canada Pension Plan Act* or premiums under the *Employment Insurance Act*, the Board will assume that the worker is required to pay those contributions or premiums.

### **#71.40      Adjustments**

The Board may adjust a worker's average net earnings where they were based upon incorrect information. If the adjustment results in a decrease in the net value of the worker's earnings, the Board officer will consider policy item #48.41 in determining whether to declare an overpayment. If it results in an increase, a retroactive adjustment will be made.