

COMPENSATION PRACTICE & QUALITY DEPARTMENT

PRACTICE DIRECTIVE # C9-7

TOPIC: Income Loss Payments
ISSUE DATE: March 3, 2003
(Amended May 8, 2009)

The Legislature has enacted the *Workers Compensation Amendment Act (No. 2), 2002* ("Bill 63"), which amends the *Workers Compensation Act* (the "Act"). As a result this practice directive was amended on March 3, 2003.

BACKGROUND

On June 30, 2002, section 33 of 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.

PURPOSE

This practice directive provides an overview of the legislative and policy changes relating to average net earnings and the process for calculating an income loss payment under the current provisions.

LAW AND POLICY

Income loss payments are discretionary and not considered payments with respect to disability. They are considered health care benefits. To respect the intent of section 5(2) of the *Act*, these payments are not paid for time lost on the day of injury.

Rehabilitation Services and Claims Manual (the "RSCM") Policy item #83.13, *Income Loss*, states, in part, that:

"In situations where a worker who is not deemed disabled from working loses time from work to attend treatment or examination by a physician or qualified practitioner or for other authorized treatment, a payment through health care benefit funds can be made."

EFFECTIVE DATES AND TRANSITION RULES

Please see Practice Directive #C1-1, *Effective Dates and Transition Rules* and Practice Directive #C14-3, *Reopenings*.

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ADJUDICATIVE GUIDELINES/INSTRUCTIONS

1. ELIGIBILITY

(a) Income loss payments may be made to workers **who are not disabled, and where:**

- the treatment or examination is related to the compensable injury;
- it is deemed unreasonable for the worker to attend the examination or treatment outside of normal working hours; and
- the lost time or cumulative lost time exceeds two hours.

(b) Where a worker's claim has a previously established wage rate, an income loss payment may be made rather than reactivating the worker's claim if all of the conditions in point number 1 are met.¹

(c) As income loss does not relate to disability, and the loss may have been incurred during the course of one or more jobs, the current provisions relating to categorizing a worker do not apply.

(d) Income loss payments representing time lost on or after June 30, 2002 are subject to the 90% net rules. Please see Practice Directive #C9-4, *Initial and Long-Term Average Earnings* and Practice Directive #C9-12, *Long-Term Average Earnings: Section 33.4 – Exceptional Circumstances*.

(e) Income loss payments are subject to the weekly statutory minimum and maximum considerations.

(f) As noted in the RSCM Policy item #83.13, where the employer maintained the worker on full salary, the income loss payment should be directed to the employer (Payee 02).

2. PROCESS

As noted in Practice Directive #C9-4, *Initial and Long-Term Average Earnings* and Practice Directive #C9-12, *Long-Term Average Earnings: Section 33.4 – Exceptional Circumstances*, the term "net" now has a new meaning. It refers to average net earnings after probable allowable deductions for federal and provincial income taxes, Employment Insurance deductions and Canada Pension Plan contributions are deducted from a worker's gross average earnings. These are collectively known as "allowable deductions". This means that, subject to minimum and maximum rules, a worker's gross earnings lost must be converted to average net earnings. As well, a compensation rate of 90% is applied to the average net earnings.

In order to convert the gross income loss figure into a net income loss amount, the Board Officer should contact the worker and/or employer to obtain the following information:

¹ Subject to a recurrence of disability, in which case the rules outlined in Practice Directive #38, *Effective Dates, Recurrences and Transition Rules* should be considered.

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- (a) Gross earnings lost;
- (b) Number of hours/days lost; and
- (c) Normal number of hours/days the worker would have worked per week.

The Board Officer enters this information into the Claims Management System (CMS). The information is converted into gross annualized earnings. These earnings are not a worker's true annual earnings, but are an estimate based on the loss he or she has incurred.

Once a worker's gross annualized earnings are calculated, the annual allowable deductions are also calculated.