

COMPENSATION PRACTICE AND QUALITY DEPARTMENT

PRACTICE DIRECTIVE # C9-8

TOPIC: Employment Insurance Payments
ISSUE DATE: February 1, 2005
(Amended July 5, 2006)

Objective

This practice directive is intended to assist in determining those situations where employment insurance (“EI”) payments may be appropriately included in calculating a worker’s average earnings.

Law & Policy

Section 33(3.2) of the *Workers Compensation Act* (the “Act”) enables WorkSafeBC to include EI benefits in the calculation of a worker’s average earnings, where it is determined that the benefits were received due to the worker’s employment in an occupation or industry that results in recurring seasonal or recurring temporary interruptions of employment.

Section 33.1(1) states that WorkSafeBC must determine initial average earnings “based on the rate at which the worker was remunerated by each of the employers for whom he or she was employed at the time of the injury”.

The *Rehabilitation Services and Claims Manual* (“RSCM”), Vol. II, Policy item #68.40, *Employment Insurance Payments*, underscores the discretionary nature of this legislative provision and requires verified evidence from an independent source to ensure that the insurance benefit was received due to the worker’s employment in an occupation or industry that results in recurring seasonal or temporary interruptions.

Policy item #68.40 also allows WorkSafeBC to compile a list of industries and occupations that, in WorkSafeBC’s view, result in recurring seasonal or temporary interruptions of employment. Any such list must, in accordance with policy, give due regard to regional considerations.

Adjudicative Guidelines

(A) Application

Due to specific requirements set out in the *Act*, section 33(3.2) is not relevant for the following “categories” of workers:

- Apprentices or Learners (see section 33.2)
- Workers employed less than 12 months (see section 33.3)

COMPENSATION PRACTICE AND QUALITY DEPARTMENT

- Persons who have purchased Personal Optional Protection (see section 33.6)

Section 33(3.2) may be relevant for “casual” workers and workers who fall under the “general” rule, as per the following guidelines.

- Casual Workers

Employment insurance payments may be considered for casual workers since casual workers have their long-term average earnings set at the outset of the claim.

- Workers who fall under the General Rule

Initial Average Earnings

EI payments are not relevant when determining initial average earnings for workers who fall under the general rule. Section 33.1(1) of the *Act* states that initial average earnings are based on “the rate at which the worker was remunerated by each of the employers for whom he or she was employed at the time of the injury”.

EI payments are not considered “remuneration”, but a government-provided social welfare benefit. Also, they are not received by the employer(s) for whom the worker was employed at the time of the injury. Rather, EI payments are received from the government because the worker was unemployed.

Since EI payments do not meet the criteria in section 33.1(1) of the *Act*, they cannot be included when determining initial average earnings for workers who fall under the general rule.

Long-term Average Earnings

EI payments may be considered when determining long-term average earnings where a worker falls under the general rule and has been employed with the accident employer for greater than 12 months (EI payments cannot be included for persons employed less than 12 months under section 33.3 of the *Act*).

(B) Nature of Employment

With the aid of WorkSafeBC’s Statistical Services Department, a list of seasonal industries and a list of seasonal occupations have been developed to assist decision makers in the application of section 33(3.2) of the *Act*. These lists are attached as Appendices 1 and 2 respectively. While the lists appear

COMPENSATION PRACTICE AND QUALITY DEPARTMENT

comprehensive, they are not exhaustive or conclusive and may be updated periodically. For the purposes of applying section 33(3.2) of the *Act*, WCB officers may exercise discretion in determining the nature of a specific industry or occupation that is not captured by either list. In every case where a WCB officer is considering employment insurance benefits in an average earnings calculation, consideration must be given to the nature of the industry or occupation.

The key adjudicative question is whether the worker received the EI benefit due to his or her employment in an industry or occupation with seasonal operations or recurring temporary shutdowns, which result in short-term periods of unemployment.

Section 33(3.2) of the *Act* recognizes that for certain industries and occupations, EI is considered to be a regular supplement to the worker's earnings and therefore should be included in the worker's average earnings. Generally, industries or occupations with recurring seasonal or temporary interruptions will be identifiable by the fact that they result in reduced opportunities of employment at similar times in successive years (e.g. operations cease on an annual basis during the winter months, resulting in a general layoff). The reduction in employment opportunities will be due to inherent operational factors such as weather conditions or the cyclical nature of the business (e.g. teachers and fishers).

Example:

A regular worker in Vancouver was laid off from employment as a retail clerk in March 2004. As a result of the layoff, the worker received EI benefits. Entitlement to EI ceased in June of 2004 when the worker obtained employment in Kelowna as a fruit harvester. In September of 2004 the worker was injured during his/her employment as a fruit harvester.

In this scenario, the calculation of the worker's average earnings would not include the EI benefits received by the worker during the 12-month period preceding the date of injury. While the worker was injured in an occupation that may be considered seasonal, the EI benefits received by the worker were due to layoff from employment in an occupation (retail clerk) that does not meet the criteria provided in section 33(3.2) of the *Act*.

It is important to note that there is no requirement for the worker to demonstrate a personal pattern or history of collecting EI benefits (e.g., at least 2 consecutive years of receiving EI benefits from the same industry or occupation).

COMPENSATION PRACTICE AND QUALITY DEPARTMENT

(C) Implementation

Where it is determined that EI benefits are to be included in the calculation of a worker's average earnings, the payments received within the 12 months preceding the date of injury are added to the gross average earnings, subject to the statutory maximum. Please refer to Appendix 3 of this note for more information regarding earnings reported by Human Resources Development Canada ("HRDC"). Depending upon the form used by HRDC, the worker's EI benefits may be reported as net earnings and will require re-calculation into a gross earnings figure.

Information regarding EI benefits for casual workers (section 33.5) or non-earners (section 33.7) with secondary casual employment is requested and considered at the outset of a claim. Generally, information relating to EI benefits for regular workers is requested at 5 weeks of short-term disability.

The EI statement of benefits from HRDC does not indicate why a worker was laid off. It does, however, indicate whether or not a worker was receiving EI due to medical disability. If a worker was receiving EI benefits due to maternity, parental, sick, or compassionate care leave, the payments should not be included in the composition of the worker's earnings for the purposes of section 33(3.2). However, consideration should be given to whether such medical absences meet the criteria for "exceptional circumstances" (see RSCM, Vol. II, Policy item #67.60 and Practice Directive #C9-12).

CROSS REFERENCES:	N/A
HISTORY:	This item replaces Practice Directive #35, <i>Employment Insurance Payments</i> . It was amended on July 5, 2006 to clarify existing corporate practice.
APPLICATION:	This item is intended to clarify existing corporate practice.

APPENDIX 1

Seasonal Industries - British Columbia

This table provides a province-wide listing of industries that are commonly understood to be seasonal in nature.

Please note that the listing is not exhaustive or conclusive. WCB officers should exercise discretion in determining whether a specific industry results in recurring seasonal or recurring temporary interruptions of employment.

7010 — Agriculture

701001	.....	Artificial Insemination or Animal Breeding
701002	.....	Apiary
701003	.....	Berry Farming
701004	.....	Composting
701005	.....	Dairy Farming
701006	.....	Egg Farming
701007	.....	Exotic Poultry Farming
701008	.....	Farm Labour Supply or Farm Services
701009	.....	Feed Lot or Stockyard
701010	.....	Fur Bearing Animal Farming
701011	.....	Grain Farming
701012	.....	Greenhouse
701013	.....	Hay or Seed Farming
701014	.....	Hog Farming
701015	.....	Hunting or Trapping
701016	.....	White Mushroom Farming
701017	.....	Orchard
701018	.....	Ornamental Nursery
701019	.....	Poultry Catching
701020	.....	Poultry Farming
701021	.....	Poultry Hatchery
701022	.....	Ranch 6.00
701023	.....	Riding Academy, or Boarding, or Raising Horses
701024	.....	Sod or Turf Nursery
701025	.....	Vegetable Farming
701026	.....	Vineyard
701027	.....	Wild Plant Harvesting

7020 — Fishing Subsector

- 702001 Fin Fish Farming
- 702002 Fish Hatchery
- 702004 Shell Fish Farming
- 702005 Dive Fishing
- 702006 Gillnet and Troll Fishing
- 702007 Longline and Trap Fishing
- 702008 Seine Fishing
- 702009 Trawl Fishing
- 702010..... Fish Packing and Hand Picking

7030 — Forestry Subsector

- 703001 Chemical Brushing and Weeding, or Chemical Tree Thinning or Spacing
- 703002 Brushing and Weeding or Tree Thinning or Spacing (not elsewhere specified)
- 703003 Cable or Hi-Lead Logging
- 703004 Dry Land Sort
- 703005 Forest Fire Fighting
- 703006 Ground Skidding, Horse Logging, or Log Loading
- 703008 Integrated Logging
- 703009 Log Booming
- 703011..... Log Processing
- 703012..... Logging Road Construction or Maintenance
- 703013..... Manual Tree Falling and Bucking
- 703014..... Mechanized Tree Falling
- 703015..... Shake Block Cutting
- 703016..... Tree Planting or Cone Picking

7040 — Oil and Gas or Mineral Resources Subsector

- 704001 Clay, Peat, Soil, or Topsoil Digging or Processing
- 704002 Oil or Gas Drilling
- 704003 Oil or Gas Field Servicing (by means other than service rigs)
- 704004 Oil or Gas Well Servicing (by means of service rigs)
- 704005 Open Pit Coal Mining
- 704006 Open Pit Metal or Mineral Mining
- 704007 Placer Mining
- 704008 Quarry
- 704009 Seismic Exploration
- 704010..... Diamond Drilling, Seismic Drilling, or Shot Hole Drilling

- 704011..... Stone Crushing
- 704012..... Underground Coal Mining
- 704013..... Underground Metal or Mineral Mining
- 704015..... Geological, Geophysical, or Geochemical Field Work
- 704016..... Oil and Gas or Mineral Exploration, or Prospecting

7220 — Heavy Construction Subsector

- 722001 Bridge, Overpass, or Viaduct Construction or Repair
- 722002 House Raising, or Structural Moving of Buildings or Heavy
Equipment
- 722003 Pier, Wharf, or Dry Dock Construction or Repair
- 722004 Pile Driving
- 722005 Steel Frame Erection or Structural Repair of Steel Frames
- 722006 Steel Frame Painting, Bridge Painting, or Bridge Cleaning
- 722007 Structural Concrete Reservoir, Flume, Dam, Dyke, Causeway, or
Jetty Construction or Repair
- 722008 Tunneling

APPENDIX 2

Seasonal Occupations - British Columbia

This table provides a listing of occupations that are commonly understood to be seasonal in nature. Occupations are identified, first on an "ALL BC" basis, and then, on a regional basis. If the worker's occupation appears in the ALL BC category, it is considered a seasonal occupation, regardless of the region in which the worker was employed.

If the worker's occupation does not appear in the ALL BC category, Board officers should then consult the list for the specific region in which the worker was employed.

Please note that the listing is not exhaustive or conclusive. WCB officers should exercise discretion in determining whether a specific occupation results in recurring seasonal or recurring temporary interruptions of employment.

SOC Code		% Seasonal Variation
ALL BC		
E1	teachers and professors	34
I	logging occupations	29
I	fishing occupations	29
I	mining; oil & gas jobs	24
I	agriculture occupations	19
INTERIOR (P,L,N,K,S)		
F1	art, culture technical jobs	43
E1	teachers and professors	39
G7	travel & accommodation jobs	36
I	agriculture occupations	34
I	logging occupations	33
A3	other managers	24
G5	food, beverage service jobs	20
LOWER MAINLAND PLUS VICTORIA (G,H,D,J,I,U,B,V)		
I	logging occupations	36
I	fishing occupations	36
E1	teachers and professors	34
F1	art, culture technical jobs	20
C0	science professionals	20
NORTH (E,R)		
I	mining; oil & gas jobs	35
I	agriculture occupations	34

I	logging occupations	32
G8	childcare; home support	31
C1	science technical jobs	29
H6	heavy equipment operators	26
H5	other trades	26
H7	transport equipment operators	22
H2	electrical trades and related	22
H1	construction trades	20

VANCOUVER ISLAND LESS EXCLUDING VICTORIA (A,Y)

I	logging occupations	26
I	fishing occupations	22
H6	heavy equipment operators	20

The occupations listed in the regional tables are those that represent a statistically supportable highly seasonable variation percentile = 20.

Those occupations listed in the "All BC" table represent those occupations that represent the highest seasonal variation percentiles that account for 5% of claims.

The sv% = 20 cutoff for the regional tables is derivative of the "All BC" table.

APPENDIX 3

Earnings Reported by Human Resources Development Canada

How to Read HRDC Printouts

The PHQ1 printout provided by HRDC details the claimant's claim history for the period specified. This screen provides all the information necessary to reconstruct the claimant's EI benefit history – the dates and duration of each claim, the type of claim and the benefits paid. It is the primary source for determination of the amount of EI benefits to be incorporated into average earnings.

The EN19 printout provides similar information regarding the claimant's current claim (if any).

The PHQ1 Information Screen (HDRC)

WEEK	CODE	AMT	RATE	EARN	D/N	WEEK	CODE	AMT	RATE	EARN	D/N
1160	82	000	351			1161	82	000	351		
1162	10	351	351			1163	80	000	351	0710	
1164	80	000	351	0558		1165	80	000	351	0704	
1166	80	000	351	0563		1167	80	000	351	0704	
1168	80	000	351	0563		1169	80	000	351	1020	
1170	80	000	351	0779		1171	80	000	351	0704	
1172	80	000	351	0704		1173	80	000	351	0563	
1174	80	000	351	0664		1175	80	000	351	0422	
1176	80	000	351	0563		1177	80	000	351	0634	
1178	01	157	351	0282		1179	80	000	351	0704	
1180	80	000	351	0704		1181	80	000	351	0704	

(1) SIN

The claimant's Social Insurance Number (SIN). HRDC computer screens generally reference their client by SIN. Whenever possible compare the SIN to the claimant's SIN to ensure accuracy.

(2) CODE WEEK

HRDC uses as code week calendar to refer to dates. All weeks start on Sunday and end Monday. The actual dates may be determined by reference to the appropriate code week calendar.

Example: Referring to the calendar below Code week 1178 refers to the week starting 16 January 2000 and ending 22 January 2000.

It is important to note that a claimant may have had a number of claims (indicated on the printout as 'CLAIM X OF X'). The EI benefits can be added from each claim that falls within the WCB earnings period under review.

- (3) **CODE** Refers to the payment type made for the particular code week. It is possible to determine the weeks paid for a specific type of benefit. Of the codes used 01, 04, 05, 10, 11 and 12 will be those most relevant to WCB earnings determination

Included	Not Included
01 Regular Benefit 04 Regular Winter Fishing/CT-7 (either summer or winter fished) 05 Regular year round fishing 06/26 07 Worksharing (if seasonal workshare) 13 Regular summer fishing/CT-6	00 Not payable or not on claim 02 Special Benefit (parental/adoption) 03 Special Benefit (parental/childcare) UIDU/benefit paid under Part II training 08/28 UIDU/benefit paid under Part II – job creation 09/29 UIDU/benefit paid under Part II – self employment SE 10 Special benefit (sickness) 11 Special Benefit (maternity) 80 No benefits paid because of: <ul style="list-style-type: none"> • Earnings declared • FWW (full working week) • Claim terminated or special benefits exhausted 81 Only for weeks prior to w/c 993 are a week of benefit paid 82 No benefit paid because of: <ul style="list-style-type: none"> • WP (waiting period) • WLI (wage loss insurance) • Disentitlement D-5 (labour dispute) 88 A week of disqualification served

- (4) **AMT** The actual dollars paid in that code week. The first two weeks will have '0' and '0' listed which represents the 2-week EI waiting period.

- 5) **RATE** The weekly amount payable to the claimant established by HRDC as the claimant's benefit rate.

- (6) **EARNINGS** The amount of employment income reported by the claimant within that specific benefit week.

NOTE: a claimant may earn up to a certain amount within a benefit week without reduction of benefits. Earnings in excess of that amount are deducted dollar from dollar. However, the payment amount does not necessarily equal the EI benefit rate less the worker's earnings as HRDC may have made other adjustments.

(7) CLAIM TYPE

The claim type originally assigned to the claim by HRDC on acceptance. This is not necessarily reliable information as the claim type is assigned on acceptance of the claim and may not be updated if the type changes. Board Officers should, instead, refer to the payment code to determine the type of benefit paid.

00	Regular
02	Sickness
03	M/P/A maternity/parental/adoption
06/07	Fishing
08	Year round fishing.
09	Sickness
Blank	Claim not established.

(8) MAT START WEEK

The code week on which maternity claim effective (if known at outset of claim)

