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January 2024 Update 2024 – 1

TO: HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL* – VOLUME II

This update of the *Rehabilitation Services & Claims Manual* contains amendment in the *Manual* implemented since update 2023 – 5.

The revised policy pages are for:

- Implementing return to work obligations introduced by the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41)
- Consequential amendment to various policies as a result of the Bill 41 obligations
- Replacing Chapter 5, *Wage-Loss Benefits*, with Chapter 5, *Wage-Loss Benefits and Return to Work Obligations*
- Consequential amendment to various policies as a result of the Chapter 5 rewrite
- Amendments to retirement age policy
- Consumer Price Index (CPI) adjustments in various Chapters

A summary is attached, and the amended pages are included as part of the package effective **January 1, 2024**.

These amended pages and the complete manual are available at worksafebc.com/law-policy.

Charmaine Chin
Head of Executive Operations

Attachments

Rehabilitation Services & Claims Manual, **Volume II**

SUMMARY OF AMENDMENTS – Update 2024 – 1

Chapter	Policy	Pages	Change
Table of Contents		Pages i to xix	Updated
Chapter 1	Policy item #1.30	Pages 5 to 9	Bill 41 consequential amendment
Chapter 3	Item C3-12.30	Page 3	Chapter 5 housekeeping
	Item C3-22.30	Pages 1 to 2	Chapter 5 housekeeping
	Item C3-23.30	Pages 1 to 2	Chapter 5 housekeeping
Chapter 5	All policies	All pages	Complete Chapter re-write
	Item C5-33.00	All pages	CPI adjustments
	Item C5-33.10	All pages	CPI adjustments
Chapter 6	Item C6-36.00	Pages 1 to 2	CPI adjustments
	Item C6-37.00	Pages 1 to 2	CPI adjustments
	Item C6-39.00	Pages 3 to 5	Chapter 5 housekeeping
	Item C6-40.00	Pages 3 to 7	Chapter 5 consequential amendment
	Item C6-41.00	Pages 1 to 5	Amended
	Item C6-42.00	Pages 1 to 4	Chapter 5 consequential amendment
	Item C6-43.00	Pages 3 to 8	CPI adjustments
Chapter 7	Policy item #49.10	Pages 7-15 to 7-16	CPI adjustments
	Policy item #51.00	Pages 7-27 to 7-28	CPI adjustments
	Policy item #51.20	Pages 7-29 to 7-30	CPI adjustments

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Chapter 8	Item C8-54.00	Pages 1 to 3	CPI adjustments
	Item C8-55.00	Pages 1 to 2	CPI adjustments
	Item C8-56.00	Pages 3 to 6	CPI adjustments
	Item C8-56.10	Pages 1 to 6	CPI adjustments
	Item C8-56.40	Pages 1 to 4	CPI adjustments
	Item C8-56.60	Pages 1 to 4	CPI adjustments
	Item C8-56.70	Pages 1 to 2	CPI adjustments
Chapter 9	Policy item #65.02	Pages 9-3 to 9-4	Chapter 5 housekeeping
	Policy item #65.04	Pages 9-5 to 9-10	Chapter 5 housekeeping
	Policy item #67.20	Pages 9-13 to 9-14	Chapter 5 housekeeping
	Policy item #67.31	Pages 9-13 to 9-14	CPI adjustments
	Policy item #68.22	Pages 9-25 to 9-26	Chapter 5 housekeeping
	Policy item #69.00	Pages 9-33 to 9-34	CPI adjustments
	Policy item #71.00	Pages 9-43 to 9-47	Chapter 5 consequential amendment
Chapter 10	Item C10-73.00	Pages 3 to 7	Chapter 5 consequential amendment
	Item C10-74.00	Pages 5 to 7	Chapter 5 housekeeping
	Item C10-82.00	Pages 1 to 2	CPI adjustments
	Item C10-83.00	Pages 5 to 6	Housekeeping
	Item C10-83.10	Pages 5 to 8	CPI adjustments and Chapter 5 housekeeping

Chapter	Policy	Pages	Change
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Chapter 11	C11-85.00	Pages 3 to 5	Bill 41 consequential amendment
	C11-86.00	Pages 1 to 6	Bill 41 consequential amendment
	C11-86.10	Page 3	Chapter 5 housekeeping
	C11-87.00	Pages 1 to 5	Bill 41 consequential amendment
	C11-88.00	Pages 1 to 5	Bill 41 consequential amendment
	C11-88.20	Pages 1 to 3	Bill 41 consequential amendment
	C11-88.90	Page 3	Chapter 5 housekeeping
	C11-89.00	Pages 1 to 4	Chapter 5 consequential amendment
Chapter 12	Policy item #93.26	Pages 9 to 72	Bill 41 consequential amendment
	Policy item #93.40	Pages 9 to 72	Chapter 5 housekeeping
	Policy item #94.15	Pages 9 to 72	Chapter 5 housekeeping
	Policy item #94.20	Pages 9 to 72	Bill 41 consequential amendment
	Policy item #96.22	Pages 9 to 72	Chapter 5 housekeeping
	Policy item #99.20	Pages 9 to 72	Bill 41 consequential amendment
Chapter 17	Policy item #114.11	Pages 17-7 to 17-8	CPI adjustments
	Policy item #115.33	Pages 17-21 to 17-24	Chapter 5 housekeeping
Appendix 4	Supplement 5	Pages A4-9 to A4-10	CPI adjustments
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temporarily totally disabled. The claim is re-opened to provide compensation for a new period of temporary disability. The additional period of temporary disability is a recurrence to which the current provisions apply. However, a subsequent change in the nature and degree of the worker's permanent disability is adjudicated under the former provisions.

5. Regardless of the date of injury, the current provisions on indexing apply to compensation paid for an injured worker on or after June 30, 2002. Indexing of retroactive permanent disability benefits payable before June 30, 2002 will be based on the former provisions.

EFFECTIVE DATE: August 1, 2006

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
August 1, 2006 – Policy amended to clarify that then section 35.1(8) of the then *Act* does not apply to permanent changes in the nature and degree of a worker's permanent disability, and that for the purposes of this policy, a recurrence includes any claim that is reopened for an additional period of temporary disability, regardless of whether the worker had been entitled to permanent disability benefits before June 30, 2002.
December 31, 2003 – Amended to reflect consequential changes to the *Act* resulting from the *Skills Development and Labour Statutes Amendment Act, 2003* (Bill 37 of 2003).
June 17, 2003 – Reorganized the format and added content to address the scope of Volumes I and II of the *Manual*.
October, 16, 2002 – Amended to clarify meaning of "recurrence" for the purposes of then section 35.1(8) of the *Act*.

APPLICATION: Amendments to policy item #1.03(b)(4) that took effect on August 1, 2006 apply to all decisions, including appellate decisions, made on or after October 16, 2002.

#1.04 Statute Revision 2019

In 2019, pursuant to the *Statute Revision Act*, R.S.B.C. 1996, c. 440, the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 was revised and ordered to come into effect on April 6, 2020. As a result of the revision, necessary consequential changes were made to Volume II:

- minor language clarifications, to mirror the Legislature's intent;
- mirroring the rewritten provisions' clarity, consistency, and gender-neutral style; and
- reflecting all the revised section numbers, and reorganization of parts, divisions, and sections.

The *Statute Revision Act* does not authorize legislative counsel to make substantive changes to the law. As such, a revision does not operate as new law but has effect and must be interpreted as a consolidation of the law contained in the *Act* and provisions replaced by the revision.

AUTHORITY: Section 8 of the *Statute Revision Act*.
HISTORY: April 6, 2020 – New policy created to explain consequential revisions to Volumes I and II of the *Rehabilitation Services & Claims Manual* required to implement the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: This policy applies to all decisions, including appellate decisions, on or after April 6, 2020.

#1.10 The Persons Covered by the *Act*

Not everyone is entitled to compensation under the *Act*, even if injured at work. To qualify for compensation, a person must be a "worker" employed by an employer covered by the *Act*. (See Chapter 2.) If a compensable injury or disease results in the worker's death, certain of the worker's relatives are entitled, but they must usually have been "dependants" during the worker's lifetime. (See Chapter 8.)

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#1.20 The Conditions under which Compensation is Payable

Not all injuries or diseases are compensable. The *Act* prescribes the type of injuries (see Chapter 3) and diseases (see Chapter 4) and the circumstances in which they are compensable. (See Chapters 3 and 4.) Thus, for example, in the case of injuries, compensation is limited to personal injuries arising out of and in the course of a worker's employment.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#1.30 The Type and Amount of Compensation

There are a variety of types of compensation provided under the *Act*:

1. payments to compensate the injured worker for loss of earnings caused by a temporary disability (see Chapter 5);

2. payments to a worker where the employer has failed to comply with the obligations under the duty to maintain employment (see Chapter 5);

3. payments to compensate permanent disability that results from a worker's injury, for actual or estimated permanent loss of earnings (see Chapter 6);

4. compensation to dependants for loss of support by a deceased worker (see Chapter 8);

5. health care benefits (see Chapter 10);

6. vocational rehabilitation assistance (see Chapter 11).

HISTORY: January 1, 2024 – Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: Applies to all decisions made on or after January 1, 2024.

#1.40 Charging of Claims Costs

The costs of compensation are normally charged to the employer rate group to which the worker's employer belongs. The costs may also affect the employer's experience rating. There are special provisions which relieve the rate group and/or the employer in certain situations. (See Chapter 17.)

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#2.00 WORKERS' COMPENSATION BOARD

Section 316 provides that the Workers' Compensation Board is a corporation continued under the *Act* to administer the provisions of the *Act*. Section 1 of the *Act* defines the word "Board" as the Workers' Compensation Board. The use of the word "Board" throughout this *Manual* means the Workers' Compensation Board.

Section 319 of the *Act* provides that the board of directors must set and revise as necessary the policies of the board of directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment.

Section 320 provides that the board of directors must set and supervise the direction of the Board.

EFFECTIVE DATE: February 11, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

February 11, 2003 – Deleted references to the Appeal Division and the former Governors.

APPLICATION:

#2.10 Jurisdiction over Claims Adjudication

Section 122(1) of the *Act* provides that the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under the compensation provisions of the *Act*, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court. Thus, the Board has sole jurisdiction over the adjudication of claims for compensation under the *Act*.

EFFECTIVE DATE: February 11, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
February 11, 2003 – Deleted references to the Appeal Division and the former Governors.

APPLICATION:

#2.20 Application of the *Act* and Policies

In making decisions, the Board must take into consideration:

1. the relevant provision or provisions of the *Act*;
2. the relevant policy or policies in this *Manual*; and
3. all facts and circumstances relevant to the case.

By considering the relevant provisions of the *Act*, the relevant policies, and the relevant facts and circumstances, the Board ensures that:

1. similar cases are adjudicated in a similar manner;
2. each participant in the system is treated fairly; and
3. the decision-making process is consistent and reliable.

Section 339(2) of the *Act* provides:

> The Board must make its decision based on the merits and justice of the case, but in doing this the Board must apply the policies of the board of directors that are applicable in that case.

Section 339(2) requires the Board to make all its decisions based on the merits and justice of the case. In making decisions, the Board must take into account all relevant facts and circumstances relating to the case before it, including the worker's individual circumstances. This is required, among other reasons, in order to comply with section 339(2) of the *Act*. In doing so, the Board must consider the relevant provisions of the *Act*. If there are specific directions in the

Act that are relevant to those facts and circumstances, the Board is legally bound to follow them.

Section 339(2) also requires the Board to apply the policies of the Board of Directors that are applicable to the case before it. The policies reflect the obligations and discretion delegated to the Board under the *Act.* Each policy creates a framework that assists and directs the Board in its decision-making role when certain facts and circumstances come before it. If such facts and circumstances arise and there is an applicable policy, the policy must be applied. Where the *Act* and policy provide for Board discretion, the Board is also required to exercise the discretion based upon the merits and justice of the case, in accordance with the *Act* and applicable policy.

All substantive and associated practice components in the policies in this *Manual* are applicable under section 339(2) of the *Act* and must be applied in decision-making. The term "associated practice components" for this purpose refers to the steps outlined in the policies that must be taken to determine the substance of decisions. Without these steps being taken, the substantive decision required by the *Act* and policies could not be made.

References to business processes that appear in policies are only applicable under section 339(2) of the *Act* in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term "business processes" for this purpose refers to the manner in which the Board conducts its operations. These business processes are not intrinsic to the substantive decisions required by the *Act* and the policies.

If a policy requires the Board to notify an employer, worker, or other workplace party before making a decision or taking an action, the Board is required to notify the party if practicable. "If practicable" for this purpose means that the Board will take all reasonable steps to notify, or communicate with, the party.

This policy item is not intended to comment on the application of practice directives, guidelines and other documents issued under the authority of the President/Chief Executive Officer of the Board. The application of those documents is a matter for the President/Chief Executive Officer to address.

EFFECTIVE DATE:	July 1, 2019
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2019 – Amended to emphasize the obligation of the Board to base its decisions upon the merits and justice of the case. June 1, 2009 – Deleted references to Board officers. March 3, 2003 – Amended to reflect the obligation of the Board in decision-making to apply a policy of the Board of Directors that is applicable to the case before it.
APPLICATION:	This policy applies to decisions on or after July 1, 2019.

Item C5-34.00, *Duration of Wage-Loss Benefits*;
Item C11-88.80, *Vocational Rehabilitation – Preventative Rehabilitation*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

October 21, 2020 − Housekeeping amendments to the Cross-References to update policy title.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
This policy replaced former policy item #13.40 effective January 1, 2009 by putting it into the new policy format.
Policy item #13.40 was created and brought into effect on October 1, 2007 to replace former policy item #32.60 of the *Rehabilitation Services & Claims Manual*, Volume II.

APPLICATION:

To all infectious agent or disease exposures occurring on or after October 1, 2007.

RE: Compensable Consequences – Psychological Impairment **ITEM: C3-22.30**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for psychological impairment as a compensable consequence of a worker's personal injury.

2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

POLICY

Psychological impairment may be accepted as compensable where the evidence indicates that it results as a consequence of an employment-related injury or occupational disease.

It cannot be assumed that a psychological impairment exists simply because the worker has unexplained subjective complaints or is having difficulty in psychologically or emotionally adjusting to any physical limitations resulting from a compensable injury or disease. There must be evidence that the worker has a psychological impairment.

The worker may be entitled to health care benefits for as long as the worker has a psychological impairment that is a compensable consequence of an injury accepted under section 134(1) or occupational disease accepted under section 136(1). When the psychological impairment is temporarily disabling, the worker is also entitled to wage-loss benefits under section 191 or 192 of the *Act*.

When the psychological impairment becomes permanent, it will be necessary to determine whether there is entitlement to permanent disability benefits. The decision-making procedure for assessing entitlement to permanent disability benefits for psychological impairment is found in Item C6-39.00.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act*.
CROSS REFERENCES:	Item C3-12.00, *Personal Injury*; Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*; Item C3-22.00, *Compensable Consequences*; Item C3-22.20, *Compensable Consequences – Pain and Chronic Pain*; Chapter 5 – Wage-Loss Benefits and Return to Work Obligations; Item C6-39.00, *Section 195 Permanent Partial Disability Benefits*; Item C10-72.00, *Health Care – Introduction*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	February 1, 2022 – Housekeeping amendments to update references to former policy item #39.01. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy replaced former policy item #22.33 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This Item applies to all claims for injuries occurring on or after July 1, 2010.

RE: Section 161(1) – Wage-Loss Benefits During the Replacement or Repair Period **ITEM: C3-23.30**

BACKGROUND

1. Explanatory Notes

This policy provides guidance with respect to wage-loss benefits for a worker awaiting the repair or replacement of an artificial appliance, eyeglasses, dentures and hearing aids.

2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

Section 161(1):

> The Board may assume the responsibility of replacement and repair of the following for a worker:
>
> (a) artificial appliances, including artificial members damaged or broken as the result of an accident arising out of and in the course of the employment;
>
> (b) eyeglasses, dentures and hearing aids broken as a result of an accident arising out of and in the course of the worker's employment if
>
> (i) that breakage is accompanied by objective signs of personal injury to the worker, or
>
> (ii) where there is no personal injury, the accident is otherwise corroborated and the Board is satisfied the worker was not at fault.

Section 191(1), in part:

> … if a temporary total disability results from a worker's injury, the Board must pay the worker compensation…

Section 192(1), in part:

> … if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation…

POLICY

Wage-loss benefits are payable only where a compensable injury causes a period of temporary disability from work. Broken or damaged artificial appliances, eyeglasses, dentures or hearing aids are not personal injuries.

Section 161(1) does not provide authority for the Board to pay a worker wage-loss benefits when there is a delay in replacing the broken or damaged artificial appliance, eyeglasses, dentures or hearing aids and the only reason the worker is unable to work is because the worker is without the broken or damaged item. Similarly, it does not provide authority for the Board to pay wage-loss where the worker has to take time off from work in order to be fitted for the item or to pick it up when ready.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 161(1) of the *Act*.
CROSS REFERENCES:	Item C3-23.00, *Replacement and Repair of Personal Possessions – Section 161(1)*; Item C3-23.10, *Section 161(1)(a) – Artificial Appliances*; Item C3-23.20, *Section 161(1)(b) – Eyeglasses, Dentures and Hearing Aids*; Item C5-33.00, *Introduction to Compensation For Temporary Disability*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 1, 2010 − This policy replaced former policy item #23.70 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This Item applies to all claims for injuries occurring on or after July 1, 2010.

RE:	Introduction to Compensation For Temporary Disability	ITEM:	C5-33.00

BACKGROUND

1. Explanatory Notes

This policy sets out all the general rules for how the Board pays wage-loss benefits to workers under Division 6 of Part 4 of the *Act* – *Compensation for Worker Disability*, applicable to both temporary total disability and temporary partial disability.

2. The Act

Section 134(4):

> If an injury disables a worker from earning full wages at the work at which the worker was employed, compensation other than a health care benefit is payable under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] from the first working day following the day of the injury.

Section 135(1), in part:

> … a worker is entitled to compensation for a mental disorder, payable as if the mental disorder were a personal injury arising out of and in the course of a worker's employment…

Section 136(1), in part:

> Compensation is payable under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment…

Section 190:

> Compensation under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] is subject to the following provisions:
>
> (a) section 230 *[manner of compensation payment: periodic or lump sum]*;
>
> (b) section 231 *[payment of compensation in specific circumstances]*;
>
> (c) section 232 *[Board authority to discontinue or suspend payments]*;

(d) section 233 *[deduction in relation to payments from employer]*.

Section 191:

(1) Subject to subsection (2), if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

(2) Compensation to be paid under this section

(a) must not be less than an amount that equals $491.75 per week if the worker's average earnings per week are greater than or equal to that amount, and

(b) must be an amount that equals the worker's average earnings if the worker's average earnings per week are less than the amount referred to in paragraph (a).

Section 192:

(1) Subject to subsection (2), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the worker's average net earnings before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

(2) The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) but to the extent only of the partial disability.

Section 193, in part:

(1) This section applies if there is a recurrence of temporary total disability or temporary partial disability of a worker after a lapse of 3 years following the occurrence of the injury to the worker.

(2) For the purpose of determining the amount of compensation payable to the worker, the Board may calculate the compensation as if the date of the recurrence was the date of the injury if the Board considers that, by doing so, the compensation payable would more closely represent the percentage of actual loss of earnings of the worker by reason of the recurrence of the injury.

…

Section 233 (1):

In setting the amount of a periodic payment of compensation to a worker, the Board must consider payments, allowances or benefits that the worker may receive from the worker's employer during the period of the worker's disability, including a pension, gratuity or other allowance provided wholly at the expense of the employer.

POLICY

1. GENERAL

The Board makes decisions on:

- the worker's entitlement to wage-loss benefits;
- the amount of the wage-loss benefit payments; and
- the duration of the wage-loss benefit payments.

Wage-loss benefits are payable if an injury, mental disorder, or occupational disease resulting from a worker's employment causes a period of temporary disability from work.

As a general rule, the Board's decisions on wage-loss benefits relate to the past, the present, and continuing situations. The Board does not generally make a decision to terminate wage-loss benefits at a future date. The Board follows the procedures and rules of evidence set out by policy in Chapter 12 to make these decisions.

All compensation under Division 6 of Part 4 of the *Act* – Compensation for Worker Disability – is subject to the manner of compensation payments provision (section 230), the payment of compensation in specific circumstances provision (section 231), the Board's authority to discontinue or suspend payments (section 232), and deductions in relation to payments from the employer (section 233).

2. PHYSICAL OR PSYCHOLOGICAL IMPAIRMENT

Every claim has a physical, or psychological impairment as the result of a work-related injury, mental disorder, or occupational disease. It is the instigating factor without which the system never comes into play. The Board considers the medical evidence to determine whether a worker has experienced a physical or psychological impairment, and then determines the extent of compensation payable, i.e. whether the impairment is disabling. There are, therefore, two considerations on every claim. Firstly, the impairment itself, and secondly, the entitlement to benefits arising from the impairment.

The words “temporary”, “permanent”, “partial”, and “total” found in sections 191, 192, 194, 195, and 196 are applicable only to the impairment component of the claim and are not to be related to its compensable effects. To differentiate between the “temporary” and “permanent” consequences of an impairment is possible only by reference to the impairment itself. Once it has been determined that a worker has a temporary or permanent, partial or total physical or psychological impairment, the Board pays wage-loss benefits or permanent disability benefits to compensate for the disabling effects of that impairment in accordance with the requirements of the appropriate section of the *Act*.

3. TEMPORARY OR PERMANENT

In order to be eligible for wage-loss benefits, a worker must have a physical or psychological impairment that temporarily disables the worker from earning full wages at the work at which the worker was employed.

A “temporary” impairment is one which is likely to improve or become worse and is therefore not stable. Ongoing change is a natural feature of human physiology. Impairments resulting from an injury commonly deteriorate or improve over time. However, an impairment is not considered temporary simply because it is possible that, as the worker becomes older, the condition may change or the worker may have to undergo further treatment. It remains temporary when such a change can reasonably be foreseen in the immediate future.

At the beginning of a claim, and throughout the period of “temporary” impairment, the Board considers the medical evidence to assess the degree of impairment, and whether the worker’s condition has stabilized as permanent.

4. DISABLED FROM EARNING FULL WAGES

Most compensable physical or psychological impairments involve an initial period during which the worker is temporarily disabled from earning full wages at the work at which the worker was employed, and the Board therefore pays wage-loss benefits. The impairment will usually improve in time until the temporary disability resolves, or the disabling effects of the impairment become permanent. However, in the case of some

diseases, there is no initial period of temporary disability; the condition is permanent right from the beginning and no wage-loss benefits are payable.

Raynaud's Phenomenon is one of these diseases. There are also others, for example, hearing loss caused by exposure to industrial noise. The worker's only entitlement in these cases is to be assessed for permanent partial disability benefits.

Even if a worker is found to have a temporary physical or psychological impairment, the Board does not pay wage-loss benefits unless that impairment causes the cessation of regular employment:

- If the impairment causes a full cessation from work, the Board pays wage-loss benefits calculated under section 191. (See policy in Item C5-33.10.)
- If the impairment causes only a partial cessation from work, or the worker returns to work in some capacity, or is capable of returning to work in some capacity, the Board calculates wage-loss benefits calculated under section 192. (See policy in Item C5-33.20) In determining whether the worker is capable of returning to work in some capacity, the Board applies the principles set out in the policy of Item C5-35.10.

5. COMPENSATION PAYABLE FROM THE FIRST WORKING DAY FOLLOWING THE DAY OF THE INJURY

Section 134(4) provides that wage-loss benefits are payable from the first working day following the day of the injury, for an injury, mental disorder, or occupational disease that disables a worker from earning full wages at the work at which the worker was employed.

5.1 Shift Work and First Working Day Following the Day of the Injury

If a worker is injured during a shift spanning two calendar days (i.e. beginning before midnight and ending after), the Board does not pay wage-loss benefits for any portion of that shift. On the other hand, a worker's entitlement to payment of wage-loss benefits will commence effective the next shift following the shift on which the worker is injured, even if that shift falls on the same calendar day as the end of the shift that is the day of the injury.

5.2 Working Beyond the Day of the Injury

If a worker continues to work beyond the day of the injury, wage-loss benefits become payable on the day the worker is actually disabled from earning full wages.

The Board takes into account the worker's partial earnings of the day on which the disability occurs to calculate the wage-loss benefits for the day of disability as follows:

A. if the worker works or is paid for one quarter of the day or less, wage-loss benefits are paid for the full day;

B. if the worker works or is paid for more than one quarter but less than three quarters of the day, wage-loss benefits are paid for half the day;

C. if the worker works or is paid for three quarters of the day or more, wage-loss benefits are not paid for the day.

Except where section 233(2) [Deduction in relation to payments from employer] is being applied, the employer is not refunded any money paid to the worker for time not worked on the day the worker is disabled from work.

The above rules apply equally if the worker becomes disabled from working following a recurrence of a compensable condition.

5.3 Strike or Other Reason to Not Have Work

The first day the worker is disabled from earning full wages may fall on a day where the work at which the worker is employed is not available.

If the physical or psychological impairment disables the worker from earning full wages beyond the day of the injury and this results in an actual loss of earnings or a potential loss of earnings, the Board considers the requirement of section 134(4) is met and the Board pays wage-loss benefits.

If the physical or psychological impairment does not disable the worker from earning full wages beyond the day of the injury, meaning it does not result in any actual or potential loss of earnings, the Board does not consider the requirement of section 134(4) to be met and the Board does not pay wage-loss benefits.

In interpreting "potential loss" no rigid rules can be established since every case will have to be determined on the evidence received.

In cases where the work at which the worker is employed would not have been available such as where there is a lay-off due to lack of work, the Board generally considers the worker to be experiencing a potential loss of earnings, and pays wage-loss benefits. In those situations, the Board generally expects that the worker, if not physically or psychologically impaired by the compensable injury, mental disorder, or occupational disease, would have immediately sought new employment, and the Board should not speculate as to if and when it would have been found.

In cases where the work at which the worker is employed on the day of the injury would not have been available afterward, such as where the worker has no other attachment to the labour force than a single day's work at a polling station during an election, the Board may conclude that there was no actual or potential loss of earnings, and not pay wage-loss benefits. If the evidence shows that the person would not normally be available on the general labour market beyond the day of work on which the person was injured, the Board considers the evidence to rebut the general expectation that a person would have immediately sought new employment, if not for the impairment resulting from the compensable injury, mental disorder, or occupational disease.

The Board would not normally expect a worker to seek other work in situations such as strikes, a statutory holiday, weekends or normal days off, vacations or absences required for medical treatment unrelated to the work injury. The Board does not normally consider those days to be a first working day following the day of the injury in which the worker could be experiencing an actual or potential loss of earnings. If there is evidence that the worker would have undertaken other work but the impairment resulting from the compensable injury, mental disorder, or occupational disease prevented it, the Board may reach the opposite conclusion.

It should be made clear that the above rules only apply at the point of the original lay-off. Once the Board has commenced the payment of wage-loss benefits, it does not normally discontinue them simply because, irrespective of the injury, mental disorder, or occupational disease, the worker would not have been working for some period of time. This applies even in cases where the worker's initial disability resolves, and wage-loss benefits are terminated but the worker subsequently has a recurrence within three years of the compensable injury, mental disorder, or occupational disease. The fact that the worker is, for example, on strike at the time of the recurrence does not bar the payment of wage-loss benefits for temporary disability.

6. EARNINGS USED FOR WAGE-LOSS BENEFITS

The Board uses a worker's average net earnings to calculate the amounts (under both section 191 and 192) of wage-loss benefits it will pay to a worker for temporary disability compensation. In any of these calculations, if prior to the compensable injury, mental disorder, or occupational disease, the worker was engaged in multiple employments, the Board combines the earnings of all employments to calculate, as applicable, the worker's:

- pre-injury earnings;
- pre-injury average net earnings;
- actual post-injury average net earnings; and
- estimated post-injury earnings.

This applies regardless of whether the compensable physical or psychological impairment only disables the worker from one occupation. This applies whether or not the other employments are covered by the compensation provisions of the *Act* or are self-employment. The combined totals are subject to the statutory maximum.

If prior to the compensable injury, mental disorder, or occupational disease, the worker is also the principal of the company that is the employer, the Board's obligations extend only to the losses incurred in the worker's capacity as an employee. Wage-loss benefits cannot be paid to reflect any detrimental effect that the injury may have on the company's business.

7. POSSIBLE DEDUCTIONS FROM WAGE-LOSS BENEFITS

If an employer continues to pay a worker salary, allowances, or benefits while the worker is receiving wage-loss benefits, under section 233(1) the Board may deduct these amounts from the compensation that is otherwise payable to the worker.

If an employer terminates the service of a worker after the worker sustains a compensable injury, mental disorder, or occupational disease, and the employer pays the worker a termination of employment payment required by law (legislative requirement or contractual agreement), the Board does not deduct this amount from the compensation that is otherwise payable to the worker. This is because an uninjured worker would have been free to take any other job that the worker could find, receive full wages in respect of that job, and still be entitled to the termination pay. By the law of British Columbia, the worker is entitled to be paid twice for the period covered by the termination pay. Termination pay is intended to allow for the worker to be in that position.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 190, 191, 192, and 193 of the *Act*.
CROSS REFERENCES:	Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*; Item C5-33.20, *Wage-Loss Benefits for Temporary Partial Disability*; Item C5-34.00, *Duration of Wage-Loss Benefits* (Section 4.3 If the Worker's Temporary Disability Stabilizes as Permanent); Item C5-34.10, *Payment of Wage-Loss Benefits*; Item C5-35.10, *Duty to Cooperate*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	This policy consolidates former policy items #33.00, #34.10, #34.30, #34.31, #34.32, #34.42, and #35.22, and includes concepts from former policy item #34.40, of the *Rehabilitation Services & Claims Manual*, Volume II, consequential to reformatting and renumbering the policies in Chapter 5. Former policy item #34.42 incorporated portions of *Workers' Compensation Reporter* Decision No. 107, [1975] 2 W.C.R. 42.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

RE: Wage-Loss Benefits For Temporary Total Disability **ITEM: C5-33.10**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on a worker's entitlement to "temporary total" disability compensation.

2. The Act

Section 134(4):

> If an injury disables a worker from earning full wages at the work at which the worker was employed, compensation other than a health care benefit is payable under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] from the first working day following the day of the injury.

Section 135(1), in part:

> … a worker is entitled to compensation for a mental disorder, payable as if the mental disorder were a personal injury arising out of and in the course of a worker's employment…

Section 136(1), in part:

> Compensation is payable under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment…

Section 154(1):

> The Board may require a worker who applies for or is receiving compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] to be medically examined at a place reasonably convenient for the worker.

Section 190:

Compensation under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] is subject to the following provisions:

(a) section 230 *[manner of compensation payment: periodic or lump sum]*;

(b) section 231 *[payment of compensation in specific circumstances]*;

(c) section 232 *[Board authority to discontinue or suspend payments]*;

(d) section 233 *[deduction in relation to payments from employer]*.

Section 191:

(1) Subject to subsection (2), if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

(2) Compensation to be paid under this section

(a) must not be less than an amount that equals $491.75 per week if the worker's average earnings per week are greater than or equal to that amount, and

(b) must be an amount that equals the worker's average earnings if the worker's average earnings per week are less than the amount referred to in paragraph (a).

Section 193, in part:

(1) This section applies if there is a recurrence of temporary total disability or temporary partial disability of a worker after a lapse of 3 years following the occurrence of the injury to the worker.

(2) For the purpose of determining the amount of compensation payable to the worker, the Board may calculate the compensation as if the date of the recurrence was the date of the injury if the Board considers that, by doing so, the compensation payable would more closely represent the percentage of actual loss of earnings of the worker by reason of the recurrence of the injury.

…

Section 233:

(1) In setting the amount of a periodic payment of compensation to a worker, the Board must consider payments, allowances or benefits that the worker may receive from the worker's employer during the period of the worker's disability, including a pension, gratuity or other allowance provided wholly at the expense of the employer.

(2) An amount deducted under this section from the compensation otherwise payable to a worker may be paid to the worker's employer out of the accident fund.

POLICY

1. GENERAL

Compensable injuries, mental disorders, and occupational diseases can involve an initial period of temporary total disability, during which the worker is disabled from earning any wages, and therefore full wage-loss benefits are paid. The resulting physical or psychological impairment, and correspondingly, the disability, will usually improve in time, generally passing through a period where the worker is entitled to temporary partial disability wage-loss benefits, until the disability resolves or becomes permanent.

2. AMOUNT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY

If a temporary total disability results from a worker's injury, mental disorder, or occupational disease, section 191(1) provides that the wage-loss benefits consist of periodic payments to the injured worker of an amount equal to 90% of the worker's average net earnings.

The *Act* sets the minimum amount the Board considers when paying wage-loss benefits to a worker entitled to temporary total disability compensation, which is adjusted each year as follows:

			$ Per Week
January 1, 2023	—	December 31, 2023	476.87
January 1, 2024	—	December 31, 2024	491.75

If required, earlier figures may be obtained by contacting the Board.

If the worker's pre-injury average earnings per week are less than the minimum amount set out by the *Act* for the year of injury, the Board uses the worker's pre-injury average

earnings as the worker's pre-injury average net earnings to calculate the worker's wage-loss benefits. The Board may, as a result, pay the worker less than the minimum set out by the *Act*.

If the worker's pre-injury average earnings per week are greater than or equal to the minimum amount set out by the *Act* for the year of injury, the Board uses the worker's pre-injury average earnings to calculate the worker's pre-injury average net earnings under policies in Chapter 9, and does not pay the worker less than the minimum amount set out by the *Act*.

The minimum is subject to cost-of-living adjustments as described in policy item #51.20. However, these adjustments only apply to injuries or disablements occurring after the adjustments come into force. Existing payments are not automatically increased to a new minimum, although they may be the subject of cost-of-living adjustments in their own right.

3. FROM TEMPORARY TOTAL DISABILITY TO TEMPORARY PARTIAL DISABILITY

The Board uses the best evidence available to make its decision as to whether a temporary total disability has resolved to a point of recovery where the Board considers the worker's disability to be only a temporary "partial" disability. It may be appropriate for the Board to rely solely upon reports of the worker's physician, qualified practitioner, and/or other recognized health care professional, or the Board may seek medical advice on the contents of such reports and/or contact the health care provider for further discussion.

In some cases, it may be necessary for the Board to have the worker medically examined in order for the Board to decide whether the temporary total disability has resolved to a point of being only a temporary partial disability.

Claims are then referred promptly for that purpose and the examination is to be given priority.

Whether through reports provided by a worker's physician, qualified practitioner, and/or other recognized health care professional, or reports resulting from a Board-ordered medical examination, the Board considers the medical evidence to determine whether the worker:

A. is still totally disabled;

B. is fully recovered;

C. is temporarily partially disabled;

D. has a residual permanent disability which shows no reasonable likelihood of change.

If the Board determines that the worker is temporarily partially disabled, the Board uses the medical evidence to:

A. estimate the period required for full recovery or stability;

B. estimate a recommendation for a future examination;

C. establish any medical restrictions to re-employment, with the reason for such restrictions;

D. identify any medical or other factors found in the evidence that the Board considers significant in the determination of the worker's recovery process.

If the Board uses the medical evidence to determine the worker is temporarily partially disabled rather than temporarily totally disabled, but the worker is not able to return to work in some capacity (i.e. suitable work), the Board may refer the worker for vocation rehabilitation assistance or a comprehensive employability assessment.

The Board advises the worker and the employer that the worker is considered to be partially disabled and that further wage-loss benefits will be determined using the policy in Item C5-33.20.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 191 of the *Act*.
CROSS REFERENCES:	Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*; Policy item #51.20, *Dollar Amounts in the* Act, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	This policy consolidates former policy items #34.00, #34.20, and #35.11 of the *Rehabilitation Services & Claims Manual*, Volume II, consequential to reformatting and renumbering the policies in Chapter 5. Former policy item #35.11 had references to Board officers, Board Medical Advisors, and Vocational Rehabilitation Services deleted on June 1, 2009; and amendments to clarify that a Board officer could make a referral to Vocational Rehabilitation Services to assist with arranging a return to work, on November 1, 2002.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

RE: Wage-Loss Benefits For Temporary Partial Disability **ITEM: C5-33.20**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on a worker's entitlement to "temporary partial" disability compensation.

2. The Act

Section 134(4):

> If an injury disables a worker from earning full wages at the work at which the worker was employed, compensation other than a health care benefit is payable under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] from the first working day following the day of the injury.

Section 135(1), in part:

> … a worker is entitled to compensation for a mental disorder, payable as if the mental disorder were a personal injury arising out of and in the course of a worker's employment…

Section 136(1), in part:

> Compensation is payable under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment…

Section 190:

> Compensation under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] is subject to the following provisions:
>
> (a) section 230 *[manner of compensation payment: periodic or lump sum]*;
>
> (b) section 231 *[payment of compensation in specific circumstances]*;
>
> (c) section 232 *[Board authority to discontinue or suspend payments]*;

(d) section 233 *[deduction in relation to payments from employer]*.

Section 191(2):

Compensation to be paid under this section

(a) must not be less than an amount that equals $491.75 per week if the worker's average earnings per week are greater than or equal to that amount, and

(b) must be an amount that equals the worker's average earnings if the worker's average earnings per week are less than the amount referred to in paragraph (a).

Section 192:

(1) Subject to subsection (2), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the worker's average net earnings before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

(2) The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) but to the extent only of the partial disability.

POLICY

1. GENERAL

If a worker's physical or psychological impairment from a compensable injury, mental disorder, or occupational disease causes only a partial cessation from work, or the worker returns to work in some capacity, or the worker is capable of returning to work in some capacity, the Board pays wage-loss benefits calculated under section 192.

Wage-loss benefits paid under section 192 are based on the worker's post-injury earning capacity during the worker's period of temporary partial disability.

2. MEANING OF TEMPORARY PARTIAL DISABILITY

The meaning of "temporary partial" is governed by the principles set out in Section 2 of the policy in Item C5-33.00. The words "temporary" and "partial" in section 192 are applicable only to the impairment component of the claim and are not related to its compensable effect. In order to be eligible for wage-loss benefits under section 192(1), a worker must have a temporary partial physical or psychological impairment as a result of a work-related injury, mental disorder, or occupational disease, which is disabling the worker from earning full wages. To determine if an injury, mental disorder, or occupational disease has totally or partially disabled the worker, the Board considers how the physical or psychological impairment impacts the worker's ability to earn full wages at the work at which the worker was employed on the day of the injury.

The Board considers the worker to be temporarily partially disabled if a worker continues to carry out, or is capable of carrying out, the worker's pre-injury work in part or with accommodation, or performs some other suitable work.

If a partially disabled worker in a suitable work arrangement is subsequently laid off due to lack of work, the Board generally considers the worker to be experiencing a potential loss, and pays wage-loss benefits for the worker's temporary partial disability.

The Board generally continues to pay wage-loss benefits once it has started, even if the worker would not have been working for some period during that time, had the injury not occurred. Policy in Item C5-34.00 addresses the termination of wage-loss benefit payments and other circumstances that may affect entitlement.

2.1 Workers Engaged in Own Business

If a self-employed worker continues to work following a compensable injury, mental disorder, or occupational disease, in some capacity (perhaps performing lighter administrative or other suitable work), this means the worker is temporarily partially disabled, not temporarily totally disabled. The Board applies section 192 and pays only partial wage-loss benefits. Full wage-loss benefits will not be paid by the Board just because the worker cannot perform the heavier work.

If the worker is also the principal of the company that is the employer, the Board's obligations extend only to the losses incurred in the worker's capacity as an employee. Wage-loss benefits cannot be paid to reflect any detrimental effect that the injury may have on the company's business.

3. AMOUNT OF COMPENSATION FOR TEMPORARY PARTIAL DISABILITY

If a temporary partial disability results from a worker's injury, mental disorder, or occupational disease, section 192 provides that the wage-loss benefits consist of periodic payments to the injured worker of an amount equal to 90% of the difference between:

A. the worker's pre-injury average net earnings, and;

B. whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is actually earning after the injury; or

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation.

Section 192 wage-loss benefits represent a worker's post-injury wage loss over the short-term, and are based on the worker's post-injury earning capacity.

Post-injury earning capacity may be equal to the worker's actual earnings unless the Board determines that the worker is capable of earning more than what is actually being earned. In these cases, the wage-loss benefit is calculated by deducting what the worker is estimated to be capable of earning from the pre-injury earnings.

In determining temporary partial disability wage-loss benefit entitlement under section 192 for workers with personal optional protection (POP), the Board does not pay wage-loss benefits in excess of the amount of POP purchased.

The Board must, in all cases, provide the worker with the reasons for paying wage-loss benefits under section 192 and more particularly, when only partial payments are made.

3.1 Minimum Amount of Compensation for Temporary Partial Disability

The minimum amount of wage-loss benefits for temporary partial disability is the amount set out in section 191(2) for temporary total disability, but only to the extent of the partial disability. (See policy in Section 2 of Item C5-33.10.)

3.2 The Worker's Pre-Injury Average Net Earnings

If the worker's pre-injury average earnings per week are greater than or equal to the amount per week set out in section 191(2)(a) for the year of injury (see policy in Section 2 of Item C5-33.10), the Board uses the worker's pre-injury average earnings to calculate the worker's pre-injury average net earnings under policy in Chapter 9.

If the worker's pre-injury average earnings per week are less than the amount per week set out in section 191(2)(a) for the year of injury (see policy in Section 2 of Item C5-33.10), the Board uses the worker's pre-injury average earnings as the worker's pre-injury average net earnings to make its determination under section 192(1).

3.3 Actual Post-Injury Average Net Earnings

In determining what better represents the worker's post-injury earning capacity, the Board considers whether the worker has returned to work in some capacity, and the worker's actual average net earnings, if any.

3.4 Estimated Post-Injury Average Net Earnings in a Suitable Occupation

In determining what better represents the worker's post-injury earning capacity, the Board considers whether the worker is able to return to work in some capacity and estimates the average net earnings the worker would be capable of earning in a suitable occupation.

When determining entitlement under section 192, the Board generally considers suitable work to be a suitable occupation. (See policy in Item C5-35.10.)

A suitable occupation is one that:

- does not endanger a worker's recovery, or impede the health and safety of the worker and/or others;
- the worker has the skills, competencies, qualifications, and functional abilities that the occupation requires;
- the worker is medically capable of performing; and
- is reasonably available over the short-term in the worker's community or, where appropriate, in British Columbia at large.

In estimating the average net earnings a worker is capable of earning in a suitable occupation, the Board may refer the worker for vocational rehabilitation assistance and/or a comprehensive employability assessment to assist with the estimation. (See policy in Item C11-89.00.)

3.5 Post-Injury Earnings for Workers Engaged in Own Business

If a self-employed worker continues to work in some capacity following a compensable injury, mental disorder, or occupational disease, the Board takes into consideration the remunerative work the worker is doing in the capacity of being self-employed, to calculate the worker's post-injury earnings.

If a worker was not engaged in the worker's own business prior to the compensable injury, mental disorder, or occupational disease, and the worker commences a business afterwards, the Board may estimate the value of the work the worker is doing, rather than simply consider the worker's reported earnings. This is because, being in control of the business, the worker determines what personal salary is paid. The worker may take no earnings, or very low earnings, out of the business when it is starting up. Yet, the worker may be doing a substantial amount of work that, under normal circumstances, would command a significant wage.

3.6 When to Use Estimated Earnings Instead of Actual Earnings

The Board bases a worker's wage-loss benefits on estimated earnings rather than on actual earnings in the following cases:

- The worker is employable but does not have a job;
- The worker has a job but is not maximizing earning capacity up to the pre-injury wage rate;
- The worker has, for personal reasons, withdrawn from the workforce;
- The worker fails to cooperate with the recovery and return-to-work process.

3.7 Change in the Amount to be Paid for the Worker's Temporary Partial Disability

The amount of wage-loss benefits the Board will pay under section 192 is subject to periodic review. The Board's review may include a vocational rehabilitation assessment regarding what the worker actually earned in the intervening period, if anything, and an estimate of what the worker could have earned in the opinion of the Board. The Board pays wage-loss benefits based on this information and on any other evidence the Board considers significant.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 192 of the *Act*.
CROSS REFERENCES:	Item C5-33.00, *Introduction to Compensation For Temporary Disability*; Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*; Item C5-34.00, *Duration of Wage-Loss Benefits*; Item C5-35.10, *Duty to Cooperate*; Item C11-89.00, *Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	This policy consolidates former policy items #35.00, #35.10, #35.20, #35.21, #35.23, and #35.24, and includes concepts from former policy items #34.10 and #34.32, of the *Rehabilitation Services & Claims*

Manual, Volume II, consequential to reformatting and renumbering the policies in Chapter 5.
Former policy item #35.20 had references to Board officers, Compensation Services, and Vocational Rehabilitation Services deleted on June 1, 2009; and amendments to clarify that compensation paid under then section 30 represent a worker's post-injury wage-loss over the short term and is based on the worker's post-injury earning capacity, on November 1, 2002.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

RE: Duration of Wage-Loss Benefits **ITEM: C5-34.00**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the factors and variables that affect how long a worker may receive wage-loss benefits from the Board for a temporary disability, or how the amount of wage-loss benefits may change.

2. The Act

Section 6, in part:

(1) This section applies if the minister responsible for the *School Act* or the minister responsible for the *College and Institute Act*, as applicable, and the minister responsible for the administration of this Act approve

(a) a vocational or training program, and

(b) a school or other location as a place at which the vocational or training program is to be provided.

…

(3) In relation to a person who is deemed to be a worker under subsection (2), compensation under this Act is payable under the compensation provisions for injuries to the worker arising out of and in the course of training for that worker.

(4) As limits on subsection (3), if an injury results in a period of temporary disability with no loss of earnings,

(a) subject to paragraph (b) of this subsection, a health care benefit only is payable, and

(b) if training allowances paid by Canada or British Columbia are suspended, the Board may, for the period the Board considers advisable, pay compensation in the amount of the training allowance.

…

Section 125:

(1) The Board may at any time, on its own initiative or on application, reopen a matter that had been previously decided under a compensation provision by the Board or an officer or employee of the Board if, since the decision was made in the matter,

(a) there has been a recurrence of a worker's injury, or

(b) there has been a significant change in a worker's medical condition that the Board had previously decided was compensable.

(2) If the Board determines that the circumstances described in subsection (1) justify a change in a previous decision respecting compensation or rehabilitation, the Board may make a new decision that varies the previous decision or order.

Section 153:

(1) A worker who applies for or is receiving compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] must provide the Board with the information that the Board considers necessary to administer the worker's claim.

(2) If a worker fails to comply with subsection (1), the Board may reduce or suspend payments to the worker until the worker complies.

Section 154(3):

The Board may reduce or suspend compensation for a worker if the worker

(a) persists in unsanitary or injurious practices that tend to imperil or delay the worker's recovery, or

(b) refuses to submit to medical or surgical treatment that the Board considers, based on expert medical or surgical advice, reasonably essential to promote the worker's recovery.

Section 154.2(6):

If a worker fails to comply with subsection (2) [a worker's duty to cooperate with an employer and the Board in the worker's early and safe return to, or continuation of work], the Board may reduce or suspend payments of compensation to the worker until the worker complies.

Section 201(2), in part:

> … the Board may not make a periodic payment to a worker under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] if the worker ceases to have the disability for which the periodic payment is to be made.

Section 232(1):

> If a worker is confined to prison, the Board may cancel, withhold or suspend the payment of compensation for the period the Board considers advisable.

POLICY

1. GENERAL

Section 201(2) provides that the Board may not pay compensation to a worker under Division 6 of Part 4 of the *Act* – Compensation for Worker Disability − (temporary, permanent, recurrence, non-traumatic hearing loss, disfigurement, and retirement benefit contribution), if the worker ceases to have the disability for which the periodic payment is to be made.

The nature of a temporary disability may also change, affecting a worker's entitlement under the *Act*.

If the condition for which the worker is receiving temporary disability compensation becomes permanent, the worker is entitled to be assessed for permanent disability benefits. This entitlement is dealt with in Chapter 6.

2. CHANGE IN THE NATURE OF THE WORKER'S TEMPORARY DISABILITY

A worker's entitlement to wage-loss benefits for a temporary disability resulting from a work-related injury, mental disorder, or occupational disease disablement may change in either of the following circumstances.

When the worker's physical or psychological impairment resolves to the point where the Board no longer considers the worker temporarily totally disabled, the worker may be entitled to temporary partial disability wage-loss benefits under section 192. This entitlement is addressed by policy in Item C5-33.20.

If the worker's physical or psychological impairment worsens to the point where the Board considers the worker's temporary partial disability has become temporary totally disabling, the worker may be entitled to temporary total disability wage-loss benefits under section 191. This entitlement is addressed by policy in Item C5-33.10.

3. FACTORS THAT MAY AFFECT ENTITLEMENTS

In general, a worker's entitlement to wage-loss benefits continues once it has started and the worker's temporary disability continues. However, the Board may exercise its authority to reduce or suspend wage-loss benefits under other provisions of the *Act*, in certain circumstances.

3.1 Vacation and Travel

If a vacation period or statutory holiday occurs while a worker is receiving wage-loss benefits, the Board continues to pay those benefits.

If a worker in receipt of wage-loss benefits wishes to travel to another place as part of a vacation or for other reasons, the worker should notify the Board. In general, the Board has no objection to wage-loss benefits being continued while a worker is travelling on vacation. However, if the vacation may hinder or protract recovery because of delayed treatment or the activities planned, the Board may reduce or suspend the worker's compensation if it exercises its discretion under section 154(3)(a) and makes a decision using policy in Item C10-74.00. The Board considers the following:

A. If there is to be a period with no treatment which may protract recovery, the Board advises the worker not to discontinue treatment and that if the worker discontinues treatment, it may affect the worker's entitlement to wage-loss benefits. The Board seeks medical advice before reducing or suspending wage-loss benefits compensation.

B. If the Board considers the activities planned for the vacation may suggest that the worker is not disabled or may protract recovery, the Board advises the worker that participation may affect the worker's entitlement to wage-loss benefits. The Board seeks medical advice before reducing or suspending wage-loss benefits compensation.

3.2 Personal Circumstances

In general, the Board continues to pay wage-loss benefits if a worker temporarily suspends treatment for a compensable injury during a period of temporary disability because of personal reasons, such as a family emergency.

However, the Board use the policy in Item C10-74.00 to reduce or suspend the worker's compensation for failing to submit to medical or surgical treatment that the Board considers reasonably essential to promote the worker's recovery.

3.3 Strike or Lay-Off

The Board continues to pay wage-loss benefits to a worker whose temporary disability continues, even in the event of a strike or lay-off at the place of the worker's injury employer, which would have meant that the worker would not be working.

3.4 Practical Delays in Returning to Work

When a worker's temporary disability resolves or stabilizes as permanent, the worker may be slightly delayed in returning to a distant place of work, or from a treatment centre back to the worker's home community. The delay could be due to such things as traveling requirements, or requiring a few days for the worker to be medically cleared to return to work. In these limited cases, the Board may extend full wage-loss benefits for a few days beyond the time when the disability ceases. The Board does not provide this type of extension if it concludes the worker is unnecessarily delaying the return to work.

3.5 Education or Training Programs

If a worker who has been receiving wage-loss benefits for temporary total or partial disability commences an educational or training program, the question arises as to the continuation of payments by the Board during the course of the program.

The fact that a worker undertakes a course of training while receiving wage-loss benefits for temporary disability under section 191 or 192 does not impact the application of the policy in Item C11-88.50.

3.5.1 Education or Training Programs Arranged Before the Injury

Prior to injury, a worker may have arranged to undertake a retraining or educational course as part of career development or to become established in some new career. If the course involves time off work, the worker could be anticipating a period when there will be no earnings save for training allowances payable by the department continued under the *Department of Employment and Social Development Act* (Employment and Social Development Canada – "ESDC") or a similar agency. Since this training allowance will continue to be paid whether or not there is a compensable injury, the worker's financial position while taking the course is no worse because of the injury than if there had been no injury.

Therefore, the Board considers that a worker is not disabled as a result of the compensable injury and no wage-loss benefit is payable while undertaking a training or educational program arranged prior to the injury. Under the terms of some collective agreements, a worker continues to receive full wages while undertaking a training program. In such cases, an arrangement is normally made with ESDC for any training allowance to be paid to the employer. The Board would expect that an employer would continue to pay a worker's salary while taking the course, regardless of the fact that the

worker had previously incurred a compensable injury. In this case, there is no financial loss because of the injury while taking the course and no wage-loss benefit is payable. Nor is the employer refunded the continuation of salary paid to the worker during the course.

In some circumstances, ESDC will "top up" a training allowance to bring it up to the amount of a normal Employment Insurance payment. If the Board makes no payment of wage-loss benefits to a worker during a training course, it is understood that any entitlement of the worker to have the training allowances "topped up" by ESDC will be unaffected by the occurrence of the compensable injury. There is, therefore, no justification for the payment of wage-loss benefits during the course.

It is not necessary for all the details of the course as to time, place, subject matter, etc. to have been settled prior to the injury for it to be considered as "pre-arranged". For example, an apprentice may be required to spend some part of each year of the apprenticeship in school. While the exact dates may not be known at the date of injury, the worker must, at that time, clearly anticipate a period at school to be undergone in the near future. It is, therefore, reasonable to apply the rules set out above.

3.5.2 Education or Training Programs Arranged After the Injury

The Board generally continues to pay wage-loss benefits to a worker who decides to use the worker's recovery time to improve education or work skills by undertaking a retraining or educational program. If the worker is only taking the program at that particular time because of the physical or psychological impairment resulting from the work-related injury, mental disorder, or occupational disease, the Board continues to pay wage-loss benefits, even if the worker will also receive a training allowance from another government agency.

If the worker's condition improves to the point where the worker is able to return to work in some capacity, the Board may reduce the wage-loss benefits by the amount the Board estimates the worker is capable of earning in a suitable occupation.

3.6 Subsequent Non-Compensable Incidents

If a subsequent non-compensable incident occurs at a time when a worker is still recovering from a compensable injury, the following principles apply.

A subsequent non-compensable incident may include:

- sustaining a non-compensable injury, condition, disease, or disability; or
- undergoing surgery, tests or other treatment for a non-compensable injury, condition, disease, or disability.

In the event that a worker temporarily suspends treatment for a compensable injury, mental disorder, or occupational disease, because of personal reasons, such as a family emergency or a vacation, this would not be considered a subsequent non-compensable incident.

The Board is only authorized to pay for disability that is caused by an employment-related injury, mental disorder, or occupational disease, and only to the extent of that disability. For this reason, the Board does not pay for periods of disability caused by a subsequent non-compensable incident.

If a worker is still temporarily disabled by a compensable injury, mental disorder, or occupational disease, when a subsequent non-compensable incident occurs, the Board estimates when the worker would have reached maximum medical recovery. The Board then continues to pay wage-loss benefits for the period that the Board estimates the worker would have taken to reach maximum medical recovery from the compensable injury, mental disorder, or occupational disease, had the subsequent non-compensable incident not occurred.

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, the Board makes a new decision as to whether the disability, or increased disability, is due to the compensable injury, mental disorder, or occupational disease, or the subsequent non-compensable incident that has aggravated the compensable injury, mental disorder, or occupational disease. If the disability is due to the subsequent non-compensable incident, the Board terminates wage-loss benefits. However, if the disability is due to the compensable injury, mental disorder, or occupational disease, wage-loss benefits may be continued.

In the marginal cases, it is impossible to do better than weigh the evidence related to the compensable injury, mental disorder, or occupational disease, against the evidence related to the subsequent non-compensable incident to reach a conclusion on the termination of wage-loss benefits. For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 339(3) of the *Act* is “at least as likely as not.”

The above applies even if the treatment for the subsequent non-compensable incident is carried out at the same time as treatment for the compensable injury, mental disorder, or occupational disease, and might not have been carried out at the time if the worker had not then sought treatment for the condition resulting from the compensable injury, mental disorder, or occupational disease.

4. TERMINATION OF WAGE-LOSS BENEFITS

The Board does not pay, or stops paying, wage-loss benefits when the worker ceases to have the temporary disability (i.e. the temporary disability resolves, or stabilizes as a

permanent impairment). The Board does not generally set a date for terminating wage-loss benefits into the future.

4.1 Estimated Date of Recovery or Stabilization

An estimated date of recovery from a health care provider is of assistance to the worker, the employer, and the Board to prepare a recovery plan. However, it is important to note that these estimates are based on the best available information at that time, and may change as the worker's claim progresses or as more information becomes available. It cannot therefore be regarded as the sole criterion for the payment of wage-loss benefits and is only one factor to be considered.

The Board does not pay wage-loss benefits to a worker with no temporary disability. If the worker is still temporarily disabled on the estimated date of recovery, the Board continues to pay wage-loss benefits for as long as a worker continues to be temporarily disabled by the physical or psychological impairment resulting from the work-related injury, mental disorder, or occupational disease until the worker has returned to work, or until the worker has attained the age at which compensation is terminated under section 201(1) of the *Act* (see policy in Item C5-34.20).

The worker has a responsibility to monitor the physical or psychological impairment for improvement, and a duty to cooperate in the timely and safe return to work before the estimated date of recovery if the worker becomes fit to return to work.

4.2 If the Worker's Temporary Disability Resolves

The Board stops paying temporary wage-loss benefits when the worker recovers from the work-related injury, mental disorder, or occupational disease.

This is so even if the worker remains off work or is unemployed:

- in order to prevent further occurrences of the condition (wage-loss benefits are not payable for preventative measures); or
- due to factors such as fire hazard, seasonal closure, strike, or lock-out.

4.3 If the Worker's Temporary Disability Stabilizes as Permanent

When a temporary disability stabilizes as permanent, the Board stops paying wage-loss benefits, and the worker is entitled to be assessed for permanent disability benefits under sections 194, 195, and 196.

In order to determine whether the worker's condition has stabilized as permanent to the extent that permanent disability benefits should be assessed, the Board first considers the medical evidence to assess the degree of the worker's impairment, and determines

whether the worker's condition has stabilized. The Board considers whether the medical evidence:

A. clearly indicates the condition has stabilized as permanent;

B. clearly indicates the condition has not yet stabilized as permanent;

C. does not yet clearly indicate whether or not the condition has stabilized as permanent, and

(i) there is a likelihood of minimal change; or

(ii) there is a likelihood of significant change.

The Board reviews the evidence to determine which category the worker's condition fits within as best as possible, and determines whether the condition is temporary or permanent on the merits of the case.

Having regard to the relevant medical evidence, the Board then decides whether the worker's condition is permanent to the extent that permanent disability benefits should be assessed.

In the case of (A), the Board considers the condition permanent; the permanent disability is assessed. The Board considers a condition to have plateaued or become stable where there is little potential for improvement or where any potential changes are in keeping with the normal fluctuations in the condition which can be expected with that kind of disability.

In the case of (B), the Board considers the condition is still temporary; the Board maintains the worker on wage-loss benefits under section 191 or 192.

In the case of (C)(i), the Board determines there is only a potential for minimal change, the Board usually considers the condition to be permanent; and assesses the permanent disability benefits immediately on the basis of the prognosis. This approach is particularly helpful where the disability is itself minor.

In the case of (C)(ii), the Board determines there is a potential for significant change in the condition, the Board applies the following guidelines:

A. If the potential change is likely to resolve relatively quickly (generally within 12 months), the Board considers the condition temporary and maintains the worker on wage-loss benefits under section 191 or section 192, and schedules a further medical examination.

B. If the potential change is likely to be protracted (generally over 12 months), the Board considers the condition permanent, and assesses

the permanent disability. The Board pays the permanent disability benefits immediately on the worker's present degree of disability, and schedules the claim for future review.

4.4 Worker's Age at the Date of the Injury

The *Act* limits the payment of temporary disability compensation to the worker reaching retirement age under section 201. This entitlement is addressed by the policy in Item C5-34.20.

4.5 If the Worker is Incurring No Loss of Earnings, Despite the Temporary Impairment

In all cases, the worker is no longer entitled to wage-loss benefits under section 191 and section 192 where, notwithstanding the existence of a temporary impairment, the worker is incurring no loss of earnings as a result of the injury.

5. CHANGES IN WORKER'S CONDITION AFTER WAGE-LOSS BENEFITS CONCLUDE

The Board may pay further wage-loss benefits to a worker after the worker's temporary disability resolves or stabilizes as a permanent impairment.

Where a recurrence of a worker's injury, mental disorder or occupational disease, or a significant change in a worker's medical condition previously determined to be compensable, causes a further period of temporary disability, wage-loss benefits may again become payable (section 125(1)). This is distinct from a situation where the worker may become entitled to wage-loss benefits due to a further work injury.

5.1 Worker in Receipt of Permanent Disability Benefits

It is recognized that no condition is ever absolutely stable or permanent; there will commonly be some degree of fluctuation. Nevertheless, permanent disability benefits will be granted when, though there may be some changes, the condition will, in the reasonably foreseeable future, remain essentially the same. The fluctuations in the condition of a worker receiving permanent disability benefits may be such as to require the worker to stay off work from time to time. The question then arises whether wage-loss benefits should be paid for these periods.

If the fluctuations in the worker's condition are within the range normally to be expected from the condition for which the worker has been granted permanent disability benefits, no wage-loss benefits are payable. The permanent disability benefits are intended to cover such fluctuations. Wage-loss benefits are only payable in cases where there is medical evidence of a significant deterioration in the worker's condition which not only goes beyond what is normally to be expected, but is also a change of a temporary nature. If the change is a permanent one, the Board may make a new decision on the

amount of the worker's permanent disability benefits under sections 195 and 196. (See the policy in Item C14-102.01.)

5.2 Impact of Recurrence or Significant Change on Wage-Loss Benefits

If the recurrence or significant change results in a further period of temporary disability within three years of the date of injury, the Board may pay further temporary disability wage-loss benefits. This is so, even if the worker would not have been working for some period during the time of the recurrence or significant change. The fact that the worker is, for example, on strike at the time of the recurrence or significant change, does not prevent the Board from paying wage-loss benefits for temporary disability. The Board uses policy item #70.10 to set the rate for the wage-loss benefits.

If the recurrence or significant change occurs after a lapse of three years following the date of injury, the Board uses policy item #70.20 to determine whether the worker has experienced an actual or potential loss and set the rate for wage-loss benefits.

EFFECTIVE DATE: January 1, 2024

AUTHORITY: Section 201 of the *Act*.

CROSS REFERENCES:
Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*;
Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*;
Item C5.34.10, *Payment of Wage-Loss Benefits* (Section 3.1 No Reimbursement of Vacation Pay or Termination Pay);
Item C5-34.20, *Wage-Loss Benefits and Retirement Date*;
Item C6-37.00, *Permanent Total Disability Benefits*;
Policy item #70.10, *Disability Occurring Within Three Years of Injury*;
Policy item #70.20, *Reopenings Over Three Years*;
Item C10-73.00, *Direction, Supervision, and Control of Health Care*;
Item C10-74.00, *Reduction or Suspension of Compensation*;
Item C11-88.50, *Vocational Rehabilitation – Formal Training*;
Item C14-102.01, *Changing Previous Decisions – Reopenings*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: This policy consolidates former policy items #34.12, #34.41, #34.50, #34.51, #34.52, #34.53, #34.54, #34.55, and the non-retirement date duration language from former policy item #35.30, and includes concepts from former policy item #34.32, of the *Rehabilitation Services & Claims Manual*, Volume II, consequential to reformatting and renumbering the policies in Chapter 5.
Former policy item #34.51 was amended to reflect amendment to health care provisions of the *Act* by the *Workers Compensation Amendment*

Act, 2020 (Bill 23 of 2020), on October 21, 2020; and to delete references to Board officers on June 1, 2009.
Former policy item #34.52 had references to Human Resources and Skills Development Canada updated on June 1, 2009; and policy cross-references and housekeeping changes updated on November 1, 2002.
Former policy item #34.54 had references to Board officers deleted on June 1, 2009; and references to pension review deleted on March 3, 2003.
Former policy items #34.55 and #35.30 were amended to provide guidance regarding the legal issues of standard of proof, evidence, and causation, on February 1, 2020.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

RE: Payment of Wage-Loss Benefits **ITEM: C5-34.10**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the payment or reimbursement of wage-loss benefits.

2. The Act

Section 134(4):

> If an injury disables a worker from earning full wages at the work at which the worker was employed, compensation other than a health care benefit is payable under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] from the first working day following the day of the injury.

Section 201(2), in part:

> … the Board may not make a periodic payment to a worker under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] if the worker ceases to have the disability for which the periodic payment is to be made.

Section 233:

> (1) In setting the amount of a periodic payment of compensation to a worker, the Board must consider payments, allowances or benefits that the worker may receive from the worker's employer during the period of the worker's disability, including a pension, gratuity or other allowance provided wholly at the expense of the employer.
>
> (2) An amount deducted under this section from the compensation otherwise payable to a worker may be paid to the worker's employer out of the accident fund.

POLICY

1. GENERAL

Temporary partial disability wage-loss benefits are paid in the same manner as temporary total disability wage-loss benefits.

The Board calculates wage-loss benefits on the basis of a worker's "average net earnings". The determination of average net earnings is dealt with by policy in Chapter 9.

The Board decides whether wage-loss benefits are payable, the duration of those payments, and their amount. The Board follows the procedures and rules of evidence set out by policy in Chapter 12 to make these decisions.

2. PAYING WAGE-LOSS BENEFITS

Wage-loss benefits usually commence shortly after the initial acceptance of a claim, and may be for total disability under section 191 or partial disability under section 192.

If a temporary disability results from a worker's injury, compensation is payable from the first working day following the day of the injury.

Payments of wage-loss benefits are usually made every two weeks. The cheques are mailed to the worker's home address or, if the worker elects, directly to the worker's bank by electronic direct bank deposit. If a payment has been lost or stolen, or otherwise not received or cashed by the worker, the worker may request a reissue of the payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

If a worker disagrees with the amount of wage-loss benefits and returns the cheque, or refuses to accept the cheque, the Board does not negotiate regarding the acceptance of the cheque. In such circumstances the worker is notified of the right to request a review from the Review Division with regard to the matter on the claim to which there is an objection. This policy also applies to those cases where a worker has elected to receive the wage-loss benefit cheque by electronic direct bank deposit.

3. REIMBURSING EMPLOYERS FOR AMOUNTS DEDUCTED FROM COMPENSATION

The *Act* permits the Board to reimburse the employer for any amount deducted from a worker's periodic payments for which the employer has paid the worker, under section 233(2). The section is permissive, not mandatory.

Section 233(2) does not require the Board to deduct from a worker's wage-loss benefits every payment the employer makes to the worker, nor to pay the employer any amounts deducted as a result of payments an employer makes to the worker during a worker's period of temporary disability. The *Act* requires only that the Board consider the matter.

In general, the Board reimburses an employer who continues paying full wages to a worker in an amount equal to the compensation that would otherwise be paid to the worker. No payment is made to the employer for the difference between the amount of compensation and the worker's regular salary.

One exception is for the Federal Government. The Board does not reimburse the Federal Government under section 233(2) if it is the injury employer. If the Federal Government is not continuing to pay full salary to the worker, the Board pays the wage-loss benefits to the worker.

If a claim is reopened and the worker is carried on full salary by a different employer than the injury employer, the new employer is reimbursed to the same extent as the injury employer would have been. This applies even though the injury or new employer is an agency or department of the Federal Government.

If an employer has any outstanding liability to the Board for assessments, the amount of the liability is deducted from any payments made to the employer.

3.1 No Reimbursement of Vacation Pay or Termination Pay

If a vacation period or statutory holiday occurs while an employer continues to pay the full wages of a worker entitled to wage-loss benefits, the Board continues to reimburse the employer the wage-loss benefit amounts to which the worker would otherwise be entitled.

The Board does not deduct a worker's termination of employment payment required by law (legislative or contractual) from a worker's temporary disability wage-loss benefits. As such, the Board does not reimburse the employer for the termination payments under section 233(2). This is because the termination payment required by law is not a voluntary payment by the employer.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 233 of the *Act*.
CROSS REFERENCES:	Item C5-33.00, *Introduction to Compensation for Temporary Disability*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	This policy consolidates former policy items #34.40, #34.60, and #35.40, and includes concepts from former policy items #33.00 and #34.41, of the *Rehabilitation Services & Claims Manual*, Volume II, consequential to reformatting and renumbering the policies in Chapter 5. Former policy item #34.40 had the statement deleted that no refund will be made to the employer where the employer continues to pay 25% or less of the worker's salary during the disability, on December 1, 2010. Former policy item #34.60 had references to Board officers deleted, and references to funds transfers included, on June 1, 2009; and references to the Review Division included on March 3, 2003.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

RE: Wage-Loss Benefits and Retirement Date **ITEM: C5-34.20**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the determination of a worker's retirement date for the purposes of the duration of the wage-loss benefits decision under section 201.

2. The Act

Section 201:

(1) Subject to subsection (2), periodic payment of compensation under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] may be paid to an injured worker only as follows:

(a) if the worker is under 63 years of age on the date of the injury, until the later of the following:

(i) the date the worker reaches 65 years of age;

(ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board;

(b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:

(i) 2 years after the date of the injury;

(ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.

(2) As a restriction on subsection (1), the Board may not make a periodic payment to a worker under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] if the worker ceases to have the disability for which the periodic payment is to be made.

(3) A determination made under subsection (1)(a)(ii) as to a date on which a worker would retire after reaching age 65 may be made after a worker has

reached age 63, and the Board may, when making the determination, consider the worker's circumstances at the time of that determination.

3. Workers Compensation Amendment Act, 2020 (Bill 23 of 2020)

Section 36:

> A determination may be made under section 201(3) of the *Workers Compensation Act*, as added by section 18 of this Act, whether or not a determination has been made under section 201(1) of that Act before the date section 18 of this Act comes into force [January 1, 2021].

POLICY

1. GENERAL

The duration of wage-loss benefits may be affected by the worker's age at the date of injury.

For the purposes of temporary disabilities, section 201(1) provides for the payment of wage-loss benefits:

- if a worker is under 63 years of age on the date of the injury, until the date the worker reaches 65 years of age, or
- if a worker is 63 years of age or older on the date of the injury, until two years after the date of the injury.

If the Board is satisfied a worker would retire after these dates, section 201(1) permits the Board to continue to pay wage-loss benefits to the date the worker would retire if the worker had not been injured.

For the purpose of this policy, a worker is generally considered to be retired when the worker substantially withdraws from the workforce and receives retirement income from one or more retirement-like sources (e.g., CPP, OAS, employer pension plan, RRSP or other personal savings).

2. EVIDENCE

As age 65 is the established retirement date under the *Act* if a worker is under age 63 on the date of injury, to continue to pay wage-loss benefits after the age of 65, the evidence must support a finding that the worker would work past age 65. Evidence is also required so that the Board can establish the worker's retirement date for the purposes of concluding wage-loss benefits payments. The standard of proof under section 339(3) is "at least as likely as not" as described in policy item #97.00.

The issue for the Board to determine is whether it is “at least as likely as not” that the worker would have retired after age 65 if the injury had not occurred. The Board considers the worker’s statement of intention to retire after age 65, but must determine whether it is “at least as likely as not” that the worker would have retired later than age 65. The Board may consider the worker's circumstances at the time of that determination. This means the Board may consider pre- and post-injury evidence to establish the date the worker would retire.

However, post-injury circumstances that happened only because of the injury are not relevant to determining when the worker would have retired if the injury had not occurred. Post-injury circumstances are relevant if they would have occurred even if the worker had not been injured.

When determining whether a worker would retire after age 65, the weight the Board gives to the types of evidence will vary with the circumstances of each claim. The following are examples of the kinds of evidence the Board may consider:

- names of the employer or employers, a description of the type of employment, the expected duration of employment, and information from the identified employer or employers to confirm their intention to employ the worker after the worker reached age 65 and that employment would be available;
- a statement from a bank or financial institution outlining a financial plan and post-age 65 retirement date;
- an accountant’s statement verifying a long-term business plan (for self-employed workers), indicating continuation of work beyond age 65;
- information provided from the worker’s employer, union or professional association regarding the normal retirement age for workers in the same occupation and whether there are incentive plans for workers working beyond age 65;
- information from the employer about whether the worker would be covered under a pension plan provided by the employer, and the terms of that plan;
- information from the employer or union on whether there was or is a collective agreement in place setting out the normal retirement age;
- information regarding whether the worker would have the capacity to perform the work;
- financial obligations of the worker, such as a mortgage or other debts;

- family commitments and/or circumstances of the worker; and
- an outstanding lease on a commercial vehicle (for self-employed workers).

This is not a conclusive list of the types of evidence that may be considered. The Board will consider any other relevant information in determining whether a worker would work past age 65 and at what date the worker would retire.

If a worker is 63 years of age or older on the date of the injury, the established retirement date under the *Act* is two years after the date of injury. In these cases, the issue for the Board to determine is whether it is "at least as likely as not" that the worker would have retired later than two years after the date of injury if the injury had not occurred. The Board applies the same evidentiary principles to this determination as for workers who are under age 63 at the date of injury, in particular, the Board may consider pre- and post-injury evidence to establish the date the worker would retire.

3. WHEN DETERMINATION IS MADE

In most cases, the determination of a worker's retirement date is made as part of the decision regarding the duration of permanent disability benefits under section 201.

In some circumstances, the determination of a worker's retirement date may be made prior to the decision on the duration of permanent disability benefits, when the determination is made as part of a decision on the duration of the worker's wage-loss benefits. In these cases, the retirement date in the decision on the duration of wage-loss benefits will also apply to the resulting permanent disability benefits, if provided.

The determination of a worker's retirement date for the purposes of the duration of wage-loss benefits decision under section 201 is made once, unless section 36 of the *Workers Compensation Amendment Act, 2020*, applies. Under section 36, another determination may be made after the worker has reached age 63 if:

- the worker was under 63 years of age on the date of injury,
- a previous determination was made under section 201(1) before January 1, 2021, and
- the worker has not reached the date of retirement as previously determined by the Board.

4. WHEN PAYMENTS CONCLUDE

At the worker's date of retirement, as determined by the Board, wage-loss benefits will conclude even if the worker's temporary disability remains.

EFFECTIVE DATE: January 1, 2024
AUTHORITY: Section 201 of the *Act*.
CROSS REFERENCES: Policy item #97.00, *Evidence*;
Item C6-41.00, *Duration of Permanent Disability Periodic Payments*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: January 1, 2024 – Amended to revise the interpretation of "would retire" in section 201 and add additional guidance for workers 63 and older at the date of injury. This policy replaces the retirement date language from former policy item #35.30, consequential to reformatting and renumbering the policies in Chapter 5.
February 1, 2022 – Housekeeping change to former policy item #35.30 to correct legislative wording.
January 1, 2021 – Former policy item #35.30 amended to reflect amendment to retirement age determination provision of the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), and to update references to the *Act* consequential to implementing the permanent partial disability benefits provisions of Bill 23 of 2020.
April 6, 2020 − Housekeeping changes to former policy item #35.30 consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
February 1, 2020 – former policy item #35.30 amended to provide guidance on legal issues of standard of proof, evidence, and causation.
APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2024.

RE: Introduction to Return to Work Obligations **ITEM: C5-35.00**

BACKGROUND

1. Explanatory Notes

This policy outlines key terms and provides an overview of the return to work obligations established for workers, employers, and the Board under sections 154.1 to 154.6 of the *Act*.

In addition to the obligations created by the *Act*, and outlined in this policy, all employers have an obligation to comply with human rights legislation to accommodate workers with disabilities. This obligation is set out in British Columbia's *Human Rights Code*, and for federally regulated employers, in the *Canadian Human Rights Act*.

2. The Act

Section 154.1:

> (1) In this Division [Division 3.1 of Part 4 of the *Act* – Return to Work and Other Duties in Relation to Injured Workers], **"injury"** includes an occupational disease and a mental disorder.
>
> (2) This Division [Division 3.1 of Part 4 of the *Act* – Return to Work and Other Duties in Relation to Injured Workers] applies in relation to an employer and a worker of the employer if, because of an injury that arose out of and in the course of the worker's employment, the worker has been disabled from earning full wages at the work at which the worker was employed at the time of the injury.

Section 154.2(6):

> If a worker fails to comply with subsection (2) [setting out the worker's duty to cooperate], the Board may reduce or suspend payments of compensation to the worker until the worker complies.

Section 154.3, in part:

> (1) Except as provided in subsection (2), this section applies in relation to an employer and a worker of the employer if the worker has been employed by the employer, on a full- or part-time basis, for a continuous period of at least 12 months before the date the worker was injured.

(2) This section does not apply in relation to the following:

(a) a person who is a worker only because the person is deemed under the Act to be a worker;

(b) an employer who regularly employs fewer than 20 workers;

(c) a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.

…

Section 154.5(1):

The Board may, by notice sent to an employer, impose on the employer an administrative penalty determined by the Board if the Board is satisfied on a balance of probabilities that the employer has failed to comply with a provision of section 154.2 *[duty to cooperate]* or 154.3 *[duty to maintain employment]*.

POLICY

1. KEY TERMS IN RETURN TO WORK OBLIGATIONS

The following terms are used throughout this Chapter.

1.1 Accommodation and Undue Hardship

Accommodation is the process of changing the work and/or the workplace to be consistent with the worker's functional abilities.

Under the duty to maintain employment, the employer must accommodate the worker to the point of undue hardship.

Undue hardship is the point at which it is too difficult, too expensive, or unsafe for the employer to accommodate the worker, which is determined based on the relevant facts and circumstances of each case.

1.2 Alternative Work

Alternative work is a job that is different from, but comparable to, the worker's pre-injury work and wages from that work.

Under the duty to maintain employment, once a worker is fit to carry out the essential duties of their pre-injury work, the employer has an obligation to offer to return the worker to either their pre-injury work, or to alternative work.

1.3 Suitable Work

Suitable work is work that is safe, productive, and consistent with the worker's functional abilities and skills. Suitable work arrangements may involve duties different from the pre-injury work, or some modification of the pre-injury duties and/or hours of work.

Under the duty to cooperate, the employer must identify suitable work that, if possible, restores the worker's full wages from their pre-injury work, and, where reasonable, make the suitable work available to the worker. If requested by the employer, the worker must assist in identifying suitable work. The duty to cooperate also requires the worker to not unreasonably refuse suitable work, whether it has been made available by the injury employer or another employer.

Under the duty to maintain employment, where a worker is not fit for the essential duties of their pre-injury work, the employer must offer the first suitable work that becomes available.

The terms suitable work and suitable occupation are both used in the *Act*, and in some circumstances the meanings of these terms overlap. Where a worker's disability is temporary, suitable work will generally be considered a suitable occupation for the purposes of determining entitlement under section 192 (see policy in Item C5-33.20, *Wage-Loss Benefits During Temporary Partial Disability*). However, where a worker's disability is permanent, suitable occupation includes a focus on the reasonable availability of the work over the long term, and on maximizing the worker's long-term earnings potential (see policy in Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*). These considerations are not requirements for the purposes of suitable work.

2. GENERAL

The Board recognizes the value of maintaining an injured worker's positive connection to the workplace. Collaboration between workers and employers, and timely intervention from the Board where required, are essential components to successful recovery and return to work outcomes, and help minimize the disruptive impact of workplace injuries on workers and employers. Sections 154.2 [duty to cooperate] and 154.3 [duty to maintain employment] set out the obligations of workers, employers, and the Board to assist injured workers in their return to, or continuation of, work.

The obligations under sections 154.2 and 154.3 apply only if the worker has been disabled from earning full wages at the worker's pre-injury work because of an injury arising out of and in the course of employment. For the purpose of these obligations, employer means the injury employer, unless otherwise specified. Injury includes an occupational disease and a mental disorder.

This policy introduces the concepts and obligations under the duty to cooperate and the duty to maintain employment, and should be read in conjunction with those policies.

See policy in Items C5-35.10, *Duty to Cooperate*, C5-35.20, *Duty to Maintain Employment*, and C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*.

3. DUTY TO COOPERATE

Section 154.2 creates a duty for all employers and workers to cooperate in the timely and safe return to, or continuation of, work (see policy in Item C5-35.10, *Duty to Cooperate*).

The employer must cooperate by contacting and maintaining communication with the worker, identifying suitable work, and providing the Board with relevant information regarding the worker's return to, or continuation of, work. The employer must also cooperate with the worker and the Board by, where reasonable, making available the suitable work it has identified.

The worker must cooperate by contacting and maintaining communication with the employer, assisting with identification of suitable work if requested by the employer, and providing the Board with relevant information regarding their return to, or continuation of, work.

The worker must also cooperate with the Board by not unreasonably refusing suitable work when it has been made available by the injury employer, or by another employer.

4. DUTY TO MAINTAIN EMPLOYMENT

Section 154.3 creates a duty for some employers, in certain situations, to maintain the employment of an injured worker (see policy in Item C5-35.20, *Duty to Maintain Employment*). Generally, an employer has a duty to maintain employment of a worker if:

- the worker has been employed by the employer for a continuous period of at least 12 months; and
- the employer regularly employs 20 or more workers.

Depending on the circumstances, maintaining employment may involve returning the worker to their pre-injury work, providing alternative work, or providing suitable work.

The duty to maintain employment includes an obligation on the employer to make any change to the work and/or the workplace necessary to accommodate an injured worker, to the point of undue hardship.

5. CONCURRENT DUTIES

Employers with a duty to maintain employment also have a duty to cooperate.

6. CONSEQUENCES FOR FAILURE TO COMPLY WITH OBLIGATIONS

Where a worker fails to comply with the obligations under the duty to cooperate, the Board may reduce or suspend the worker's compensation under section 154.2(6) (see policy in Item C5-35.10, *Duty to Cooperate*).

Where an employer fails to comply with the obligations under either the duty to cooperate or the duty to maintain employment, the Board may levy an administrative penalty under section 154.5. The process for imposing administrative penalties is outlined in policy in Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Division 3.1 of the *Act*.
CROSS REFERENCES:	Item C5-33.20, *Wage-Loss Benefits During Temporary Partial Disability*; Item C5-35.10, *Duty to Cooperate*; Item C5-35.20, *Duty to Maintain Employment*; Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*; Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 – Policy created to implement Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

RE: Duty to Cooperate **ITEM: C5-35.10**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the worker and employer's duty to cooperate in the worker's timely and safe return to, or continuation of, work.

In addition to the obligations imposed by section 154.2 of the *Act,* and outlined in this policy, all employers have an obligation to comply with human rights legislation to accommodate workers with disabilities. This obligation is set out in British Columbia's *Human Rights Code*, and, for federally regulated employers, in the *Canadian Human Rights Act*.

2. The Act

Section 154.1:

See Item C5-35.00, *Introduction to Return to Work Obligations*.

Section 154.2:

(1) An employer must cooperate with a worker and the Board in the worker's early and safe return to, or continuation of, work by doing the following:

(a) subject to subsection (3), contacting the worker as soon as practicable after the worker is injured and maintaining communication with the worker;

(b) identifying suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work;

(c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;

(d) any other thing required by the Board.

(2) A worker must cooperate with an employer and the Board in the worker's early and safe return to, or continuation of, work by doing the following:

(a) subject to subsection (3), contacting the employer as soon as practicable after the worker is injured and maintaining communication with the employer;

(b) on request of the employer, assisting the employer to identify suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work;

(c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;

(d) any other thing required by the Board.

(3) The obligations referred to in subsections (1) (a) and (2) (a) do not apply if, having regard to all of the circumstances, contact and communication between the employer and the worker are likely to imperil or delay the worker's recovery.

(4) The Board must determine whether an employer or worker has failed to comply with this section if

(a) the employer or worker notifies the Board of a dispute regarding compliance, and

(b) the dispute cannot otherwise be resolved.

(5) A determination under subsection (4) must be made within 60 days after the Board is notified of the dispute or within a longer period that the Board may determine.

(6) If a worker fails to comply with subsection (2), the Board may reduce or suspend payments of compensation to the worker until the worker complies.

Section 154.4:

(1) If section 154.2 or 154.3 conflicts with a term of a collective agreement that is binding on an employer in relation to a worker, the section in conflict prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement.

(2) Subsection (1) of this section does not operate to displace a term of the collective agreement that deals with seniority.

Section 154.5(1):

> See Item C5-35.00, *Introduction to Return to Work Obligations*.

Section 191(1):

> Subject to subsection (2), if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

Section 192(1):

> Subject to subsection (2), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
>
> (a) the worker's average net earnings before the injury, and
>
> (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
>
> (i) the average net earnings that the worker is earning after the injury;
>
> (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

POLICY

1. GENERAL

The Board supports timely and safe return to, or continuation of, work as an important component of a worker's rehabilitation, and recognizes the value of maintaining an injured worker's positive connection to the workplace.

2. WHEN DUTY TO COOPERATE APPLIES

The duty to cooperate under section 154.2 of the *Act* applies to an employer and a worker of the employer if, because of an injury that arose out of and in the course of the worker's employment, the worker has been disabled from earning full wages at the work at which the worker was employed at the time of the injury. In this policy, employer means the injury employer, unless otherwise specified. Injury includes an occupational disease and a mental disorder.

The duty to cooperate applies to an employer regardless of whether the duty to maintain employment under section 154.3 applies.

Where section 154.2 conflicts with a term of a collective agreement governing the relationship between the worker and the employer, section 154.2 prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement. However, this does not displace a term of the collective agreement that deals with seniority.

3. DUTY TO COOPERATE

The employer and the worker must cooperate with each other and with the Board in the worker's early and safe return to, or continuation of, work.

The employer must cooperate by:

- contacting the worker as soon as practicable after the worker is injured. As soon as practicable means as soon as is reasonably capable of being done.
- maintaining communication with the worker. This means maintaining communication during the worker's recovery, as appropriate in the circumstances.
- identifying suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work.
- providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work.

The worker must cooperate by:

- contacting the employer as soon as practicable after the worker is injured. As soon as practicable means as soon as is reasonably capable of being done.
- maintaining communication with the employer. This means maintaining communication during the worker's recovery, as appropriate in the circumstances.
- on request of the employer, assisting the employer to identify suitable work that, if possible, restores the full wages the worker was earning at the worker's pre-injury work.
- providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work.

Sections 154.2(1)(d) and 154.2(2)(d) enable the Board to create any other requirements of an employer or a worker to elicit their cooperation with each other and with the Board in the worker's early and safe return to, or continuation of, work. For the purposes of these sections, the Board requires:

- the employer to cooperate with the worker and Board by, where reasonable, making available suitable work the employer has identified; and

- the worker to cooperate with the Board by not unreasonably refusing suitable work when it has been made available by any employer, which generally means an employer with whom the worker has an existing employment relationship.

The worker and the employer do not have to contact or maintain communication with each other if, having regard to all of the circumstances, the contact and communication are likely to imperil or delay the worker's recovery.

4. SUITABLE WORK

4.1 Suitable Work – General

Suitable work is work that is safe, productive, and consistent with the worker's functional abilities and skills. More specifically:

- The work must be safe, in that it does not pose a health and safety risk to the worker (i.e., it will neither harm the worker nor slow recovery) or to others.

- The work must be productive; token or demeaning tasks are considered detrimental to the worker's rehabilitation.

- The work must be within the worker's functional abilities and medical restrictions.

- The worker has, or is reasonably able to acquire, the necessary skills, competencies, or qualifications to perform the work.

Suitable work arrangements may involve duties different from the pre-injury work, or some modification of the pre-injury duties and/or hours of work. Consultation with the worker, employer, physicians, qualified practitioners and/or other recognized health care professionals, and the union may be part of identifying suitable work.

4.2 Suitable Work – Duty to Cooperate

The successful development of suitable work arrangements depends on the cooperation of all parties in the workplace. If possible, suitable work should restore the full wages the worker was earning at the worker's pre-injury work.

Suitable work can be made available by the employer on, or soon after, the date of injury, or after the worker has participated in some form of medical treatment or rehabilitation. The worker must not unreasonably refuse suitable work when it has been made available by any employer.

In cases where the worker is not fit to work, or no suitable work is identified or is currently available, the worker and the employer are expected to maintain regular communication, as appropriate, in preparation for a future return to work.

5. DURATION OF THE DUTY TO COOPERATE

The worker and the employer's duty to cooperate in the worker's timely and safe return to, or continuation of, work begins from the date of injury and continues throughout the worker's claim.

Where there is no longer an employment relationship between the worker and the employer, the worker continues to have a duty to cooperate with the Board.

6. BOARD INVOLVEMENT

The worker and the employer are encouraged to work together to resolve disputes regarding compliance with the duty to cooperate.

If the worker or the employer notifies the Board of a dispute which cannot otherwise be resolved, the Board must determine if the worker and/or the employer failed to comply with the duty to cooperate. The Board must make a determination within 60 days after the Board is notified of the dispute, or within a longer period that the Board may determine.

The Board may also determine compliance on its own initiative at any time.

6.1 Board Determinations – Suitable Work and Reasons for Refusal

Where the worker refuses work the employer has made available, the Board first examines whether the work meets the criteria for suitable work. The Board's determination is based on, but not limited to, a detailed description of the work that has been made available, the work requirements, and information outlining the worker's functional abilities and medical restrictions.

Where a worker refuses suitable work, the Board considers the reasons for refusal and determines if they are reasonable. In making this determination, the Board considers the requirements of the work, evidence regarding the worker's functional abilities and medical restrictions, and additional factors or evidence relevant to the case, including but not limited to, transportation and dependant care.

Transportation or dependant care issues may be considered if they impact the worker's ability to accept suitable work due to the workplace injury or a change in the hours and/or location of the work an employer has made available, including (but not limited to) where:

- the ability of the worker to commute to the suitable work location is significantly impacted;

- the distance the worker must travel to get to the suitable work location is significantly greater than the distance to the pre-injury work location; or

- dependant care arrangements would be significantly different from the pre-injury arrangements.

If a worker is working towards an employment objective under a rehabilitation plan, the worker is not expected to accept lower paying suitable work in the interim, if the worker is cooperating in good faith and taking the suitable work would negatively compromise the rehabilitation plan. In these cases, a refusal of suitable work will generally not be considered unreasonable.

Where there is a dispute about whether the work that has been made available is within the worker's functional abilities or medical restrictions, failing to provide details of the work duties to the physician, qualified practitioner, or other recognized health care professional will generally be considered an unreasonable refusal.

Where the Board determines the worker's refusal of suitable work is reasonable, this will not be considered a failure to comply with the duty to cooperate.

7. CONSEQUENCES FOR FAILURE TO COMPLY WITH THE DUTY TO COOPERATE

Failure to comply with the duty to cooperate may result in:

- a reduction or suspension of the worker's compensation payments under section 154.2(6), or

- an administrative penalty on the employer under section 154.5 and as outlined in policy in Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*.

7.1 Reduction or Suspension of Benefits

If the Board determines the worker failed to comply with the duty to cooperate, the Board may reduce or suspend the worker's compensation payments under section 154.2(6). The Board must, in all cases, make the worker aware of the reasons for the reduction or suspension of compensation payments.

Generally, when compensation payments are reinstated following a period of reduction or suspension, the payments are reinstated prospectively from the date the worker started complying with the obligations under the duty to cooperate.

7.1.1 Reduction of Benefits for Failure to Comply with Obligation to Not Unreasonably Refuse Suitable Work

The worker has a duty to not unreasonably refuse suitable work when it has been made available by any employer.

If the Board determines the worker's refusal of suitable work is not reasonable, this will generally be considered a failure to comply with the duty to cooperate, and the Board may reduce compensation payments to the worker.

The Board reduces the worker's compensation payments based on the principles of section 192 where the worker's disability is temporary. Compensation payments are generally reduced effective the date the work was suitable and available, as determined by the Board.

Where the worker's disability is temporary, and the worker refuses suitable work for reasons that do not constitute a failure to comply with the duty to cooperate (such as, withdrawing from the workforce for non-compensable health issues) the Board determines benefit entitlement under section 192 (see policy in Item C5-33.20, *Wage-Loss Benefits During Temporary Partial Disability*).

If the worker no longer has a temporary disability, and is receiving compensation under section 155, the reduction of compensation payments is determined in accordance with policy in Item C11-88.00, *Vocational Rehabilitation – Nature and Extent of Programs and Services*.

7.1.2 Suspension of Benefits for Failure to Comply with Other Obligations

This section applies if the worker fails to comply with the following duty to cooperate obligations:

- contacting the employer as soon as practicable after the worker is injured;
- maintaining communication with the employer;
- on request of the employer, assisting the employer to identify suitable work that, if possible, restores the full wages the worker was earning at the worker's pre-injury work; and
- providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work.

The Board does not suspend compensation payments if the worker has taken all reasonable steps to comply. This involves consideration of what a reasonable person would have done in the circumstances.

Before compensation payments are suspended, the Board:

- informs the worker about the duty to cooperate and identifies the specific obligation(s) with which the worker is failing to comply.
- provides the worker with a reasonable opportunity to comply.

If the worker remains non-compliant, the Board issues a decision informing the worker that compensation payments are suspended due to failure to comply with the duty to cooperate. The suspension commences as of the date of the Board's decision.

7.2 Administrative Penalty

If the employer fails to comply with its obligations under the duty to cooperate, the Board may impose an administrative penalty on the employer under section 154.5 in accordance with policy in Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*.

The Board generally does not impose an administrative penalty if the employer has taken all reasonable steps to comply. This involves consideration of what a reasonable person would have done in the circumstances.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 154.1, 154.2, and 154.4 of the *Act*.
CROSS REFERENCES:	Item C5-33.20, *Wage-Loss Benefits During Temporary Partial Disability;* Item C5-35.00, *Introduction to Return to Work Obligations*; Item C5-35.20, *Duty to Maintain Employment*; Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*; Item C10-83.00, *Transportation*; Item C10-83.10, *Subsistence Allowances*; Item C11-88.00, *Vocational Rehabilitation – Nature and Extent of Programs and Services* of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 – Policy created to implement Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). Section 154.2 comes into effect on January 1, 2024, and applies as set out in section 13 of Bill 41.
APPLICATION:	Applies to all decisions made on or after January 1, 2024, in relation to a worker who sustained an injury (as defined in section 154.1(1) of the *Act*) on or after January 1, 2022, except that for injuries sustained before January 1, 2024, policy on the obligation to contact referred to in sections 154.2(1)(a) and (2)(a) of the *Act* applies as soon as practicable after January 1, 2024 and not as soon as practicable after the worker is injured.

RE: Duty to Maintain Employment **ITEM: C5-35.20**

BACKGROUND

1. Explanatory Notes

This policy provides guidance regarding an employer's duty to maintain employment.

In addition to the obligations imposed by section 154.3 of the *Act,* and outlined in this policy, all employers have an obligation to comply with human rights legislation to accommodate workers with disabilities. This obligation is set out in British Columbia's *Human Rights Code*, and for federally regulated employers, in the *Canadian Human Rights Act*.

2. The Act

Section 154.1:

See Item C5-35.00, *Introduction to Return to Work Obligations*.

Section 154.3:

(1) Except as provided in subsection (2), this section applies in relation to an employer and a worker of the employer if the worker has been employed by the employer, on a full- or part-time basis, for a continuous period of at least 12 months before the date the worker was injured.

(2) This section does not apply in relation to the following:

(a) a person who is a worker only because the person is deemed under the Act to be a worker;

(b) an employer who regularly employs fewer than 20 workers;

(c) a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.

(3) If a worker is fit to work but not fit to carry out the essential duties of the worker's pre-injury work, an employer must offer to the worker the first suitable work that becomes available.

(4) If a worker is fit to carry out the essential duties of the worker's pre-injury work, an employer must

(a) offer that pre-injury work to the worker, or

(b) offer to the worker alternative work of a kind and at wages that are comparable to the worker's pre-injury work and wages from that work.

(5) An employer must, to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker.

(6) An employer's obligations under this section end as follows:

(a) all of the employer's obligations under this section end on the second anniversary of the date a worker is injured if the worker has not returned to work by that date;

(b) the employer's obligation under subsection (4) ends on the second anniversary of the date a worker is injured if, by that date, the worker is carrying out suitable work.

(7) The Board must, if an employer and a worker disagree with each other, determine

(a) whether the worker is fit to carry out suitable work or fit to carry out the essential duties of the worker's pre-injury work, and

(b) whether suitable work is available.

(8) If an employer terminates a worker's employment within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work, the employer is deemed to have failed to comply with subsection (3) or (4), as applicable.

(9) Subsection (8) does not apply if the employer can establish, to the Board's satisfaction, that the termination was unrelated to the worker's injury.

(10) The Board must, on the request of a worker, determine whether an employer has failed to comply with this section.

(11) The Board is not required to consider a request under subsection (10) if

(a) the Board considers the request has no merit, or

(b) both of the following apply:

(i) the worker's employment is terminated within 6 months after the worker begins to carry out suitable work or begins to

carry out the essential duties of the worker's pre-injury work or alternative work;

(ii) the request is made more than 3 months after the worker's employment is terminated.

(12) The Board may pay to a worker, for a period of up to one year, an amount equal to the compensation to which the worker was entitled under section 191 *[temporary total disability]* or 192 *[temporary partial disability]*, as applicable, if

(a) an employer has failed to comply with this section, and

(b) the worker is no longer entitled to the compensation under section 191 or 192.

Section 154.4:

(1) If section 154.2 or 154.3 conflicts with a term of a collective agreement that is binding on an employer in relation to a worker, the section in conflict prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement.

(2) Subsection (1) of this section does not operate to displace a term of the collective agreement that deals with seniority.

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 191(1):

Subject to subsection (2), if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

Section 192(1):

Subject to subsection (2), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the worker's average net earnings before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

POLICY

1. GENERAL

Section 154.3 provides some employers have a duty to maintain the employment of an injured worker when certain conditions are met. Depending on the circumstances, maintaining employment may involve returning the worker to their pre-injury work, providing alternative work, or providing suitable work. The duty to maintain employment includes making any change to the work or workplace necessary to accommodate a worker to the point of undue hardship.

The duty to maintain employment is in addition to an employer's duty to cooperate under section 154.2.

Where section 154.3 conflicts with a term of a collective agreement governing the relationship between the worker and the employer, section 154.3 prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement. However, this does not displace a term of the collective agreement that deals with seniority.

2. WHEN DUTY TO MAINTAIN EMPLOYMENT APPLIES

The duty to maintain employment under section 154.3 applies in relation to an employer and a worker of the employer if, because of an injury that arose out of and in the course of the worker's employment, the worker has been disabled from earning full wages at the work at which the worker was employed at the time of the injury. In this policy, employer means the injury employer. Injury includes an occupational disease and a mental disorder.

In this situation, the employer has a duty to maintain employment of a worker if:

- the worker has been employed by the employer, on a full- or part-time basis, for a continuous period of at least 12 months before the date the worker was injured; and

- the employer regularly employs 20 or more workers.

The duty to maintain employment does not apply to:

- a person who is a worker only because the person is deemed under sections 5, 6, or 7 of the *Act* to be a worker; or
- a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.

No class of employers or workers, and no industry or class of industries have been excluded from the application of these sections by the Lieutenant Governor in Council.

2.1 Continuous Employment for at Least 12 Months

In order for the employer to have a duty to maintain employment, the worker must have been employed with the employer for a period of at least 12 months before the date of injury (on a full- or part-time basis).

A worker employed by the employer for 12 months or more before the date of injury is considered to be continuously employed, unless that 12-month period was interrupted by a work cessation that severed the employment relationship.

Generally, for the duty to maintain employment, work cessations that do not sever the employment relationship include, but are not limited to:

- compensable injuries, mental disorders, or occupational diseases resulting in time off work;
- layoffs of less than three months;
- layoffs of more than three months, if the recall date was stipulated, and the recall occurs;
- sabbaticals, sick leaves, parental leaves, leaves of absence, and vacations; or
- strikes and lock-outs.

2.1.1 Workers with a Recurring Pattern of Employment Contracts

A worker with a recurring pattern of employment contracts with the employer is considered to be continuously employed where:

- There is a demonstrated pattern of extending or renewing the worker's employment over a period of at least 12 months before the date of injury; and

- The evidence does not show that the employment was officially severed with no intention to rehire the worker in the future.

The recurrence of the contracts may be consecutive, seasonal, or with minor breaks between periods of employment.

2.2 Employer Regularly Employs 20 or More Workers

Generally, the number of workers employed by the employer in British Columbia on the date of injury is considered the number of workers regularly employed. The Board may reference the number of workers reported by the employer in the most recent year to the Canada Revenue Agency.

All workers whose earnings must be reported to the Board for assessment purposes are included when determining the number of workers regularly employed.

3. DUTY TO MAINTAIN EMPLOYMENT

The nature of the employer's obligations under the duty to maintain employment depend on whether the worker is fit to carry out the essential duties of the pre-injury work or fit to work in some other capacity.

Essential duties are the duties necessary to achieve the intended outcome of the job. Factors to be considered in determining essential duties include, but are not limited to:

- how often each duty is undertaken;
- the proportion of time spent on each duty;
- the effect on the job outcome if a duty is removed;
- the effect on the work process before or after a duty, if a duty is removed;
- the current job description;
- whether the duty is critical to safety; and
- the normal productivity expected in the job (rate, range, or level of production or service expected for the job).

3.1 Worker Fit for Essential Duties

When the worker is fit to carry out the essential duties of their pre-injury work, the employer must offer the worker:

- the pre-injury work, with or without accommodation; or

- alternative work, with or without accommodation, that is comparable to the worker's pre-injury work and wages.

3.1.1 Pre-Injury Work

In some cases, the worker is fit to carry out the essential duties of their pre-injury work without accommodation. In other cases, the worker's functional abilities may impact the worker's performance of an essential duty, or may limit the worker's rate, range, or level of production. If changes to the work and/or the workplace would allow the worker to perform the duty or duties in question, the employer must accommodate the worker to the point of undue hardship.

3.1.2 Alternative Work

Alternative work is a job that is different from, but comparable to, the worker's pre-injury work and wages from that work.

When determining if the alternative work offered is comparable to the pre-injury work, the Board may consider a number of factors in addition to wages, including:

- job duties;
- skills, qualification and experience required;
- degree of physical and cognitive effort required;
- level of responsibility and supervision of other workers;
- rights and privileges associated with the position;
- bargaining unit status;
- geographic location of the alternative worksite;
- hours of work, working conditions, and right to work overtime;
- opportunities for advancement;
- employee benefits including vacation, health care, life insurance and pension benefits; and
- any other factor the Board considers relevant in a particular circumstance.

3.2 Worker Not Fit for Essential Duties

Where the worker is not fit to carry out the essential duties of their pre-injury work (with or without accommodation) but is fit to work in some capacity, the employer must offer the worker the first suitable work that becomes available.

3.2.1 Suitable Work – General

Suitable work means work that is safe, productive, and consistent with the worker's functional abilities and skills. More specifically:

- The work must be safe, in that it does not pose a health and safety risk to the worker (i.e., it will neither harm the worker nor slow recovery) or to others.
- The work must be productive; token or demeaning tasks are considered detrimental to the worker's rehabilitation.
- The work must be within the worker's functional abilities and medical restrictions.
- The worker has, or is reasonably able to acquire, the necessary skills, competencies, or qualifications to perform the work.

Suitable work arrangements may involve duties different from the pre-injury work, or some modification of the pre-injury duties and/or hours of work. Consultation with the worker, employer, physicians, qualified practitioners and/or other recognized health care professionals, and the union may be part of identifying suitable work arrangements.

3.2.2 Suitable Work – Duty to Maintain Employment

Suitable work may be offered while the worker is temporarily disabled or after the worker's condition has stabilized as a permanent condition.

If the Board determines the work offered is not suitable work, the employer must offer to the worker the first suitable work that becomes available.

In determining if suitable work is available with the employer, the Board may consider, among other things, the employer's recruitment activities and patterns on or after the date the worker is fit for suitable work (e.g., job postings, vacancies, or evidence of hirings or transfers).

If the worker unreasonably refuses an offer of suitable work, the Board determines whether the worker failed to comply with the worker's duty to cooperate under section 154.2(2)(d) (see policy in Item C5-35.10, *Duty to Cooperate*).

4. ACCOMMODATION

An employer's duty to maintain employment includes an obligation to make any change to the work and/or the workplace necessary to accommodate an injured worker, to the extent that the accommodation does not cause the employer undue hardship.

Accommodation is the process of changing the work and/or the workplace to be consistent with the worker's functional abilities. An accommodation does not have to be the change most preferred by the worker.

The employer must provide an accommodation to allow the worker to continue, or return to, work if the worker is:

- fit to carry out the essential duties of their pre-injury work with accommodation; or
- fit to work but not fit to carry out the essential duties of their pre-injury work, and a job is suitable, or can be made suitable, through accommodation.

A worker's accommodation requirements may be temporary or permanent.

The obligation to make any change to the work and/or workplace to accommodate an injured worker is ongoing. As the worker's functional abilities change, the employer's obligation also changes to correspond with the worker's changed level of function.

4.1 Undue Hardship

While employers must take all reasonable and practical steps to accommodate an injured worker, employers are not required to accommodate a worker if it would cause undue hardship. Undue hardship is the point at which it is too difficult, too expensive, or unsafe for the employer to accommodate the worker. What constitutes undue hardship is based on all relevant facts and circumstances of each case. The Board may consider any or all of the following factors when determining whether accommodating the worker would cause undue hardship:

- safety risks to the worker, other workers, or others;
- financial ability to accommodate;
- disruption of operations;
- interchangeability of the work force and facilities;
- size of the employer's operation; and
- impact on other workers.

This list is not exhaustive, and any one factor may be determinative of whether accommodating the worker would cause undue hardship. When claiming undue hardship, the employer must provide supporting evidence.

If the Board determines that undue hardship would result from accommodating the worker, the employer is not required to provide accommodation. However, the employer must consider if there are other options that would accommodate the worker without undue hardship.

In cases where the expense to accommodate the work and/or the workplace would result in undue hardship for the employer, the Board may consider paying for a portion, or the entire, cost of accommodating the worker where such payments are consistent with the *Act* and policy.

5. DURATION OF DUTY TO MAINTAIN EMPLOYMENT

Generally, the duty to maintain employment is ongoing until the second anniversary of the date of injury. As the worker's fitness to carry out the essential duties of the pre-injury work changes, the employer's obligation also changes to correspond with the worker's changed level of function.

All of the employer's obligations under the duty to maintain employment end on the second anniversary of the date the worker is injured if the worker has not returned to work by that date.

The employer's obligation to offer the pre-injury or alternative work under section 154.3(4) ends on the second anniversary of the date the worker is injured if, by that date, the worker is carrying out suitable work.

If the worker is carrying out pre-injury work, alternative work, or suitable work by the second anniversary of the date of injury, the obligation under section 154.3(5) to accommodate the worker's injury is ongoing beyond the second anniversary of the date of injury.

If the worker voluntarily severs the employment relationship, no further obligations under the duty to maintain employment generally apply.

5.1 Duration for Fixed Term Contract Workers

In most cases, the duty to maintain employment is not intended to extend the time frame of employment agreed to at the time of hire. If a worker was hired on a contract, the employer's duty to maintain employment only requires the employer to return the worker to the pre-injury work, alternative work, or suitable work for the remainder of the contract term that was interrupted by the compensable injury.

However, in cases where there is a demonstrated pattern of extending or renewing the worker's employment in the past, with little to no break in employment, the Board may conclude that the duty to maintain employment should extend beyond the term of the contract and be governed by the normal rules for duration of duty to maintain employment.

When calculating the duration of the employer's duty to maintain employment for a worker employed on a seasonal basis, the off-season period is included. However, during the off-season period, the employer's obligation may not be in effect.

5.2 Recurrence or Significant Change

Where the duty to maintain employment has not yet ended, and a worker experiences a recurrence or significant change of the compensable injury, the employer continues to be bound by the duty to maintain employment for the original duration of the obligation.

6. DISAGREEMENTS BETWEEN WORKERS AND EMPLOYERS

The worker and the employer are encouraged to work together to resolve disagreements that arise regarding the duty to maintain employment.

If the worker or the employer notifies the Board of a disagreement which cannot otherwise be resolved, the Board determines:

- whether the worker is fit to carry out the essential duties of the pre-injury work;
- whether the worker is fit to carry out suitable work; and/or
- whether suitable work is available.

7. BOARD DETERMINATIONS REGARDING COMPLIANCE

At the worker's request, the Board must determine whether an employer has complied with its duty to maintain employment. The Board may also determine employer compliance on its own initiative at any time.

Where requested, or on its own initiative, the Board determines whether the employer:

- offered work consistent with the worker's fitness to return to the pre-injury work, alternative work, or other suitable work;
- made any changes to the work and/or workplace to accommodate the worker, to the point of undue hardship; and
- maintained employment for the duration required.

The Board is not required to consider the worker's request if the Board considers the request has no merit.

7.1 Terminations After Returning to Work

If the employer terminates a worker's employment within six months of returning to work (whether the worker returns to their pre-injury work, suitable work, or alternative work), then the employer is deemed to have failed its duty to maintain employment, unless the employer can establish, on a balance of probabilities, that the termination was not related to the worker's injury.

Where a worker's employment is terminated within six months of returning to work, the worker may request the Board to determine if the employer failed its duty to maintain employment. The worker should request a determination within three months of the termination of employment. The Board may, but is not required to, consider the worker's request if the request is made more than three months after the worker's employment is terminated.

8. CONSEQUENCES FOR FAILURE TO COMPLY WITH THE DUTY TO MAINTAIN EMPLOYMENT

Failure to comply with the duty to maintain employment may result in an administrative penalty to the employer under section 154.5, and/or additional payments to the worker.

8.1 Payments to Workers

Where the employer failed to comply with the duty to maintain employment and the worker is no longer temporarily disabled, the worker may receive compensation payments under section 154.3(12) in certain circumstances. The Board has discretion to provide payments to the worker under this section equal to the compensation the worker was entitled to under section 191 or 192 for a period of up to one year.

The Board will generally not make payments under section 154.3(12) where the worker is receiving vocational rehabilitation benefits under section 155.

The Board recognizes that assisting the worker in their return to work minimizes the disruptive impact of workplace injuries. Payments under section 154.3(12) are intended to support a worker in their return to work efforts.

Payments under section 154.3(12) are discretionary, and their entitlement and continuance is generally conditional upon the active cooperation of the worker with the Board. The Board may require proof that the worker is actively seeking employment or awaiting a definite job opportunity, based on the principles in Item C11-88.30, *Vocational Rehabilitation – Job Search Assistance*. Payments under section 154.3(12) may be reduced or discontinued if the worker returns to work.

A worker may be entitled to payments under section 154.3(12) regardless of whether an administrative penalty is imposed upon the employer under section 154.5.

8.2 Administrative Penalty

If the employer fails to comply with its obligations under the duty to maintain employment, the Board may impose an administrative penalty on the employer under section 154.5 in accordance with policy in Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*.

The Board will not impose an administrative penalty if the employer has taken all reasonable steps to comply. This involves consideration of what a reasonable person would have done in the circumstances.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 154.1, 154.3, and 154.4 of the *Act*.
CROSS REFERENCES:	Item C5-33.20, *Wage-Loss Benefits During Temporary Partial Disability*; Item C5-35.00, *Introduction to Return to Work Obligations*; Item C5-35.10, *Duty to Cooperate*; Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*; Item C11-86.00, *Vocational Rehabilitation – Eligibility Criteria*; Item C11-88.30, *Vocational Rehabilitation – Job Search Assistance*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 – Policy created to implement Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). Section 154.3 comes into effect on January 1, 2024, and applies as set out in section 13 of Bill 41.
APPLICATION:	Applies to all decisions made on or after January 1, 2024, in relation to a worker who sustained an injury (as defined in section 154.1(1) of the *Act*) on or after July 1, 2023, except that policy on section 154.3(8) of the *Act* does not apply in relation to a worker whose employment was terminated before January 1, 2024.

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RE: Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment **ITEM: C5-35.30**

BACKGROUND

1. Explanatory Notes

This policy sets out administrative penalties the Board may apply under section 154.5 of the *Act* for an employer's failure to comply with the provisions of sections 154.2 (Duty to Cooperate) and 154.3 (Duty to Maintain Employment).

2. The Act

Section 154.5:

(1) The Board may, by notice sent to an employer, impose on the employer an administrative penalty determined by the Board if the Board is satisfied on a balance of probabilities that the employer has failed to comply with a provision of section 154.2 *[duty to cooperate]* or 154.3 *[duty to maintain employment]*.

(2) A notice under subsection (1) must be in the form and contain the information required by the Board.

(3) An administrative penalty under this section must not be greater than the maximum wage rate as determined under section 209 *[maximum wage rate for average earnings]*.

(4) An employer on whom an administrative penalty is imposed under this section must pay the amount of the penalty to the Board for deposit into the accident fund.

(5) If an administrative penalty under this section is reduced or cancelled by a Board decision, on a review under Part 6 *[Review of Board Decisions]* or on an appeal to the appeal tribunal under Part 7 *[Appeals to Appeal Tribunal],* the Board must

(a) refund the required amount to the employer, and

(b) pay interest on that amount calculated in accordance with the policies of the board of directors.

POLICY

1. GENERAL

The main purpose of administrative penalties under section 154.5 is to motivate the employer receiving the penalty and other employers to comply with the duty to cooperate and the duty to maintain employment. Maintaining employment relationships and facilitating timely and safe return to work lessens the disruptive impact of workplace injuries.

A penalty for non-compliance may be an amount equal to, but must not be greater than, the maximum wage rate in the year the penalty is initially imposed, as determined under section 209.

2. APPLYING A SECTION 154.5 ADMINISTRATIVE PENALTY

If the Board is satisfied on a balance of probabilities that the employer has failed to comply with the duty to cooperate and/or the duty to maintain employment, the Board may impose an administrative penalty under section 154.5. The Board considers the individual circumstances of each case when determining whether to impose a penalty.

The Board will not impose an administrative penalty if the employer has taken all reasonable steps to comply with its obligations. This involves consideration of what a reasonable person would have done in the circumstances.

Before issuing an administrative penalty, the Board will:

(a) Inform the employer about its duties under section 154.2 and/or 154.3, identify the specific obligation(s) with which the employer is failing to comply, and advise that the Board may impose an administrative penalty for the non-compliance.

(b) Provide the employer with a reasonable opportunity to comply and/or provide an explanation for non-compliance.

If the employer remains non-compliant, the Board issues a decision letter informing the employer that the Board is imposing a penalty. The letter will provide information regarding the duty the employer failed to comply with, the amount of the penalty, and the right to have the decision reviewed and appealed.

3. PENALTY AMOUNT FOR FAILURE TO COMPLY WITH THE DUTY TO COOPERATE

The penalty amount for a failure to comply with the duty to cooperate is equal to the cost of any compensation payable to the worker under sections 155, 191 and 192 of the *Act* during the period of non-compliance.

The penalty is charged at the end of each month that the employer is non-compliant, up to a total amount not exceeding the maximum wage rate under section 209.

4. PENALTY AMOUNT FOR FAILURE TO COMPLY WITH DUTY TO MAINTAIN EMPLOYMENT

The penalty amount for a failure to comply with the duty to maintain employment is based on the greater of:

- the worker's long-term average earnings as determined by the Board up to the maximum wage rate under section 209; or
- an amount equal to 50% of the maximum wage rate under section 209.

The Board may reduce the penalty for a non-compliant employer who subsequently comes into compliance. If the Board reduces the penalty, the penalty amount may be pro-rated based on the number of weeks the employer was non-compliant following the Board's decision to impose the penalty, up to a maximum of 52 weeks.

5. MULTIPLE AND CONCURRENT PENALTIES UNDER SECTION 154.5

If an employer fails to comply with the duty to cooperate or the duty to maintain employment at different periods in the same claim, the Board may impose more than one administrative penalty.

If an employer fails to comply with the duty to cooperate and the duty to maintain employment during overlapping periods in the same claim, the Board applies a single penalty. In these cases, the Board imposes the higher penalty.

6. REDUCING OR CANCELLING PENALTIES

If a penalty imposed under section 154.5 is reduced or cancelled by a Board decision, on review, or on appeal, the Board must refund the required amount to the employer and pay interest on that amount. Guidance on refunds and the payment of interest on employer overpayments is set out in policy in Item AP5-243-1 of the *Assessment Manual.*

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 154.5 of the *Act*.
CROSS REFERENCES:	Item C5-35.00, *Introduction to Return to Work Obligations*; Item C5-35.10, *Duty to Cooperate*; Item C5-35.20, *Duty to Maintain Employment*, of the *Rehabilitation Services & Claims Manual*, Volume II. Item AP5-243-1, *Assessment Payments*, of the *Assessment Manual*.
HISTORY:	January 1, 2024 – Policy created to implement Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

RE: Permanent Disability Benefits – General **ITEM: C6-36.00**

BACKGROUND

1. Explanatory Notes

This policy provides an overview of the statutory provisions related to permanent disability benefits.

2. The Act

Section 190:

Compensation under this Division is subject to the following provisions:

(a) section 230 *[manner of compensation payment: periodic or lump sum]*;

(b) section 231 *[payment of compensation in specific circumstances]*;

(c) section 232 *[Board authority to discontinue or suspend payments]*;

(d) section 233 *[deduction in relation to payments from employer]*.

Section 194:

(1) Subject to subsection (2), if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

(2) Compensation to be paid under this section must not be less than $2 131.27 per month. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

Section 195:

(1) Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must

(a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and

(b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.

(2) The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) *[compensation for temporary total disability]* but to the extent only of the permanent partial disability.

(3) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

Section 196:

(1) This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.

(2) *Repealed*.

(3) The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the average net earnings of the worker before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

POLICY

A. INTRODUCTION

The Board pays permanent disability benefits if a worker fails to completely recover from a work-related injury or occupational disease, and is left with a permanent residual disability. The entitlement to permanent disability benefits commences at the point when the worker's temporary disability under the claim ceases and the condition

RE: Permanent Total Disability Benefits **ITEM: C6-37.00**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on a worker's entitlement to permanent total disability benefits.

2. The Act

Section 194:

(1) Subject to subsection (2), if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

(2) Compensation to be paid under this section must not be less than $2 131.27 per month. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

POLICY

A. INTRODUCTION

Section 194 of the *Act* pertains to the determination of a worker's entitlement to compensation for a permanent total disability that results from a work injury.

Some examples of permanent total disability are paraplegia, quadriplegia, hemiplegia, and total or near total blindness. Combinations of permanent partial disabilities can also become permanent total disabilities, such as bilateral amputations of arms and legs.

Permanent total disability periodic payments continue until a worker reaches age 65, or later if the Board is satisfied that the worker would work past age 65.
(See Item C6-41.00.)

On reaching retirement age, a worker who has received permanent disability benefits is entitled to a retirement benefit (see Item C18-116.00). Permanently totally disabled workers are also entitled to rehabilitation benefits, health care benefits and personal

supports after reaching retirement age (Item C18-116.30). Board policies on the retirement benefit are contained in Chapter 18 of the *RS&CM*.

B. COMMENCEMENT OF PERMANENT TOTAL DISABILITY BENEFIT PAYMENTS

Permanent total disability benefits are granted as soon as the medical evidence confirms that the worker is permanently totally disabled as a result of the work injury or occupational disease.

However, it may be necessary to make this type of payment at a provisional rate under policy item #65.04 pending clarification of the worker's pre-injury earnings.

After determining the amount of a worker's permanent total disability benefits, the Board must deduct from a worker's periodic payment, an amount that equals 50% of any Canada Pension Plan (CPP) disability benefit that the worker is paid in respect of the work injury. The required CPP disability benefit deduction is subject to the Board's statutory minimum (see Item C6-36.10).

C. MINIMUM AMOUNT OF COMPENSATION FOR PERMANENT TOTAL DISABILITY

Section 194(2) provides that the compensation to be paid for permanent total disability must not be less per month than the minimum set out below. This minimum is subject to cost of living adjustments as described in policy item #51.20.

			$ Minimum
January 1, 2023	—	December 31, 2023	2,066.77
January 1, 2024	—	December 31, 2024	2,131.27

If required, earlier figures may be obtained by contacting the Board.

i. Statutory Minimum Application

The statutory minimum only applies in cases where the Board rates a worker's permanent disability at 100% under the section 195 method of permanent disability assessment. It does not apply when the percentage of permanent partial disability is less than 100% but the worker is found to be totally unemployable under the section 196 method of permanent disability assessment. (See Item C6-40.00.)

C. PERMANENT DISABILITY EVALUATION SCHEDULE

Section 195(1) permanent disability benefits may be made with reference to the *Permanent Disability Evaluation Schedule* ("*Schedule*"), which is set out in Appendix 3. This is a rating schedule of percentages of disability for specific injuries or mutilations created under section 195(3).

The *Schedule* is a set of guide-rules, not a set of fixed rules. The Board is free to apply other variables in arriving at a final rating; but the "other variables" referred to means other variables relating to the degree of physical or psychological impairment, not other variables relating to social or economic factors, nor rules (including schedules and guide-rules) established in other jurisdictions. In particular, the actual or projected loss of earnings of a worker because of the disability is not a variable which can be considered. The Board's discretion to consider other variables is generally applied to address new and emerging conditions that are not already covered in the *Schedule*.

In cases where the specific impairment is not covered by the *Schedule*, but the part of the body in question is covered, the Board must first determine the percentage of loss of function in the damaged area. This determination is based on the findings of the section 195(1) evaluation and other medical and non-medical evidence available. The final rating is arrived at by taking this percentage of the percentage allocated in the *Schedule* to the disabled part of the body. Because the *Schedule* is used in the calculation, this type of permanent disability benefit is still considered as a Scheduled one. For example, the amputation of an arm down to the proximal third of the humerus or its disarticulation at the shoulder is given a 70% of total disability rating in the Schedule. Suppose a worker has a severe crush injury to the arm which culminates in a permanent loss of half its function. The final outcome would be 50% of 70%, i.e. a 35% of total disability rating.

D. NON-SCHEDULED RATING FOR PERMANENT DISABILITY BENEFITS

Any permanent disability benefits under section 195 where the *Schedule* is not directly or indirectly used in the assessment are non-Scheduled permanent disability benefits. This covers impairments in all parts of the body not listed in the *Schedule*. Disabilities resulting from multiple injuries or occupational diseases may also involve non-Scheduled permanent disability ratings. The rules governing respiratory and skin diseases are set out in the policy of Item C4-29.00 and Section A. of Item C4-32.00 respectively.

In the case of permanent disability benefits for non-Scheduled permanent disability ratings, judgment is used to arrive at a percentage of disability appropriate to the particular worker's impairment. Regard will be had to, among other things, the section 195(1) evaluation, the circumstances of the worker, medical opinions of Board or non-Board doctors, and to schedules used in other jurisdictions.

Neither the age adaptability or enhancement factors nor devaluation are formally applied in respect of non-Scheduled ratings for permanent disability benefits. However, in making a judgment as to the correct percentage of disability, the Board will have regard to the age of the worker, to existing disabilities in other parts of the worker's body, or to the combined effect of more than one disability in the same part of the body.

E. MINIMUM AMOUNT OF COMPENSATION FOR PERMANENT PARTIAL DISABILITY UNDER SECTION 195

Section 195(2) provides that the minimum compensation to be paid for permanent partial disabilities is calculated in the same manner as for temporary total disability but only to the extent of the permanent partial disability (see Section 2 of the policy in Item C5-33.10). Thus, for example, if a worker is injured on January 2, 1986, resulting in a residual disability assessed at 10% of total disability, the minimum compensation will be the lesser of 10% of $197.25 or 10% of the worker's average earnings prior to the injury.

The statutory minimum for permanent total disability under section 194 does not apply to permanent partial disability simply because a worker is found to be totally unemployable under section 196. (See Item C6-37.00.)

i. Injury Prior to January 1, 1965

Permanent partial disability benefits provided for injuries that occurred before January 1, 1965 are recalculated in accordance with the then minimum for permanent total disability but to the extent only of the partial disability. This minimum was an amount equal to $30.00 per week ($130.00 per month), unless the worker's average earnings were less, in which case compensation is paid in an amount equal to the average earnings.

Any increase resulting from the above provisions does not apply to commuted permanent disability benefits or the commuted portion of a worker's permanent disability benefits.

In considering whether the worker's earnings are less than the minimum, only the worker's actual earnings are relevant.

EFFECTIVE DATE: July 1, 2022
AUTHORITY: Section 195 of the *Act*.
CROSS REFERENCES: Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*;
Item C6-37.00, *Permanent Total Disability Benefits*;
Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*;

Appendix 3, *Permanent Disability Evaluation Schedule*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

January 1, 2024 – Housekeeping change to update internal cross reference.
July 1, 2022 – Policy amended to remove procedures specific to determining permanent psychological disability benefits.
January 1, 2021 – This policy resulted from the consolidation of former policy items #39.00, #39.01, #39.10, #39.20, #39.30, and #39.31, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. Policy changes consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23).
September 1, 2020 – Housekeeping change was made to correct a grammatical error and to add the title of Appendix 3 to the Cross Reference section.
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 – Consequential amendments were made arising from changes to the *Permanent Disability Evaluation Schedule*.
June 1, 2009 – Removed references to Board officer, Rehabilitation and Compensation Services Division, Disability Awards Medical Advisor and Board authorized External Service Provider.
August 1, 2003 – Deletion of statements regarding revisions to the *Schedule* and housekeeping changes.

APPLICATION:

Applies to all decisions made on or after July 1, 2022.

C. SUITABLE OCCUPATION

In estimating what a worker is capable of earning in a suitable occupation after the injury, the Board considers the evidence, including the worker's individual circumstances, the limitations resulting from the compensable disability and pre-existing medical conditions, and the ability of the worker to perform different occupations.

Consideration is also given to the suitability of the worker for occupations that could reasonably become available over the long run that will maximize the worker's long-term earnings potential up to the pre-injury wage rate. In most cases, "long-term" refers to three to five years.

The Board assesses the suitability of an occupation and the worker's earning potential in light of transferable skills and all possible rehabilitation measures that may be of assistance, including the possibility of retraining or other measures that may be appropriate to the worker. (See Item C11-85.00.)

(i) Meaning of "suitable occupation"

An occupation differs from a "job", which is defined as a specific position with a particular employer. Occupation is a collection of jobs or employments that are characterized by a similarity of skills.

A suitable occupation

- is one for which the worker has the necessary skills, competencies, qualifications, and functional abilities, and is medically fit to undertake;
- does not impede the health and safety of the worker and/or others;
- maximizes the worker's long-term earnings potential to the pre-injury wage rate; and
- is reasonably available over the long term.

Pre-existing non-compensable factors, (including pre-existing medical conditions) will be considered when determining a suitable occupation. Non-compensable factors arising after the date of injury will generally not be considered when determining a suitable occupation.

(ii) Meaning of "reasonably available"

An occupation is considered reasonably available when the worker is competitively employable for a job or jobs within it, meaning the worker has a reasonable chance of securing employment in that occupation.

A reasonably available job is usually within a reasonable commuting distance of the worker's home. (See Item C11-88.90.)

If a suitable occupation is reasonably available over the long term, it is taken into consideration even though it is not available at the time of assessment because of general economic conditions.

If jobs in a suitable occupation are subject to fluctuations in the economy but a lower-paying job in another suitable occupation appears more stable in the long run, then the other job may be considered the best-paying job in the long run.

If the worker declines the best-paying job in the suitable occupation because of a personal preference for a lower-paying job or for a lifestyle choice which may impact earnings, the wage rate in the best-paying job in the suitable occupation will be used in the formula.

(iii) Assessing the worker's post-injury job

If the worker has made all reasonable efforts to maximize the worker's earnings, the job the worker has actually obtained is generally accepted as being suitable, unless there is evidence the job is transitory and jobs at another level of earnings within that occupation will be available to the worker in the near future.

The Board will generally only have regard to higher paying occupations which a person in the worker's present job would ordinarily be expected to obtain. It would not be fair to assume a worker will receive all possible advancements and wage increases that might theoretically be made available, as that approach could overestimate earnings.

D. MEASUREMENT OF EARNINGS LOSS

Subsections 196(3)(a) and (b) set out the process for determining a worker's entitlement to permanent partial disability benefits under this method. If permanent partial disability benefits are being paid under section 196, subsections 196(3)(a) and (b) provide that the Board must pay a worker compensation that is a periodic payment of an amount that equals 90% of the difference between the average net earnings of the worker before the injury, and either the average net earnings that the worker is earning, or that the Board estimates the worker is capable of earning, after the injury.

The latter figures are obtained by ascertaining the earnings in the occupations which have been found to be suitable and reasonably available according to the criteria set out in Section C of this Item and determining the earnings figure which will maximize the worker's long-term earnings potential.

A worker's post-injury earnings loss will be based on estimated earnings rather than on actual earnings in the following cases:

- The worker is employable but does not have a job; or
- The worker has a job but is not maximizing earning capacity up to the pre-injury rate;
- The worker has, for personal reasons, withdrawn from the workforce; or
- The worker does not cooperate with the rehabilitation process.

The intention of the *Act* is to protect workers' earnings only up to the maximum wage rate. This is shown by section 208(2), which results in payments for total disability being limited to 90% of the maximum and by section 200, which ensures that, where a worker is already receiving payments for a disability, additional payments can be made for any further disability only to the extent that they do not take the total payments above the maximum. No permanent partial disability benefits can be paid under section 196(3) where, following the injury, the worker is earning or is able to earn at or above the maximum wage rate. If a worker was earning at or above the maximum prior to the injury and it is projected that because of the injury, earnings will be less than the maximum, permanent disability benefits based on a projected loss of earnings can be paid but only to the extent of the difference between the maximum and the projected earnings.

Although assessment of permanent partial disability benefits will often be made some time after the original injury, it would not be fair to compare directly the actual pre-injury average earnings with the earnings the worker might now earn in the occupations available. The effect of inflation upon earnings levels would mean that the real loss would not be properly determined in that way.

The practice of the Board is to use the earnings in the occupations after the injury, as they stood at the date of the injury, where these are available and are a reliable and accurate reflection of the worker's post-injury earning capacity. For example, the Board may use actual earnings in post-injury occupations where earnings are the provincial minimum wage.

When earnings in occupations at the time of the injury are not available or are not a reliable and accurate reflection of the worker's post-injury earning capacity, the Board will use current earnings in the occupations available after the injury, and adjust them back to the date of injury by the wage inflation adjustment factors applicable in those years. The wage inflation adjustment factor is derived from the formula set out in section 209(2) of the *Act* to adjust the maximum wage rate. The wage inflation adjustment factor effective for a given year is the percentage change in:

- the annual average of wages and salaries in British Columbia for the year two years prior, from

- the annual average of wages and salaries in British Columbia for the year three years prior,

but not less than zero.

When calculating a worker's average net earnings for the purposes of the section 196(3) assessment, the Board will also consider the formulas used to determine the CPP contributions, EI premiums and income taxes applicable to the level of average earnings. The formulas used are those in effect on the earlier of the first day after the date wage-loss benefits have been payable to the worker for a cumulative period of 10 weeks; or on the effective date of a worker's permanent disability benefits.

E. PROVISION OF EMPLOYABILITY ASSESSMENTS

Where workers are provided with a copy of a completed employability assessment before a decision is made on entitlement to permanent disability benefits under section 196(3), they have 30 days in which to provide a written submission. All such submissions received within this time frame will be considered before the final decision is made. If the details of the employability assessment and its impact on the permanent disability benefits under section 196(3) are known and agreed to, the 30-day waiting period may be waived.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 196 of the *Act.*
CROSS REFERENCES:	Chapter 9, *Average Earnings*; Item C11-85.00, *Vocational Rehabilitation – Principles and Goals;* Item C11-88.90, *Vocational Rehabilitation – Relocation*; Item C11.89.00, *Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability*; Policy item #97.40, *Permanent Disability Benefits*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 – Consequential changes to reflect language updates to Chapter 5, *Wage-Loss Benefits and Return to Work Obligations*. November 23, 2022 – Policy clarified to confirm Board of Directors' intent that wage inflation adjustment factor is based on the change in the annual average of wages and salaries in British Columbia. September 1, 2022 – Policy revised to clarify a worker's individual circumstances are considered when determining whether an occupation is suitable, and a reasonably available occupation is one for which the worker is competitively employable for a job or jobs within it. January 1, 2021 – This policy resulted from the consolidation of former policy items #40.00, #40.01, #40.10, #40.12, #40.13, and #40.14, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. Policy changes consequential to

implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23).
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
April 1, 2018 – Policy revised to clarify when earnings are adjusted for inflation and to revise the factor used to account for inflation. Under this approach, the factor would be determined using the process for changing the maximum wage rate as set out in then subsections 33(7) – (10) (now sections 209 and 227) of the *Act*.
June 1, 2009 – Deleted references to Board officer, Medical Services and the former Disability Awards Committee.
March 3, 2003 – Inclusion of reference to review.
November 1, 2002 – Policy substantially revised. Clarified guidelines to be followed in determining suitable and reasonably available occupations for a worker. Amendments included the requirement of an employability assessment, and the limitation of "up to the worker's pre-injury wage rate".

APPLICATION: Applies to all decisions made on or after January 1, 2024.

RE: Duration of Permanent Disability Periodic Payments ITEM: C6-41.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the determination of a worker's retirement date for the purposes of the duration of permanent disability benefits decision under section 201 of the *Act*.

2. The Act

Section 201:

(1) Subject to subsection (2), periodic payment of compensation under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] may be paid to an injured worker only as follows:

(a) if the worker is under 63 years of age on the date of the injury, until the later of the following:

(i) the date the worker reaches 65 years of age;

(ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board;

(b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:

(i) 2 years after the date of the injury;

(ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.

(2) As a restriction on subsection (1), the Board may not make a periodic payment to a worker under this Division if the worker ceases to have the disability for which the periodic payment is to be made.

(3) A determination made under subsection (1) (a) (ii) as to a date on which a worker would retire after reaching age 65 may be made after a worker has

reached age 63, and the Board may, when making the determination, consider the worker's circumstances at the time of that determination.

3. Workers Compensation Amendment Act, 2020 (Bill 23 of 2020)

Section 36:

A determination may be made under section 201(3) of the *Workers Compensation Act*, as added by section 18 of this Act, whether or not a determination has been made under section 201 (1) of that Act before the date section 18 of this Act comes into force [January 1, 2021].

POLICY

For the purpose of permanent disabilities, section 201(1) provides for the payment of permanent disability benefits:

- if a worker is under 63 years of age on the date of the injury, until the date the worker reaches 65 years of age, or
- if a worker is 63 years of age or older on the date of the injury, until two years after the date of the injury.

If the Board is satisfied a worker would retire after these dates, section 201(1) permits the Board to continue to pay permanent disability benefits to the date the worker would retire if the worker had not been injured.

For the purpose of this policy, a worker is generally considered to be retired when the worker substantially withdraws from the workforce and receives retirement income from one or more retirement-like sources (e.g., CPP, OAS, employer pension plan, RRSP or other personal savings).

A. EVIDENCE

As age 65 is the established retirement date under the *Act* if a worker is under age 63 on the date of injury, to continue to pay permanent disability benefits after the age of 65, the evidence must support a finding that the worker would work past age 65. Evidence is also required so that the Board can establish the worker's retirement date for the purposes of concluding permanent disability benefits payments. The standard of proof under section 339(3) is "at least as likely as not" as described in policy item #97.00.

The issue for the Board to determine is whether it is "at least as likely as not" that the worker would have retired after age 65 if the injury had not occurred. The Board considers the worker's statement of intention to retire after age 65, but must determine

whether it is “at least as likely as not” that the worker would have retired later than age 65. The Board may consider the worker's circumstances at the time of that determination. This means the Board may consider pre- and post-injury evidence to establish the date the worker would retire.

However, post-injury circumstances that happened only because of the injury are not relevant to determining when the worker would have retired if the injury had not occurred. Post-injury circumstances are relevant if they would have occurred even if the worker had not been injured.

When determining whether a worker would retire after age 65, the weight the Board gives to the types of evidence will vary with the circumstances of each claim. The following are examples of the kinds of evidence the Board may consider:

- names of the employer or employers, a description of the type of employment, the expected duration of employment, and information from the identified employer or employers to confirm their intention to employ the worker after the worker reached age 65 and that employment would be available;
- a statement from a bank or financial institution outlining a financial plan and post-age 65 retirement date;
- an accountant’s statement verifying a long-term business plan (for self-employed workers), indicating continuation of work beyond age 65;
- information provided from the worker’s employer, union or professional association regarding the normal retirement age for workers in the same occupation and whether there are incentive plans for workers working beyond age 65;
- information from the employer about whether the worker would be covered under a pension plan provided by the employer, and the terms of that plan;
- information from the employer or union on whether there was or is a collective agreement in place setting out the normal retirement age;
- information regarding whether the worker would have the capacity to perform the work;
- financial obligations of the worker, such as a mortgage or other debts;
- family commitments and/or circumstances of the worker; and
- an outstanding lease on a commercial vehicle (for self-employed workers).

This is not a conclusive list of the types of evidence that may be considered. The Board will consider any other relevant information in determining whether a worker would work past age 65 and at what date the worker would retire.

If a worker is 63 years of age or older on the date of the injury, the established retirement date under the Act is two years after the date of injury. In these cases, the issue for the Board to determine is whether it is "at least as likely as not" that the worker would have retired later than two years after the date of injury if the injury had not occurred. The Board applies the same evidentiary principles to this determination as for workers who are under age 63 at the date of injury, in particular, the Board may consider pre- and post-injury evidence to establish the date the worker would retire.

B. WHEN DETERMINATION IS MADE

In most cases, the determination of a worker's retirement date is made as part of the decision regarding the duration of permanent disability benefits under section 201.

If a worker is under 63 years of age on the date of the injury, the decision on the duration of permanent disability benefits is generally made after the worker reaches age 63, but before reaching age 65. In some circumstances, the decision on the duration of permanent disability benefits may be made before the worker reaches age 63, if appropriate based on applicable law and policy, and the merits and justice of the case.

If a worker is 63 years of age or older on the date of the injury, the decision on the duration of the worker's permanent disability benefits is generally made as part of the decision on the worker's entitlement to permanent disability benefits.

The determination of a worker's retirement date may be made prior to the decision on the duration of permanent disability benefits, when the determination is made as part of a decision on the duration of the worker's wage-loss benefits. In these cases, the retirement date in the decision on the duration of wage-loss benefits will also apply to the resulting permanent disability benefits, if provided.

The determination of a worker's retirement date for the purposes of the duration of permanent disability benefits decision under section 201 is made once, unless section 36 of the *Workers Compensation Amendment Act, 2020*, applies. Under section 36, another determination may be made after the worker has reached age 63 if:

- the worker was under 63 years of age on the date of injury,
- a previous determination was made under section 201(1) before January 1, 2021, and

- the worker has not reached the date of retirement as previously determined by the Board.

C. WHEN PAYMENTS CONCLUDE

At the worker's date of retirement, as determined by the Board, periodic payments will conclude even if the worker's permanent disability remains.

In situations where a worker in receipt of permanent disability periodic payments dies from causes unrelated to the disability, the periodic payments will continue for the full month in which the death occurred. The effect of this policy will be that no overpayments will be considered to have arisen for the period from the date of the worker's death up to the end of the month covered by the last periodic payment.

If the worker dies prior to the commencement of payments for the permanent disability benefits, the compensation is calculated and paid to the date of death. The situation where such a worker would have received the permanent disability benefit as a lump sum payment is dealt with by policy in Item C6-45.00.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 201 of the *Act*.
CROSS REFERENCES:	Policy item #48.44, *Deduction of Overpayments from Permanent Disability Benefits*; Item C6-45.00, *Lump Sums and Commutations*, of the *Rehabilitation Services & Claims Manual*, Volume II;
HISTORY:	January 1, 2024 − Amended to revise the interpretation of "would retire" in section 201 and add additional guidance for workers 63 and older at the date of injury. January 1, 2021 − This policy replaces former policy item #41.00, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. Amended to reflect amendment to retirement age determination provision of the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23). September 1, 2020 − Policy amended to clarify examples of evidence are parallel in then policy item #41.00 and then policy item #35.30 of the *Rehabilitation Services & Claims Manual*, Volume II. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on legal issues of standard of proof, evidence, and causation.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after January 1, 2024.

RE: Payment of Permanent Disability Benefits **ITEM: C6-42.00**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on how permanent disability benefits are paid.

2. The Act

Section 190:

> Compensation under this Division is subject to the following provisions:
>
> (a) section 230 *[manner of compensation payment: periodic or lump sum]*;
>
> (b) section 231 *[payment of compensation in specific circumstances]*;
>
> (c) section 232 *[Board authority to discontinue or suspend payments]*;
>
> (d) section 233 *[deduction in relation to payments from employer]*.

Sections 194, 195, and 196:

> See Item C6-36.00.

POLICY

A. INTRODUCTION

Although section 190 of the *Act* provides that all compensation for worker disability is subject to sections 230, 231, 232, and 233, permanent disability benefits under sections 194, 195 and 196 are normally payable monthly until the worker reaches retirement age as determined by the Board. However, some payments are made as lump sums. The cheques are mailed to the worker's home address or, if the worker elects, directly to the worker's bank by electronic direct bank deposit.

If a worker disagrees with the amount of permanent disability benefits and returns the cheque, or refuses to accept the cheque, the Board will not negotiate regarding the acceptance of the cheque. In such circumstances the worker is notified of the right to

request a review from the Review Division with regard to the matter on the claim to which there is an objection. This policy also applies to those cases where a worker has elected to receive the permanent disability benefit cheque by electronic direct bank deposit.

When a payment to a worker has been lost or stolen or otherwise not received or cashed by the worker, the worker may request a reissue of payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

B. COMMENCEMENT OF PERIODIC PAYMENTS

The general rule is that the permanent disability periodic payments commence at the date when the worker's temporary disability ceased and the worker's condition stabilized or was first considered to be permanent.

If a worker has been paid any wage-loss benefits under section 191 or 192 of the *Act*, the permanent disability periodic payments will take effect from the date following the termination of these wage-loss benefits. For the majority of cases, this will adequately reflect the financial impact of the disability on the worker's earnings.

There may, however, be the unusual situation where a worker has or could have returned to a significant level of employment with a minimal loss of income. Temporary partial disability wage-loss benefits under section 192 would be 90% of the worker's average net earnings in this employment. Should the worker's permanent disability benefits eventually be assessed at a higher rate than the rate paid for temporary wage-loss benefits under section 192, it would appear that the worker may have been inadequately compensated. The *Act*, however, precludes the payment of both temporary and permanent disability compensation for the same condition at the same time.

A problem of permanent disability benefits retroactivity also occurs when, although the worker had a temporary partial disability, the worker had or could have returned to full employment and has not, therefore, actually been paid any wage-loss benefits under section 192. As previously stated, the *Act* requires that the Board recognize a disability as either temporary or permanent, but not both concurrently. When carrying out the final permanent disability assessment, the Board will have the benefit of the earlier examination, or at least some other documentary evidence on file, on which the decision was made to delay permanent disability compensation. If the findings on the latter examination are the same as the initial findings, or only show a minimal degree of change, it is reasonable to consider the condition as having plateaued from the date of the first examination. In that event, the date of the first examination should be the starting date of the permanent disability periodic payments. If, on the other hand, the latest examination shows a measurable and significant change since the first examination, the worker will be considered as having been, in the interim, temporarily

disabled. In that event, the date of the last examination will be the starting date of the periodic payments for permanent disability benefits.

If there was no examination by either a Board Medical Advisor or an External Service Provider when wage-loss benefits were terminated under section 192, and there is no other measurable data on file with which to make a comparison with the final assessment of the Board, the permanent disability benefits will be backdated to the date wage-loss benefits were terminated under section 192.

C. RETROACTIVE PERMANENT DISABILITY BENEFITS

If permanent disability benefits are granted retroactively, the payments due prior to the date of the first periodic payment will be paid in the form of a lump sum.

In calculating that sum, entitlement in respect of a portion of a month is determined by reference to the actual calendar days in a particular month. For example, if a worker is entitled to permanent disability benefits calculated at $1,000 per month, for the period March 17 to 31 (15 calendar days), the calculation is as follows:

$$\frac{\$1{,}000}{31 \text{ days}} \times 15 \text{ days} = \$483.87$$

A reduction in the lump sum is made in respect of periods of time during the period following the commencement of the permanent disability benefits when the worker received wage-loss benefits under section 191 or 192 or vocational rehabilitation benefits under section 155. However, no such reduction is made when the permanent disability benefits are granted in the form of a lump sum and the monthly equivalent is less than $20.00 per month at the time of the commutation.

The payment of interest on the lump sum is dealt with in policy item #50.00.

D. PERMANENT DISABILITY BENEFIT ADJUSTMENTS

If permanent disability benefits to a worker or a dependant are paid or increased on the basis of a Review Division decision, and the finding is later reversed by the Workers' Compensation Appeal Tribunal, the permanent disability payments are terminated or adjusted as of the date of the Workers' Compensation Appeal Tribunal decision. In such cases, the capitalization is adjusted by the reversal of an amount equivalent to the unused portion of the capitalization or, in the case of a modification, the adjustment applies to the amount of the capitalization affected by the modification. The policy regarding relief of costs to employers in such circumstances is detailed in policy item #113.10.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 190 and 230 of the *Act.*
CROSS REFERENCES:	Policy item #113.10, *Investigation Costs*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 – Reorganization of policy direction from former policy item #34.60 into this Item, consequential to the reformatting and renumbering of policies in Chapter 5, *Wage-Loss Benefits and Return to Work Obligations*. January 1, 2021 – This policy resulted from the consolidation of former policy items #42.00, #42.10, #42.12, and #42.20, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to Board officer. March 3, 2003 – Amended regarding references to Review Division and Workers' Compensation Appeal Tribunal.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

POINTS/FACTORS	0–24 POINTS	25–49 POINTS	50–74 POINTS	75–99 POINTS
Surface area of part of body **(see guideline 3)**	Less than 25%	25%–49%	50%–74%	75% or more
Texture and thickening **keloid scarring hardening**	Mild alteration of texture. Slight wrinkly, furrows or marks.	Moderate thickening. Moderate hardening. Mild dryness or scaling. Prone to pimples.	Major thickening. Major hardening. Moderate dryness or scaling. Frequent pimples. Prone to ulceration.	Severe. Severe. Major dryness or scaling. Frequent ulceration. Significant irregularity of scar.
Colour	Mild alteration of colour.	Moderate alteration of colour.	Major alteration of colour.	Severe alteration of colour.
Visibility	Less than 25% visible with work clothing.	25 to 49% visible with work clothing.	50 to 74% visible with work clothing.	75% visible or greater with work clothing.
Loss of bodily form	Mild depression or elevation.	Moderate depression or elevation.	Major depression or elevation. Moderate to major atrophy. Moderate to major irregularity of body.	Severe depression or elevation. Severe muscle or tissue loss.

2. An average is taken of the points assigned by dividing the total points by five. The result is rounded up to the nearest whole number. The disfigurement is then placed in one of four classes as follows:

Class 1	0 to 24 points
Class 2	25 to 49 points
Class 3	50 to 74 points
Class 4	75 to 99 points

3. The area of the body affected is determined. Five areas are recognized. A minimum and maximum amount of compensation exists for each of the

four classes for each area of the body including a dollar value per point within each class as shown in the following tables:

January 1, 2024 – December 31, 2024

Head and Neck

Class	Maximum Points	Minimum Compensation for Class ($)	Maximum Compensation for Class ($)	Dollar Value per point within Class ($)
1	24	0	8,277.12	344.88
2	49	8,608.19	16,553.87	331.07
3	74	17,902.96	50,281.12	1,349.09
4	99	51,621.95	83,801.87	1,340.83

Each Hand

Class	Maximum Points	Minimum Compensation for Class ($)	Maximum Compensation for Class ($)	Dollar Value per point within Class ($)
1	24	0	2,690.16	112.09
2	49	2,806.03	5,586.91	115.87
3	74	6,025.57	16,553.41	438.66
4	99	17,008.62	27,933.66	455.21

Each Arm

Class	Maximum Points	Minimum Compensation for Class ($)	Maximum Compensation for Class ($)	Dollar Value per point within Class ($)
1	24	0	2,069.28	86.22
2	49	2,152.04	4,138.28	82.76
3	74	4,477.60	12,621.28	339.32
4	99	12,952.35	20,898.03	331.07

Each Leg (including the foot)

Class	Maximum Points	Minimum Compensation for Class ($)	Maximum Compensation for Class ($)	Dollar Value per point within Class ($)
1	24	0	1,447.92	60.33
2	49	1,497.58	2,689.42	49.66
3	74	2,912.91	8,276.67	223.49
4	99	8,498.32	13,817.92	221.65

Torso

Class	Maximum Points	Minimum Compensation for Class ($)	Maximum Compensation for Class ($)	Dollar Value per point within Class ($)
1	24	0	1,447.92	60.33
2	49	1,497.58	2,689.42	49.66
3	74	2,912.91	8,276.67	223.49
4	99	8,498.32	13,817.92	221.65

The dollar values per point within each class are adjusted on January 1 of each year. The minimum and maximum amount of compensation for each class is adjusted accordingly. Since June 30, 2002, the percentage change in the consumer price index determined under section 333 of the *Act*, as described in policy item #51.20 will be used.

4. The amount of the compensation in Class 1 is obtained by multiplying the average criterion score for disfigurement by the dollar value per point within the class. For example, if the average criterion score for a hand disfigurement is 6, it is assigned to Class 1 of the hands area of the body and the amount of the compensation is $672.54 (6 x $112.09).

5. The amount of the compensation for a disfigurement in Classes 2, 3 or 4 is obtained by subtracting the maximum points in the previous class from the average criterion score for disfigurement. Next, the total is multiplied by the dollar value per point within the class, followed by adding to the total, the maximum amount of compensation in the previous class. For

example, if a burn to the chest is assigned an average criterion score of 34, it is in Class 2 of the torso area of the body and the amount of the compensation is $1,944.52 [(34 – 24) x $49.66 + $1,447.92].

Detailed examples of the application of the above guidelines are set out below:

Example 1

The worker has a loss of the fingernail and nailbed, slight shortening of the right mid finger, a small curved raised nail growing through the graft at the injury site. Assuming that the disfigurement was found capable of impairing earning capacity, the compensation amount would be calculated as follows:

Factors	Description	Points
Surface area	Less than 25%	2
Texture / keloid	Minimal alteration; no keloid	2
Colour	No contrast	0
Visibility	Less than 25%	20
Structure	Mild evidence of depression	5

A. Total points are 29.

B. Average criterion score is 6 (29/5). Disfigurement is in Class 1.

C. Multiply the average criterion score for the hand disfigurement by the dollar value per point within Class 1 = $672.54 (6 x $112.09).

Compensation amount is $672.54.

Example 2

The worker has healed burns that extend up the right side and front of the abdomen and chest. There is evidence of occasional ulceration and moderate irregularity of the scars. Scar colour is significantly different when compared to unaffected skin. Assuming that the disfigurement was found capable of impairing earning capacity, the compensation amount would be calculated as follows:

Factors	Description	Points
Surface area	Less than 25%	20
Texture / keloid	Some puckering and contraction moderate keloid, scars raised to 3 mm	70
Colour	Significant contrast	80
Visibility	Nil	0
Structure	No evidence of depression or elevation other than keloid	0

A. Total points are 170.

B. Average criterion score is 34 (170/5). Disfigurement is in Class 2.

C. The maximum points for a torso disfigurement in the previous class (Class 1) subtracted from the average criterion score for the torso disfigurement is 10 (34 – 24).

D. The total from line C multiplied by the dollar value per point within Class 2 for a torso disfigurement, followed by adding to the total, the maximum compensation for a torso disfigurement in the previous Class (Class 1) is $1,944.52 [(34 – 24) x $49.66 + $1,447.92].

Compensation amount is $1,944.52.

EFFECTIVE DATE: January 1, 2021
AUTHORITY: Section 199 of the *Act.*
HISTORY: January 1, 2021 – This policy resulted from the consolidation of former policy items #43.00, #43.10, and #43.20, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted reference to Board officer.
May 1, 2008 – Amendments to the formula for determining the amount of disfigurement compensation to ensure that disfigurement payments increase uniformly within each class for greater degrees of disfigurement. Applied to all decisions including appellate decisions made on or after May 1, 2008.

APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

worker except as expressly provided in the compensation provisions.

An exception is made by section 231(1) of the *Act* which provides in part:

> In the case of payments of compensation to
>
> (a) a minor, or
>
> (b) a person of unsound mind who the Board considers incapable of managing the person's own affairs,
>
> the payments may be made to the person that the Board considers best qualified in all the circumstances to administer the payments, whether or not that person is the legal guardian of the person in respect of whom the payment is being made.

Compensation benefits due to a worker, where a public trustee has been appointed, will be issued in the name of the worker but sent to the public trustee.

AUTHORITY: Sections 121 and 231 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#49.10 Worker Receiving Custodial Care in Hospital

Section 231(2) provides that if an injured worker is receiving custodial care in a hospital or elsewhere, periodic payments of compensation due to the worker may be dealt with as follows, regardless of the date of the injury:

> (a) in a case of temporary disability of the worker, the payments may be
>
> (i) applied to the maintenance of a home to which the worker is likely to return on the worker's recovery, or
>
> (ii) accumulated by the Board for payment to the worker on the worker's recovery;
>
> (b) in a case of permanent disability of the worker, the payments may be applied toward the cost of the worker's maintenance;
>
> (c) in any case, the payments may be paid to or for the benefit of
>
> (i) the worker, to the extent the worker is able to make use of the compensation for personal needs or is able to manage the worker's own affairs, or

(ii) any person who is dependent on the worker for support.

Section 231(3) provides that in the case of permanent disability where the Board applies the payments toward the costs of the worker's maintenance, if the worker is conscious, the Board must pay to the worker, or for the use of the worker, a comfort allowance of at least the amount set out below out of each periodic payment.

January 1, 2023	—	December 31, 2023	$284.95
January 1, 2024	—	December 31, 2024	$293.84

If required, earlier figures may be obtained by contacting the Board.

AUTHORITY: Section 231 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#49.11 Meaning of Custodial Care in Hospital or Elsewhere in Section 231(2)

Section 231(2) applies if an injured worker is receiving "custodial care in a hospital or elsewhere".

"Custodial care" requires that the worker be undergoing a voluntary or involuntary stay in, and be receiving care from, a hospital or other similar institution. Only long-term or permanent residence in a hospital or similar institution could amount to "custodial care". It does not cover periodic stays in hospital which a worker might have to undergo for the purpose of surgery or other treatment.

A worker is not considered to be receiving "custodial care" when confined to prison or other corrective institution. While the worker might be said to be in involuntary custody, it is not felt that the worker is undergoing "care" for the purpose of the section. The case would be different if the prison or corrective institution were also a hospital. The Board has authority under section 232(1) of the *Act* to discontinue the compensation of workers confined to prison. (See policy item #49.20.)

AUTHORITY: Section 231 of the *Act*.
CROSS REFERENCES: Policy item #49.20, *Imprisonment of Worker*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
November 25, 2015 − Application statement revised by Board of Directors Decision No. 2015/11/25-01.
January 1, 2014 – Policy changed to reflect the removal of the blatant Board error test; effective January 1, 2014.
June 1, 2009 – Deleted references to Board officers.
March 1, 2006 – Amendments made to provide for the payment of interest to the dependants of deceased workers in respect of retroactivity of then section 17 payments that are the result of a blatant Board error; applied to all decisions, including appellate decisions, made on or after March 1, 2006.

APPLICATION: Applies to all decisions, including appellate decisions, made on or after April 3, 2023.

#51.00 COST OF LIVING ADJUSTMENTS TO PERIODIC PAYMENTS

Subsections 334(1), (2), and (4) of the *Act* provide the method for indexing periodic payments of compensation to a worker. The subsections provide:

(1) On or before January 1 of each year, the Board must

(a) determine the percentage change in the consumer price index for Canada, for all items, for the 12-month period ending on October 31 of the previous year, and

(b) if the percentage change under paragraph (a) is greater than 4%, determine a percentage in accordance with subsection (2).

(2) The percentage determined by the Board under subsection (1) (b) must be at least 4% and must not be greater than the percentage change determined under subsection (1) (a).

…

(4) For the purposes of subsection (3), the periodic payments of compensation must be adjusted as follows:

(a) if the percentage change determined under subsection (1) (a) is negative, the adjustment is 0%;

(b) if the percentage change determined under subsection (1) (a) is greater than 4%, the adjustment is equal to the percentage determined under subsection (1) (b);

(c) in any other case, the adjustment is the percentage change determined under subsection (1) (a).

The Board determines the indexing factor to be applied to periodic payments of compensation to a worker or a dependant in the following manner:

- The Board compares the consumer price index for October of the previous year with the consumer price index for October of the year prior to the previous year.
- If the percentage change between these two consumer price indexes is less than 0%, no adjustment to periodic payments of compensation is made.
- If the percentage change between these two consumer price indexes is greater than 0% but less than or equal to 4%, the indexing factor is the percentage change.
- If the percentage change between these two consumer price indexes is greater than 4%, the indexing factor must be at least 4% but must not be greater than the percentage change.

The resulting indexing factors determined annually are set out below:

Date	Percentage
January 1, 2024	3.120936

If required, earlier figures may be obtained by contacting the Board.

The resulting indexing factor is applied on January 1 of each year to periodic payments of compensation to be paid in the calendar year in respect of an injury or a death occurring more than 12 months before the date of the adjustment.

If the Board starts or restarts periodic payments of compensation on a date more than 12 months after the date of the worker's injury or death, section 334(5) requires the Board to adjust all periodic payments as if payments were made continuously from the date of injury or death. This means that if payments on a claim are started or restarted more than 12 months after the injury or death, the worker or dependant receives the benefit of any cost of living adjustments occurring in the interim period as if payment had been continuous since the date of injury or death.

Compensation paid to a worker on or after June 30, 2002 will be indexed according to section 334 of the *Act*, irrespective of the date the worker was injured. However, if the Board is paying a retroactive adjustment of compensation to a worker who was injured before June 30, 2002, the indexing rules in section 25 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as it read immediately before June 30, 2002, apply to the compensation benefits that should have been paid to the worker before June 30, 2002. Compensation due

to the worker on or after June 30, 2002 will be indexed according to section 334 of the *Act*.

Effective December 31, 2003, compensation paid to a dependant of a deceased worker is indexed under section 334 of the *Act* regardless of the date that the worker died. However, if the Board retroactively adjusts compensation in respect of a death that occurred before December 31, 2003, the indexing rules in section 25.1 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as it read immediately before December 31, 2003, apply to the compensation that should have been paid to the dependant before that date. Compensation owing to the dependant on or after December 31, 2003 is indexed under section 334 of the *Act*.

Authority to approve adjustments under section 334 has been assigned to the President.

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	Section 334 of the *Act.*
HISTORY:	November 24, 2022 – Housekeeping changes consequential to implementing the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. December 31, 2003 – Amended regarding references to benefits paid to surviving dependants, in accordance with the legislative changes in the *Skills Development and Labour Statutes Amendment Act*, 2003 (Bill 37 of 2003).
APPLICATION:	This policy item applies to all periodic payments made to workers and surviving dependants.

#51.20 Dollar Amounts in the *Act*

Section 333(1) of the *Act* provides:

> Subject to subsection (2), the Board must adjust every dollar amount referred to in this Act on January 1 of each year by applying the percentage change in the consumer price index for Canada, for all items, for the 12-month period ending on October 31 of the previous year.

The Board determines the percentage change to be applied each January 1 to dollar amounts in the *Act* by comparing the consumer price index for October of the previous year with the consumer price index for October of the year prior to the previous year.

The resulting percentage changes determined annually are set out below:

Date	Percentage
January 1, 2024	3.120936

If required, earlier figures may be obtained by contacting the Board.

When the Board makes the adjustments, those dollar amounts referred to in the *Act* are deemed to be amended.

These provisions do not apply to the figures referred to in the maximum wage rate, and other figures referred to in policy item #69.00.

Authority to approve adjustments under section 333 has been assigned to the President.

Authority has also been assigned to the President to adjust the following amounts, using the formula set out in policy of the applicable Item of the *Manual*:

Amount of Disfigurement Compensation	C6-43.00
Clothing Allowances	C10-82.00
Transportation	C10-83.00
Subsistence Allowances	C10-83.10
Additional Benefits for Severely Disabled Workers	C10-84.00
Transfer of Costs	#114.11
Funeral and Other Death Expenses	C8-54.00

The Board adjusts dollar amounts referred to in Part 4, Division 5 − Compensation in Relation to Death of Worker, and section 225 of the *Act* in accordance with section 333 of the *Act*. In addition, effective December 31, 2003, the Board adjusts the dollar amounts referred to in Part 4, Division 5 − Compensation in Relation to Death of Worker, and section 225 and Schedule C of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as it read immediately before June 30, 2002, in accordance with section 333 of the *Act*.

EFFECTIVE DATE: December 31, 2003
AUTHORITY: Section 333 of the *Act*.
HISTORY: December 1, 2023 – Housekeeping amendment.
January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.

RE: Compensation on the Death of a Worker – Funeral and Other Death Expenses **ITEM: C8-54.00**

BACKGROUND

1. Explanatory Notes

This policy establishes the amount the Board will pay for funeral and other death expenses following the death of a worker. It also describes who is eligible to receive payments for these expenses.

2. The Act

Section 166:

(1) The following apply if compensation is payable under this Part [Part 4 – Compensation to Injured Workers and Their Dependants] as the result of the death of a worker or of injury resulting in such death:

(a) in addition to any other compensation payable under this Division [Division 5 of Part 4 of the *Act* – Compensation in Relation to Death of Worker], the Board must pay an amount in respect of funeral and related expenses, as determined in accordance with the policies of the board of directors;

(b) the employer of the worker must bear the cost of transporting the body to the nearest business premises where funeral services are provided;

(c) if burial does not take place at the premises referred to in paragraph (b), the Board must pay the costs of any additional transportation, up to a maximum determined in accordance with the policies of the board of directors.

(2) No action for an amount greater than that established under subsection (1) lies in respect of the funeral, burial or cremation of the worker or related cemetery charges.

POLICY

1. Funeral and Other Death Expenses

If compensation is payable as the result of the death of a worker or of injury resulting in such death, in addition to any other compensation payable, the Board pays an amount in respect of funeral and related expenses. The maximum amount payable for funeral and related expenses is set out below.

The employer of the worker is required to bear the cost of transporting the body to the nearest business premises where funeral services are provided, and if burial does not take place at the nearest business premises where funeral services are provided, the Board may pay the cost of any additional transportation, up to the maximum set out below.

	Funeral and Related Expenses	Transportation of Body
January 1, 2023 – December 31, 2023	$10,890.22	$1,720.58
January 1, 2024 – December 31, 2024	$11,230.10	$1,774.28

If required, earlier figures may be obtained by contacting the Board.

Effective December 31, 2003, the above figures are adjusted annually on January 1 of each year. The percentage change in the consumer price index determined under section 333 of the *Act*, as described in policy item #51.20, is used.

No action for an amount greater than that established by the above provisions lies in respect of the funeral, burial, or cremation of the worker or related cemetery charges.

2. Person to Whom Expenses are Paid

Payment of funeral and related expenses is made to the most eligible person or persons, as determined by the Board. In determining whom to pay, the Board considers who has incurred the cost of funeral and related expenses, or who has undertaken to meet those payments.

Where the funeral and related expenses are less than the maximum provided in this Item, the Board pays only the actual amount of funeral and related expenses.

Once the Board has paid out the maximum amount provided in this Item to one or more persons, the Board does not consider any other claims for funeral and related expenses.

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	Section 166 of the *Act*
CROSS REFERENCES:	Policy item #51.20, *Dollar Amounts in the Act*, of the *Rehabilitation Services & Claims Manual,* Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. December 31, 2003 − Replaced policy items #53.00 and #53.10, of the *Rehabilitation Services & Claims Manual,* Volume II.
APPLICATION:	This Item applies to the death of a worker on or after December 31, 2003.

RE: Compensation on the Death of a Worker − Lump Sum Payment **ITEM: C8-55.00**

BACKGROUND

1. Explanatory Notes

This policy describes the provision of a lump sum payment to an eligible dependent spouse or foster parent.

2. The Act

Section 167:

> In addition to any other compensation provided, a dependent spouse or foster parent in Canada to whom compensation is payable is entitled to a lump sum of $3 316.80.

POLICY

Lump Sum Payment

A dependent spouse or foster parent in Canada to whom compensation is payable as a result of a worker's death is also entitled to a lump sum payment as follows:

January 1, 2023	—	December 31, 2023	$3,216.42
January 1, 2024	—	December 31, 2024	$3,316.80

If required, earlier figures may be obtained by contacting the Board.

Payment of this amount is made as soon as the claim is accepted.

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	Section 167 of the *Act*.
CROSS REFERENCES:	Policy item #51.20, *Dollar Amounts in the Act*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. November 24, 2011 − Housekeeping amendments made in accordance with legislative amendments to the then *Act*. December 31, 2003 − Replaced policy item #55.10 of the *Rehabilitation Services & Claims Manual,* Volume II.
APPLICATION:	This Item applies to the death of a worker on or after December 31, 2003.

(a) the monthly rate of compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, and

(b) if there are more than 2 child dependants, $430.99 per month for each child dependant beyond that number.

(4) The minimum compensation payable under this section must be the compensation that would be payable if the compensation were calculated under this section in respect of a deceased worker with average earnings of $46 434.03 per year.

POLICY

This Item applies to a dependent spouse and one or more child dependants. A surviving spouse and children who were not dependent upon the worker's earnings at the time of the worker's death may be entitled to compensation under Item C8-56.70.

1. Calculation of Compensation – Dependent Spouse with One Child Dependant

The monthly payment for a dependent spouse with one child dependant is calculated as follows:

(I) The Board determines 85% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum provided in Section 4 of this Item.

(II) The Board then deducts an amount equal to 50% of the federal benefits payable to or for those dependants.

The example below describes the monthly payment that would be payable for a dependent spouse and one child dependant, where the worker died on April 6, 2020 with an average net earnings of $60,000 per year.

(I) The Board determines 85% of the monthly rate of compensation

A.	Monthly permanent total disability benefits rate at date of death	90% x $\frac{60{,}000}{12}$	=	4,500
B.	85% of A	85% of A	=	3,825
	Maximum compensation entitlement (Board and federal benefits)	85% x 4,500	=	3,825

(II) The Board deducts an amount equal to 50% of federal benefits

C.	Federal benefits for dependent spouse	CPP rate set each year	=	638.28
D.	Federal benefits for child dependant	1 x CPP rate set each year	=	255.03
E.	Total federal benefits (dependent spouse and child)	C + D (638.28+255.03)	=	893.31
F.	50% of total federal benefits	50% of E (50% x 893.31)	=	446.65
G.	Total Board monthly payments payable (B less F)	B − F	=	
		3,825 − 446.65		3,378.35

2. Calculation of Compensation – Dependent Spouse with Two or More Child Dependants

The monthly payment for a dependent spouse and two or more child dependants is calculated as follows:

(I) The Board adds:

(a) the entire monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum provided in section 4 of this Item, and

(b) the following amount per month for each child dependant beyond two in number.

January 1, 2023	—	December 31, 2023	$417.95
January 1, 2024	—	December 31, 2024	$430.99

If required, earlier figures may be obtained by contacting the Board.

(II) The Board then deducts an amount equal to 50% of the federal benefits payable to or for those dependants.

The example below describes the monthly payment that would be payable for a dependent spouse and three child dependants, where the worker died on April 6, 2020, with an average net earnings of $60,000 per year.

(I) The Board determines 100% of the monthly rate of compensation, plus the additional amount for extra dependants

A.	Monthly permanent total disability benefits rate at date of death	$90\% \times \frac{60{,}000}{12}$	=	4,500
B.	Additional amount for third child dependant under section 171(3)(b)	See section 171(3)(b)	=	430.99
C.	Total monthly compensation rate (A plus B) and	A + B	=	4,930.99
	Maximum compensation entitlement (Board and federal benefits)	4,500 + 430.99	=	4,930.99

(II) The Board deducts an amount equal to 50% of federal benefits

D.	Federal benefits for dependent spouse	CPP rate set each year	=	638.28
E.	Federal benefits for child dependants	3 x CPP rate set each year (3 x 255.03)	=	765.09

F.	Total federal benefits (dependent spouse and children)	D + E	=	1,403.37
G.	50% of total federal benefits	50% x F (50% x 1,403.37)	=	701.69
H.	Total Board monthly payments payable (C less G)	C − G 4,871.21 − 701.69	=	4,169.52

3. Change in Federal Benefits

If the Board receives evidence of a change in a dependant's entitlement to federal benefits, the amount of federal benefits deducted from the compensation for that dependant is adjusted accordingly. For instance, if the Board receives evidence that children's benefits under the Canada Pension Plan have been terminated, the amount of federal benefits deducted from the compensation for that child will be adjusted. The adjustment takes effect as of the date of the change in federal benefits.

4. Minimum Monthly Payments

The minimum monthly payment under this Item must not be less than the amount that would be payable if, at the date of death, the deceased worker had the following average earnings:

January 1, 2023	—	December 31, 2023	$45,028.71
January 1, 2024	—	December 31, 2024	$46,434.03

If required, earlier figures may be obtained by contacting the Board.

5. Commencement of Compensation

Compensation under this Item commences on the day after the date of the worker's death.

6. Duration and Recalculation of Compensation

Compensation for a dependent spouse is payable for life.

Compensation for a dependent spouse with one or more child dependants is recalculated in accordance with Item C8-57.00 as each child ceases to meet the requirements, described in Item C8-53.20, to be eligible for compensation as a "child" of the deceased worker.

RE:	Compensation on the Death of a Worker – Calculation of Compensation – Dependent Spouse with No Children	ITEM:	C8-56.10

BACKGROUND

1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for a dependent spouse with no dependent children.

2. The Act

Section 1, in part:

> **"dependant"** – See Item C8-53.00.
>
> **"surviving spouse"** means a person who was a spouse of a worker when the worker died;
>
> ...

Section 165, in part:

> (1) In this Division [Division 5 of Part 4 of the *Act* – Compensation in Relation to Death of Worker]:
>
> …
>
> **"dependent spouse"**, in relation to a deceased worker, means a surviving spouse of the worker who is a dependant of the worker;
>
> **"federal benefits"** means the benefits paid for a dependant under the *Canada Pension Plan* as a result of a worker's death, other than the death benefit payable to the estate of a worker under section 57 *[death benefit]* of that Act.
>
> (2) If 2 workers are spouses and both are contributing to the support of a common household, each is deemed to be a dependant of the other.
>
> (3) If parents contribute to the support of a common household at which their children also reside, the children are deemed to be dependants of the parent whose death is compensable under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants].

Section 169:

(1) This section applies if

(a) a deceased worker leaves a dependent spouse but does not leave any child dependants, and

(b) at the date of the worker's death, the dependent spouse

(i) was 50 years of age or older, or

(ii) had a physical or mental disability that resulted in the spouse being incapable of earning.

(2) Subject to subsection (3), the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for that dependent spouse, would equal 60% of the monthly rate of compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] that would have been payable if the deceased worker had, at the date of the worker's death, sustained a permanent total disability.

(3) A monthly payment under this section must not be less than $1 392.79.

Section 170:

(1) This section applies if

(a) a deceased worker leaves a dependent spouse but does not leave any child dependants, and

(b) at the date of the worker's death, the dependent spouse

(i) was under 50 years of age, and

(ii) did not have a physical or mental disability that resulted in the spouse being incapable of earning.

(2) Subject to subsection (3), the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for the dependent spouse, would equal the product of

(a) the percentage determined by subtracting 1% from 60% for each year that the age of the dependent spouse, at the date of the worker's death, is under 50 years of age, and

(b) the monthly rate of compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.

(3) The percentage determined under subsection (2)(a) must not be less than 30%, and a monthly payment under this section must not be less than $1 392.79.

Section 187:

(1) This section applies if, at the date of a worker's death, a dependent spouse of the worker does not have a physical or mental disability that results in the spouse being incapable of earning, but does have a disability that results in a substantial impairment of earning capacity.

(2) The Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had the incapacity referred to in subsection (1).

POLICY

This Item applies where there are no dependent children, but there is a dependent spouse at the time of the worker's death. A surviving spouse who was not a dependent spouse may be entitled to compensation under Item C8-56.70.

1. Meaning of Having a "Physical or Mental Disability that Resulted in the Dependent Spouse Being Incapable of Earning"

Being "physically or mentally incapable of earning" means the dependent spouse is not capable of independent financial support. A dependent spouse who has a physical or mental disability, but is capable of independent financial support is not entitled to compensation under section 169. A temporary physical or mental incapacity to earn is not sufficient to entitle a dependent spouse to compensation under section 169.

The Board may pay compensation to a dependent spouse under section 187 if, at the date of a worker's death a dependent spouse does not have a physical or mental disability that results in the dependent spouse being incapable of earning, but does have a disability that results in a substantial impairment of earning capacity. The Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the dependent spouse a proportion of the compensation that would have been payable under section 169.

2. Calculation of Compensation – Dependent Spouse 50 Years of Age or Older or Incapable of Earning as a Result of Physical or Mental Disability

The monthly payment for a dependent spouse who, at the date of the worker's death, is either:

- 50 years of age or over, or
- has a physical or mental disability that results in the spouse being incapable of earning,

is calculated as the difference between:

(a) 60% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of the worker's death, sustained a permanent total disability, and

(b) 50% of the federal benefits payable to or for the dependent spouse.

The monthly payment is subject to the minimum amount provided in Section 5 of this Item.

3. Calculation of Compensation – Dependent Spouse under 50 Years

The monthly payment for a dependent spouse who, at the date of the worker's death, is under 50 years of age, and does not have a physical or mental disability that results in the spouse being incapable of earning, is calculated as follows:

(I) The Board multiplies:

(a) the percentage determined by subtracting one percentage point from 60%, to a minimum of 30%, for each year that the age of the dependent spouse, at the date of the worker's death, is under 50 years of age, by

(b) the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.

(II) The Board then deducts an amount equal to 50% of the federal benefits payable to or for the dependent spouse from the product determined above.

The monthly payment is subject to the minimum amount provided in Section 5 of this Item.

When determining the percentage under (I)(a) above, the Board does not round up the age of the dependent spouse to the nearest whole number. For instance, a dependent spouse who is 35 years and 11 months is considered 35, not 36, for the purpose of determining the percentage to use in establishing compensation.

The example below describes the monthly payment that would be payable for a dependent spouse who, at the date of the worker's death, has no dependent children, is 35 years old, where the worker died on April 6, 2020, with an average net earnings of $60,000 per year.

(I) The Board determines the percentage to apply to the monthly rate of compensation

A.	Determination of percentage based on the dependent spouse's age	50 - 35	=	15%
	Relevant percentage	60% - 15%	=	45%

(II) The Board applies the age percentage to the monthly rate of compensation

B.	Monthly permanent total disability benefits rate at date of death	$90\% \times \frac{60{,}000}{12}$	=	4,500
C.	Product of percentage and monthly permanent total disability benefits rate (A times B), which is maximum compensation entitlement (Board and federal benefits)	45% x 4,500	=	2,025
			=	2,025

(III) The Board deducts an amount equal to 50% of federal benefits

D.	50% of federal benefits			
	Federal benefits for dependent spouse	CPP rate set each year	=	638.28
	50% of federal benefits	50% x 638.28	=	319.40

E.	Total Board monthly payments payable (C less D)	C 2,025	−	D 319.14	=	1,705.86

4. Change in Federal Benefits

If the Board receives evidence of a change in the entitlement of a dependent spouse to federal benefits, the amount of federal benefits deducted from the compensation for that dependant is adjusted accordingly. The adjustment takes effect as of the date of the change in federal benefits.

5. Minimum Monthly Payments

The minimum monthly payment for a dependent spouse under this Item is as follows:

January 1, 2023	—	December 31, 2023	$1,350.64
January 1, 2024	—	December 31, 2024	$1,392.79

If required, earlier figures may be obtained by contacting the Board.

The minimum monthly payment is the actual minimum paid by the Board. Federal benefits are not deducted from this minimum amount.

6. Commencement of Compensation

Compensation under this Item commences on the day after the date of the worker's death.

7. Duration and Recalculation of Compensation

Compensation for a dependent spouse is payable for life.

The amount of compensation payable for a dependent spouse who, at the date of the worker's death, had a physical or mental disability that resulted in the spouse being incapable of earning is recalculated in accordance with Item C8-57.00 if the dependent spouse ceases to have that disability.

EFFECTIVE DATE: June 30, 2002
AUTHORITY: Sections 169 and 170 of the *Act*.

RE: Compensation on the Death of a Worker − Calculation of Compensation − Children **ITEM: C8-56.40**

BACKGROUND

1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for dependent children.

2. The Act

Section 1, in part:

> **"surviving spouse"** means a person who was a spouse of a worker when the worker died;
>
> ...

Section 165:

> See Item C8-56.00.

Section 168:

> (1) Subject to subsection (2), if compensation is payable as the result of the death of a worker or of injury resulting in such death, the Board must pay compensation to the dependants of the deceased worker in accordance with this Division [Division 5 of Part 4 of the *Act* – Compensation in Relation to Death of Worker].
>
> (2) Unless a shorter period applies under this Division, the Board must make periodic payments under this Division for the life of the person to whom the payment is to be made.

Section 172:

> (1) This section applies if a deceased worker leaves no dependent spouse eligible for monthly payments under this Division [Division 5 of Part 4 of the *Act* – Compensation in Relation to Death of a Worker] but does leave one or more child dependants.

(2) Subject to subsection (5), if there is one child dependant, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits to or for that child, would equal 40% of the monthly rate of compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.

(3) Subject to subsection (5), if there are more than 2 child dependants, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for those children, would equal 50% of the monthly rate of compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.

(4) Subject to subsection (5), if there are more than 2 child dependants, the Board must make a monthly payment of an amount that, when combined with 50% of the federal benefits payable to or for those children, would equal the total of

(a) 60% of the monthly rate of compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, and

(b) if there are more than 3 child dependants, $430.99 per month for each child beyond that number.

(5) The minimum compensation payable under this section must be the compensation that would be payable if the compensation were calculated under this section in respect of a deceased worker with average earnings of $46 434.03 per year.

POLICY

Children who were not wholly or partly dependent on the worker's earnings at the time of the worker's death are not entitled to compensation under this Item. They may, however, be entitled under Item C8-56.70.

1. Calculation of Compensation – Where there is a Dependent Spouse

If there is a dependent spouse eligible for periodic payments, the child dependent's compensation is calculated in conjunction with that of the dependent spouse under Items C8-56.00, C8-56.20 or C8-56.30. With one exception, this is so whether the child dependants live with the dependent spouse or not. Where they live apart, the apportionment provisions described in Item C8-58.00 may be applied to the compensation. The exception involves Item C8-56.20, which applies to child dependants only when they are living with the separated spouse at the date of the worker's death.

If there is a dependent spouse and one or more dependent children, and the dependent spouse subsequently dies, compensation for the dependent children is recalculated under Item C8-57.00.

2. Calculation of Compensation – Where there is no Dependent Spouse

If there is no dependent spouse or common law dependent spouse eligible for monthly payments under Division 5 of Part 4 of the *Act*, compensation for any dependent children is calculated as described below.

2.1 One Child Dependant

The monthly payment for one child dependant is calculated as the difference between:

(a) 40% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and

(b) 50% of the federal benefits payable to or for that child.

2.2 Two Child Dependants

The monthly payment for two child dependants is calculated as the difference between:

(a) 50% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and

(b) 50% of the federal benefits payable to or for those children.

2.3 More Than Two Child Dependants

The monthly payment for more than two child dependants is calculated as follows:

(I) The Board adds:

(a) 60% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and

(b) if there are more than 3 child dependants, the following amount per month for each child beyond that number:

January 1, 2023	—	December 31, 2023	$417.95
January 1, 2024	—	December 31, 2024	$430.99

If required, earlier figures may be obtained by contacting the Board.

(II) The Board then deducts an amount equal to 50% of the federal benefits payable to or for those children from the amount determined above.

3. Change in Federal Benefits

If the Board receives evidence of a change in a child dependant's entitlement to federal benefits, the amount of federal benefits deducted from the compensation for that child is adjusted accordingly. For instance, if the Board receives evidence that a child's benefits under the Canada Pension Plan have been terminated, the amount of federal benefits deducted from the compensation for that child will be adjusted. The adjustment takes effect as of the date of the change in federal benefits.

4. Minimum Monthly Payments

The minimum monthly payment under this Item must not be less than the amount that would be payable if, at the date of death, the deceased worker had the following average earnings:

January 1, 2023	—	December 31, 2023	$45,028.71
January 1, 2024	—	December 31, 2024	$46,434.03

If required, earlier figures may be obtained by contacting the Board.

RE:	Compensation on the Death of a Worker − Calculation of Compensation – Dependent Parents and Other Dependants	ITEM:	C8-56.60

BACKGROUND

1. Explanatory Notes

This policy describes the calculation of compensation for dependent parents and "other dependants" of a deceased worker.

2. The Act

Section 1, in part:

> **"family member"**, in relation to a worker, means the following:
>
> (a) a spouse, parent, grandparent, step-parent, child, grandchild, stepchild, sibling or half-sibling of the worker;
>
> (b) a person, whether related to the worker by blood or not, who stood in place of a parent of the worker or to whom the worker stood in place of a parent;
>
> …

Section 173:

> (1) This section applies if a deceased worker
>
> (a) leaves either a dependent spouse or one or more child dependants entitled to compensation under this Division [Division 5 of Part 4 of the *Act* – Compensation in Relation to Death of a Worker], but not both a dependent spouse and one or more child dependants, and
>
> (b) leaves a dependent parent or dependent parents.
>
> (2) In addition to the compensation payable to the spouse or children, the Board must pay to the dependent parent or dependent parents an amount the Board considers is reasonable and proportionate to the pecuniary loss suffered by the dependent parent or dependent parents by reason of the worker's death.

(3) As a restriction on subsection (2), an amount paid under this section must not be greater than $762.83 per month for life or for a lesser period as determined by the Board.

Section 174:

(1) This section applies if a deceased worker does not leave a dependent spouse or a child dependant entitled to compensation under this Division [Division 5 of Part 4 of the *Act* – Compensation in Relation to Death of a Worker], but does leave other dependants.

(2) The Board must pay to the other dependants of the worker an amount the Board considers is reasonable and proportionate to the pecuniary loss suffered by those dependants by reason of the worker's death.

(3) As a restriction on subsection (2), the total of the amounts paid under this section must not be greater than $762.83 per month for life or for a lesser period as determined by the Board.

POLICY

1. Dependent Spouse and Children

If both a dependent spouse and children of the deceased worker are eligible for compensation as a result of the worker's death, no other person is entitled to compensation for the death, other than funeral and transportation expenses under Item C8-54.00.

2. Dependent Parents

If there is either a dependent spouse or one or more child dependants entitled to compensation as a result of a worker's death, but not both a spouse and one or more child dependants, compensation is payable for the dependent parent or dependent parents of the deceased worker.

The compensation payable to a dependent parent or dependent parents is in addition to the compensation payable to the dependent spouse or to the dependent child or children as a result of the worker's death.

A parent who was not wholly or partly dependent upon the worker's earnings at the time of the worker's death is not entitled to compensation under this Item. The parent may, however, be entitled to compensation under Item C8-56.70.

3. Other Dependants

If there is neither a dependent spouse nor a child dependant entitled to compensation as a result of a worker's death, compensation is payable to "other dependants" of the deceased worker.

The term "other dependants" means any of the following family members of the worker who were wholly or partly dependent on the worker's earnings at the time of the worker's death:

- parent(s) or step-parent(s);
- person who stood in place of a parent of the worker, whether or not the person is related to the worker;
- grandparent(s);
- child or children who do not meet the requirements under Item C8-53.10 to be eligible for compensation as a "child" of the deceased worker;
- grandchild(ren);
- stepchild or stepchildren who do not meet the requirements under Item C8-53.20 to be eligible for compensation as a "child" of the deceased worker;
- sibling(s) or half-sibling(s); and
- person to whom the worker stood in place of a parent, whether or not the person is related to the worker, and who does not meet the requirements under Item C8-53.20 to be eligible for compensation as a "child" of the deceased worker.

Except in the case of parents, a family member of the worker who is described in the above list and who was not wholly or partly dependent on the worker's earnings at the time of the worker's death is not entitled to compensation under the *Act*. A parent who was not wholly or partly dependent upon the worker's earnings may still be entitled to compensation under Item C8-56.70.

4. Calculation of Compensation

Compensation for a dependant under this Item is an amount the Board considers is reasonable and proportionate to the pecuniary loss suffered by the dependant as a result of the worker's death.

In determining the appropriate amount of compensation, the Board considers the amount of financial support that the dependant had been receiving from the worker at the date of the worker's death, or at the date of the injury resulting in death. The Board also considers the number of dependants eligible for compensation under this Item, as well as the maximum amount of compensation payable, as set out below.

The total amount of compensation payable for all dependants under this Item, taken together, must not be greater than the following amount:

January 1, 2023	—	December 31, 2023	$739.74
January 1, 2024	—	December 31, 2024	$762.83

If required, earlier figures may be obtained by contacting the Board.

5. Commencement of Compensation

Compensation under this Item commences on the day after the date of the worker's death.

6. Duration of Compensation

Compensation under this Item may be for life or for a lesser period as determined by the Board. For instance, the worker's grandchild might have been dependent upon the worker's earnings for payment of tuition fees. In such a case, the Board may determine that compensation should end when the grandchild ceases to attend school.

EFFECTIVE DATE: June 30, 2002
AUTHORITY: Sections 173 and 174 of the *Act*.
CROSS REFERENCES: Item C8-53.00, *Compensation on the Death of a Worker – Definitions – Meaning of "Dependant" and Presumptions of Dependency*;
Item C8-53.20, *Compensation on the Death of a Worker – Definitions – Meaning of "Child" or "Children"*;
Item C8-54.00, *Compensation on the Death of a Worker – Funeral and other Death Expenses*;
Item C8-56.70, *Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit*, of the *Rehabilitation Services & Claims Manual*, Volume II.

RE:	Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit	ITEM:	C8-56.70

BACKGROUND

1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for a person who, although not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the worker.

2. The Act

Section 1, in part:

> **"dependant"** – See Item C8-53.00.

Section 175:

> (1) This section applies if
>
> > (a) either
> >
> > > (i) no compensation is payable under sections 169 to 174 in relation to a deceased worker, or
> > >
> > > (ii) the compensation is payable under those sections only to a spouse, a child or children or a parent or parents of the worker, and
> >
> > (b) the worker leaves a spouse, a child or children or a parent or parents who, although not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.
>
> (2) At the discretion of the Board, payments may be made to persons referred to in subsection (1)(b), but not to more than one of the categories of persons referred to in that provision.
>
> (3) As a restriction on subsection (2), the total of the amounts paid under this section must not be greater than $762.83 per month for life or for a lesser period determined by the Board.

POLICY

1. Persons with a Reasonable Expectation of Pecuniary Benefit

This Item applies if

(a) no compensation is payable to a dependant of the deceased, or

(b) the compensation is payable only to a spouse, a child or children, or a parent or parents,

but the worker leaves a spouse, child or children, or a parent or parents who, although not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.

A reasonable expectation of pecuniary benefit requires more than an assumption that the person would have received a financial benefit from the worker if the worker had not died. The evidence must support a finding that the worker would have provided an actual monetary benefit to the spouse, child or parent if the worker had not died.

Compensation may be payable to persons with a reasonable expectation of pecuniary benefit in only one of the following categories:

(a) spouse of the deceased worker;

(b) child or children of the deceased worker; or

(c) parent or parents of the deceased worker.

An application for compensation from a spouse, child or parent, on the grounds that he or she is a dependant of the deceased worker will automatically be considered under this Item if the Board concludes that the person was not wholly or partly dependent on the worker's earnings at the time of the worker's death.

2. Calculation of Compensation

Compensation under this Item is determined at the Board's discretion. However, monthly payments must not be greater than the following amount:

January 1, 2023	—	December 31, 2023	$739.74
January 1, 2024	—	December 31, 2024	$762.83

If required, earlier figures may be obtained by contacting the Board.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: To all decisions on or after June 1, 2009.

#65.01 Variable Earnings

The Board recognizes that not all workers receive remuneration based on a regular five-day work week. Accordingly, calculating time of the injury earnings based on a worker's rate of pay on the date of the injury is not always appropriate. The guidelines set out below apply in determining short-term average earnings where a worker is regularly employed with variable earnings.

The Board considers a worker to have variable earnings if the worker:

- works on call for one or more employers at differing rates of pay and does not have a casual pattern of employment;
- has irregular shifts;
- has shifts with no repeating patterns;
- works a shift cycle involving more than five cycles;
- works differing shift hours per cycle;
- is paid shift differentials; or
- is scheduled for a shift cycle change.

For such workers with variable earnings, the Board will usually calculate the short-term average earnings with reference to the worker's earnings in the three month period up to and including the worker's date of injury. However, the Board may use a shorter time period if it determines that the three month time period is not an accurate reflection of the worker's time of the injury earnings.

Situations where a shorter time period may be used include:

- if a regularly employed worker with variable earnings has been with an employer for less than three months, the worker's short-term average earnings are based on the worker's earnings from the worker's date of hire up to and including the date of the injury.
- if the worker received wage-loss benefits (or wage-loss equivalent vocational rehabilitation allowances/benefits) during the three month period prior to the date of injury.

- if the worker has experienced a significant atypical and/or irregular disruption in the pattern of employment during the three month period prior to the date of the injury. This circumstance may arise, for example, if the worker had a lengthy absence due to a non-compensable illness or injury, educational or maternity/paternity reasons.

In such situations, the Board may choose to exclude a portion of the time period over which earnings are averaged if doing so would provide a more accurate reflection of the worker's time of the injury earnings. The Board does not generally exclude short absences from work for non-compensable reasons or minor fluctuations in hours worked or rate of pay.

EFFECTIVE DATE:	June 1, 2009
CROSS REFERENCES:	Policy item #65.00, *General Rule for Determining Short-Term Average Earnings*; Policy item #67.10, *Casual Pattern of Employment*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION:	To all decisions on or after June 1, 2009.

#65.02 Worker with Two Jobs

If a worker holds two jobs and is disabled from both by an injury arising out of and in the course of one of them, the worker's earnings at the time of the injury will be based on the combined earnings of both jobs up to the statutory maximum. This applies whether or not the other job is covered by the compensation provisions of the *Act* or is self-employment. The total days worked in both jobs are merged to obtain the days worked per week. Both employers, if covered by the compensation provisions of the *Act*, may be reimbursed by the Board if they continue paying the disabled worker (Section 3 of the policy in Item C5-34.10).

If a worker is engaged in two jobs, one of which is a job for which personal optional protection has been purchased, the income earned in the non-personal optional protection job will be combined with the amount of personal optional protection purchased for the other job, up to the statutory maximum, in order to determine average earnings.

EFFECTIVE DATE:	June 1, 2009
CROSS REFERENCES:	Item C5-34.10, *Payment of Wage-Loss Benefits*; Policy item #65.00, *General Rule for Determining Short-Term Average Earnings*; Policy item #67.10, *Casual Pattern of Employment*; Policy item #67.20, *Personal Optional Protection*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2024 − Housekeeping change to update internal cross reference.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: To all decisions on or after June 1, 2009.

#65.03 Fishers

The worker's earnings at the time of the injury for fishers whose remuneration is based on a share of the catch, the value of which may only be determined at a future date, will be based on the earnings over the three month period immediately preceding the date of the injury. If earnings information is not available for that three-month period, the worker's average earnings may be based on the 12-month period immediately preceding the worker's date of injury. See also policy item #68.62 for information on a fisher's composition of average earnings if the fisher deducts equipment and/or operating expenses from gross income for business or taxation purposes and owns a vessel or other equipment used to harvest fish.

EFFECTIVE DATE: June 1, 2009
CROSS REFERENCES: Policy item #65.00, *General Rule for Determining Short-Term Average Earnings*;
Policy item #68.62, *Fishers*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: To all decisions on or after June 1, 2009.

#65.04 Provisional Rate

Compensation may be based on a provisional rate when the following conditions are present:

i. there is some significant delay in obtaining information necessary to determine the worker's short-term or long-term average earnings;

ii. the Board is unable to avoid that delay; and

iii. the worker is not causing the delay.

The worker is informed that a provisional rate has been set.

The amount of the provisional rate depends on the information available to the Board. While being careful not to set a rate which is higher than the worker's actual earnings, the Board should, as far as is possible, take into consideration the actual circumstances of the worker, for instance, age, occupation, seniority and union status. The Board should also have regard to statements of earnings already on file or on other recent compensation claims.

If the Board sets a provisional rate, this is a preliminary determination pending receipt of further information required to determine a worker's average earnings. If sufficient earnings information is received after payments have been made based on a provisional rate, a decision on the worker's average earnings will then be made.

Section 123(2) of the *Act* provides that the Board may not reconsider a decision on the worker's average earnings if any of the following apply:

(a) more than 75 days have elapsed since the decision was made;

(b) a request for review has been filed under section 270 *[making a request for a review]* in respect of the decision;

(c) a notice of appeal has been filed under section 292 *[how to appeal]* in respect of the decision.

Section 123(3) provides that the Board may, on its own initiative, reconsider a decision after the 75 days referred to in section 123(2)(a) have elapsed, if the decision contains an obvious error or omission.

A preliminary determination to set a provisional rate is not a "decision" for the purposes of section 123. Rather, it is a Board action that is intended to provide temporary financial relief to the worker until the Board receives the required information to make a decision on the worker's average earnings. However, once the Board makes the average earnings decision, that decision is subject to the provisions of section 123(2).

If insufficient earnings information or no information is received after a reasonable time, the Board will review the rate at least every four weeks from the date of the preliminary determination until the decision on average earnings is made. In setting a provisional rate, regard will be had to the applicable statutory minimum (Section 2 of the policy in Item C5-33.10). See policy item #93.26 regarding a worker's obligation to provide information. Where payments based on a provisional rate have been commenced, and the average earnings decision sets a rate lower than the provisional rate previously set, no recovery of the payments will be made in the absence of an administrative error, fraud or misrepresentation by the worker. For a definition of an administrative error, refer to policy item #48.41.

EFFECTIVE DATE:	October 29, 2020
CROSS REFERENCES:	Policy item #48.41, *When Does an Overpayment of Compensation Occur?*; Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*; Policy item #93.26, *Obligation to Provide Information*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 − Housekeeping change to update internal cross reference.

October 29, 2020 – Amended to reflect amendment to the reconsideration provisions of the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
May 1, 2010 – Amended to clarify when a provisional rate may be used and to change references to average net earnings to average earnings.
June 1, 2009 – Deleted references to Board officers.
March 3, 2003 – Amended to provide that where the Board sets a provisional rate, this is a preliminary determination pending receipt of further information.
Policy also provides that a preliminary determination is not a decision for the purposes of the time limits for reconsideration.

APPLICATION: Applies to all decisions made on or after October 29, 2020.

#65.05 Workers Participating in Non-Board Sponsored Return to Work Programs

If a worker is participating in a non-Board sponsored Return to Work program, insurance proceeds may be considered earnings for the purposes of determining short-term average earnings. Generally, for insurance proceeds to be considered earnings, payment must relate to the work being performed.

For example, if a worker is only in the workplace for four hours, but receives a top up in insurance proceeds for an additional four hours not related to the work being performed, the insurance proceeds are not considered to be earnings for the purposes of determining short-term average earnings. Conversely, if the worker is in the workplace for eight hours, and the worker receives half of the worker's wages through payment of insurance proceeds, the insurance proceeds may be considered earnings for the purposes of determining short-term average earnings.

Evidence which demonstrates that payment of insurance proceeds relate to the work being performed includes, but is not limited to:

- Continued payment of insurance proceeds is dependent upon active participation in the Return to Work program.
- The employer funds the insurance program as a wage replacement scheme.
- The Return to Work program is integrated into the normal production activities of the host employer.

See policy item #67.60 to determine the long-term average earnings for a worker participating in a non-Board sponsored Return to Work program.

EFFECTIVE DATE:	March 1, 2009
CROSS REFERENCES:	Policy item #67.60, *Exceptional Circumstances*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION:	Applies to all decisions made on or after the effective date.

#66.00 GENERAL RULE FOR DETERMINING LONG-TERM AVERAGE EARNINGS

Section 211 of the *Act* provides:

> Subject to this Division [Division 7 of Part 4 of the *Act* – Worker's Average Earnings and Earning Capacity], if a worker's disability continues after the end of the shorter period referred to in section 210, the Board must, for the period starting after the end of that period, determine the amount of the worker's average earnings based on the worker's gross earnings, as determined by the Board, for the 12-month period immediately preceding the date of the worker's injury.

After a claim has lasted five weeks, the Board considers whether it is likely to last for ten weeks and, if the Board has not done so already, sets in motion any enquiries necessary for a possible 10-week average earnings review.

As part of the Board's enquiries, information will be obtained as to the worker's earnings for the 12-month period immediately preceding the date of the worker's injury. Information will also be obtained about the worker's tax status for the previous year.

If not supplied by the employer, earnings and tax status information for the required period of time prior to the injury must be provided by the worker. The information provided must be verified information from an independent source such as wage stubs, T4s, or letters from the Income Tax Authorities or employers.

If, at the earlier of: the day after 10 cumulative weeks of wage-loss benefits have been paid to the worker; or the effective date of the worker's permanent disability benefits, there is insufficient information on which to complete the 10-week rate review, a provisional rate may be set until sufficient information is received (policy item #65.04).

In situations where a worker is being maintained on full salary by the employer, the Board will still be required to carry out a rate review of this kind and, if a

reduction is warranted, to make the necessary adjustment. If the worker's long-term earnings average out in excess of the rate set at the time of the injury and the figure being paid by the employer, it is conceivable that the worker could be in a less advantageous position than other workers with a similar earnings pattern. As such, a rate increase can be initiated and the difference between the new rate and what is being refunded to the employer made payable to the worker. This would not apply if the employer is paying the worker at the maximum applicable to the claim. If an employer ceases to make payments to a worker, the Board will begin to pay the worker directly.

EFFECTIVE DATE:	January 1, 2016
AUTHORITY:	Section 211 of the *Act*.
CROSS REFERENCES:	Policy item #65.04, *Provisional Rate*; Policy item #65.00, *General Rule for Determining Short-Term Average Earnings*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. By Board of Directors Resolution No. 2015/11/25-02, the application statement of this policy was revised on November 25, 2015.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after January 1, 2016.

#67.00 EXCEPTIONS TO THE GENERAL RULES FOR DETERMINING AVERAGE EARNINGS

The *Act* provides a number of exceptions to the general rules in setting a worker's short-term and long-term average earnings. The Board's policies with respect to each of these exceptions are presented below. If a worker's circumstances do not fit within any of the exceptions, the applicable general rule for determining a worker's average earnings applies.

Section 219 of the *Act* provides that if two or more exceptions to the general rules for determining average earnings apply to the same worker for the same injury, the Board must determine and apply the section that best reflects the worker's circumstances. In making this determination, "best" does not mean the highest rate possible, but rather, the rate that most closely reflects the actual loss incurred. This situation could arise if, for example, a worker was an apprentice (section 216) who had been employed less than 12 months (section 217). In this situation, the Board would apply the section that most accurately reflects the worker's average earnings and earning capacity at the time of injury.

HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#67.10 Casual Pattern of Employment

Section 214 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 the worker's average earnings from the date of 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. The Board must use the worker's gross earnings for the 12-month period immediately before the date of 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.

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 general rules of sections 210, 211 and 219 should apply;

    (b) those workers who have purchased coverage under section 4(2) of the *Act*, to whom the section 215 exception applies;

    (c) those workers who were an apprentice or learner, to whom the section 216 exception applies; and

    (d) those workers who were employed, on other than a casual or temporary basis, by the worker's employers for less than 12 months immediately preceding the date of the injury, to whom the section 217 exception applies.

    Certain workers will not clearly fall within the above categories. An indicator that a worker may fall within the section 214 exception is that the worker's job at the time of injury was not permanent and/or was scheduled

Compensation payable to persons entitled to personal optional protection is subject to the same cost of living adjustments as compensation payable to other persons.

EFFECTIVE DATE: March 18, 2003
CROSS REFERENCES: Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*;
Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*;
Item C6-37.00, *Permanent Total Disability Benefits*;
Item C6-39.00*, Section 195 Permanent Partial Disability Benefits*;
Policy item #71.00, *Average Net Earnings*, of the *Rehabilitation Services & Claims Manual*, Volume II;
Item AP1-4-3, *Personal Optional Protection*, of the *Assessment Manual*.
HISTORY: January 1, 2021 – Housekeeping changes made to cross-references consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 18, 2003 – Policy amended as to where the maximum and minimum wage rate figures may be obtained.

#67.30 Workers with No Earnings

Section 212 of the *Act* provides:

> If a worker had no earnings at the time of the injury, the Board must determine the amount of a worker's average earnings from the date of injury in a manner that the Board considers appropriate.

This is an exception to both general rules for determining average earnings. There is no 10-week average earnings review.

Persons working without pay are not generally considered as "workers" under the *Act*. However, there are some exceptional situations of this type which are covered and for which the *Act* or the Board has specified the earnings on which compensation is to be based. These situations are described in policy items #67.31 – #67.34.

CROSS REFERENCES: Policy item #67.31, *Volunteer Workers Admitted by the Board under Section 5*;
Policy item #67.32, *Volunteer Firefighters*;
Policy item #67.33, *Sisters in Catholic Institutions*;
Policy item #67.34, *Emergency Services Workers*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#67.31 *Volunteer Workers Admitted by the Board under Section 5*

Section 213 of the *Act* provides that if a person who is deemed to be a worker under section 5 *[extending application: public interest undertakings]* of the *Act*, is not regularly employed, the Board may, on the terms and conditions the Board directs, fix the amount of a person's average earnings having regard to all the circumstances, including the person's income, at not less than the amount set out below per week nor more than the maximum wage rate provided under section 209 of the *Act*.

January 1, 2023	—	December 31, 2023	$158.97
January 1, 2024	—	December 31, 2024	$163.93

If required, earlier figures may be obtained by contacting the Board.

The minimum wage set out above is subject to cost of living adjustments as described in policy item #51.20.

CROSS REFERENCES: Policy item #51.20, *Dollar Amounts in the Act*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#67.32 *Volunteer Firefighters*

The average earnings of volunteer firefighters working without remuneration is deemed to be the same in amount as the average earnings in their regular employment or employments, not, however, to be less than the amount on which the employer has been assessed (Item AP1-1-1 of the *Assessment Manual*).

In order to provide a minimum level of coverage to volunteer firefighters who have no attachment to the labour force, the employer is assessed $75.00 per month ($17.30 per week) for each person, unless the employer concerned has arranged with the Board for, or pays the claimant, a higher amount. Compensation is based on this rate unless or until wages are confirmed as being lost at another job. In the latter case, the rate can be increased to the rate on the job, but the $17.30 cannot be combined with it.

If the volunteer firefighter is unemployed, but has an attachment to the labour force in the sense that the volunteer firefighter is seeking employment, wage-loss benefits are determined on the average earnings from the last regular employment. The fact that the volunteer firefighter is collecting Employment Insurance benefits confirms for compensation purposes an attachment to the labour force. The 12 months immediately preceding the volunteer firefighter's

subject to the maximum wage rate under the *Act*, include the value of room and board as well as the worker's salary.

If an employer withdraws room and board during the disability, that portion of wage-loss benefits representing the dollar value of the room and board would be paid directly to the worker.

EFFECTIVE DATE:	December 1, 2010
CROSS REFERENCES:	Item C5-34.10, *Payment of Wage-Loss Benefits*; Policy item #68.00, *Composition of Average Earnings*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION:	Applies to all decisions made on or after December 1, 2010.

#68.23 Special Expenses or Allowances

Section 208(3)(b) of the *Act* provides:

> The Board must not include the following in determining the amount of a worker's average earnings:
>
> (b) special expenses or allowances paid to the worker because of the nature of the worker's employment.

Although a worker may receive payments in respect of work-related expenses or allowances, these payments will not be included in the calculation of average earnings.

Examples of special expenses or allowances include:

- tool allowances paid to tradespersons;
- safety boot allowances provided to workers required to wear safety boots due to the nature of their work;
- clothing allowances for workers required to wear special apparel for their work;
- dry-cleaning allowances;
- vehicle allowances; and
- travel allowances.

HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#68.30 Strike Pay

Strike pay is not included when calculating a worker's earnings.

#68.40 Employment Insurance Payments

Section 208(4) of the *Act* provides:

> If income from employment benefits was payable to a worker under the *Employment Insurance Act* (Canada) during the period for which average earnings are to be determined, the Board may include that income in the determination only if the Board considers that the worker's employment during that period was in an occupation or industry that results in recurring seasonal or recurring temporary interruptions of employment.

This is a discretionary provision and will be applied only where the evidence supports a finding that the worker received employment insurance benefits due to the worker's employment in an occupation or industry that results in recurring seasonal or temporary interruptions of employment.

The Board may collect the necessary data to compile a list of industries and occupations that result in recurring seasonal or temporary interruptions of employment. The list must give regard to regional considerations and may adopt information from sources such as British Columbia Statistics, Statistics Canada or the department continued under the *Department of Employment and Social Development Act* (Employment and Social Development Canada – "ESDC").

EFFECTIVE DATE:	February 1, 2020
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof and evidence. June 1, 2009 – Updated reference to Human Resources and Skills Development Canada.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#68.50 Property Value Losses

No account will be taken of losses in property values alleged to be the result of the work injury, for example, where the injured person is disabled from working on and improving land which the person owns or there is a loss of goodwill in the business because of an inability to work in it.

In compensating the principal of a small limited company, the Board's obligations extend only to the losses suffered in the capacity of employee. Wage-loss benefits cannot be paid to reflect any detrimental effect that the injury may have on the company's business.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof and evidence. January 1, 2008 – Amendments to provide principals will be compensated based on their actual average earnings, as most other workers are.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting the calculation of average earnings for principals with injuries that occur on or after January 1, 2008.

#69.00 MAXIMUM AMOUNT OF AVERAGE EARNINGS

Section 208(2) provides that a worker's average earnings cannot exceed the "maximum wage rate" as determined under section 209.

The *Act* contains a special procedure for determining the maximum wage rate in force in any year.

Section 209 provides:

> (1) Before the end of each calendar year, the Board must determine the maximum wage rate applicable for the following calendar year.
>
> (1.1) As an exception to subsection (1), the maximum wage rate for 2021 is $100 000.
>
> (2) The maximum wage rate to be determined under this section must be an amount, which may be rounded to the nearest $100, that the Board considers represents the same relationship to the amount of $100 000 as
>
> (a) the annual average of wages and salaries in British Columbia for the year preceding the year in which the determination is being made
>
> bears to
>
> (b) the annual average of wages and salaries in British Columbia for the year 2019.

(3) For the purpose of determining annual average of wages and salaries under this section, the Board may use data published or supplied by Statistics Canada.

Prior to 2020, the Act referred to $40,000 and 1984 as the factors in the formula for calculating the maximum for the following calendar year. Prior to 1986, the *Act* referred to $11,200 and 1972 as the factors in the formula for calculating the maximum for the following calendar year.

For the maximum wage rates in force used to calculate temporary and permanent disability benefit payments, see below.

	Yearly Applicable
January 1, 2023 – December 31, 2023	$112,800.00
January 1, 2024 – December 31, 2024	$116,700.00

If required, earlier figures may be obtained by contacting the Board.

The maximum wage rate is not subject to consumer price index adjustments. Nor can a worker who is in receipt of the current maximum compensation benefits receive the benefit of such adjustments. However, if the maximum wage rate is increased in any year, workers injured in a prior year who were limited by the maximum compensation for that year can receive the benefit of any applicable cost of living adjustments occurring after the increase. Such adjustments are calculated using the previous maximum as a base and cannot at any time increase the worker's compensation above the current maximum.

Increases in the maximum wage rate do not have the effect of increasing the existing compensation being paid to workers whose payments have been limited by the lower maximum existing in a previous year. Exceptions to this rule may occur if, on a reopening occurring more than three years after a worker's injury, the Board exercises its authority under section 193 or section 197 to base the amount of compensation payable on the worker's earnings at the date of the reopening (policy item #70.20).

Authority to approve increases in the maximum wage rate under section 209 has been assigned to the President.

EFFECTIVE DATE: October 21, 2020
CROSS REFERENCES: Policy item #70.20, *Reopenings Over Three Years*, of the *Rehabilitation Services & Claims Manual*, Volume II.

CROSS REFERENCES: Policy item #69.11, *Permanent Disability Lump Sum Compensation and Permanent Disability Compensation for a Fixed Term*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#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 policy items #65.00 − #70.30.

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 pay cheque for the items listed in (a) – (c) above. Instead, the Board must estimate the probable deductions for these items.

If a worker's average earnings before the injury are less than the minimum average earnings per week established by section 191, temporary disability wage-loss benefits are not based upon 90% of average net earnings. Instead, the Board pays the worker wage-loss benefits equal in amount to the worker's loss of earnings. Consequently, there will be no deductions under Division 8 of Part 4 of the *Act* – Average Net Earnings of the Worker – from the worker's average earnings to produce average net earnings.

Under sections 220 and 221 of the *Act*, the Board calculates a worker's average net earnings at two stages in the claim process as described below.

EFFECTIVE DATE: January 1, 2024

AUTHORITY: Sections 220 and 221 of the *Act*.

HISTORY: January 1, 2024 – Reorganization of policy direction from former policy item #34.51 into this Item, consequential to the reformatting and renumbering of policies in Chapter 5, *Wage-Loss Benefits and Return to Work Obligations*.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

#71.10 Short-term Average Net Earnings

Under section 220 of the *Act* short-term average net earnings apply to the period set out in section 210.

Under section 210, the short-term average net earnings period begins on the date of the worker's injury and ends on the earlier of:

(a) the date wage-loss benefits have been payable to the worker for a cumulative period of 10 weeks; or

(b) the effective date of permanent disability compensation.

Schedule of Deductions

Effective January 1st 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 1st 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 applicable Schedule is that which is 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).

AUTHORITY: Section 220 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#71.20 Long-term Average Net Earnings

Under section 221 of the *Act* long-term average net earnings apply to the period commencing on the earlier of:

(a) the first day after the date wage-loss benefits have been payable to the worker for a cumulative period of 10 weeks; or

(b) the effective date of permanent disability benefits.

Formulas for Deductions

Effective January 1st each year, the Board implements formulas, based on those used by the Canada 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 1st 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 wage-loss benefits have been payable to the worker for a cumulative period of 10 weeks; or the effective date of permanent disability benefits.

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 probable income taxes for long-term average net earnings, the Board applies 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 Canada caregiver 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.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Sections 210 and 221 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
	June 1, 2009 – Updated reference to Canada Revenue Agency.
APPLICATION:	Applies on or after June 1, 2009.

#71.30 Insufficient Information

A worker has an obligation under section 153 of the *Act* to provide the Board with the information that the Board considers necessary to administer the worker's claim. If 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.

If 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, if 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.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#71.40 Adjustments

The Board may adjust a worker's average earnings subject to reconsideration rules set out in section 123 of the *Act*, if they were based upon incorrect information. If the adjustment results in a decrease in the value of the worker's earnings, the Board will consider policy item #48.41 in determining whether to declare an overpayment. If it results in an increase, a retroactive adjustment may be made.

EFFECTIVE DATE: October 29 2020
HISTORY: October 29, 2020 – Amended to reflect amendment to the reconsideration provisions in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted reference to Board officer.
October 1, 2007 – Amended to include reference to then section 96(5) of the *Act* and to delete the term net.
APPLICATION: Applies on or after October 29, 2020.

POLICY

1. GENERAL

Health care provided to injured workers is at all times subject to the direction, supervision, and control of the Board.

The Board determines all questions as to the necessity, character, and sufficiency of health care to be provided for injured workers. When making this determination, the Board may seek medical opinions or other expert professional advice to assist in determining if a given health care benefit or service is reasonably necessary.

The control of health care by the Board is not intended to exclude injured workers' choices. The Board uses its control over health care to do such things as ensure that health care options are not overlooked, promote recovery, facilitate return to work, and exclude choices by injured workers, physicians, qualified practitioners and/or other recognized health care professionals that will delay recovery, involve unnecessary or ineffective treatment, or create an unwarranted risk of further injury, increased disablement, disease or death. If there are reasonable choices of treatment, or reasonable differences of opinion among the medical profession with regard to the preferable treatment, or choices to be made that depend on personal preferences, the matter should be regarded as one of patient choice.

The Board's exercise of control relates largely to the approval or denial of health care payments, but can also include such things as directing an injured worker to be examined by a specialist or to attend a particular health care facility.

Where the Board considers health care to be reasonably necessary, and more than one type is available, the Board determines whether the choices are equally effective in terms of expected outcomes and length of disability, and are of a similar cost.

If there is a substantial difference in costs of equally effective health care options, the Board normally authorizes the option that is expected to be the least costly. In such cases, if the physician, qualified practitioner, other recognized health care professional, and/or worker chooses the more costly option, the Board pays for costs up to the amount that would have been paid for the authorized health care option.

If there is no substantial difference in costs between equally effective health care options, the choice is left to the worker.

If a worker travels outside British Columbia, and wishes to obtain health care the Board otherwise considers to be reasonably necessary, the worker should be advised that the Board will generally not pay in excess of the rates paid for medical treatment in British Columbia.

Generally, the Board does not pay for health care that is new, non-standard or not generally accepted by the Board, unless prior approval has been obtained.

2. SELECTION OF A PHYSICIAN OR QUALIFIED PRACTITIONER

Subject to the Board's overriding supervisory power, the worker may select the worker's own physician or qualified practitioner. For the purpose of sections 156, 157, 158, 159, 160, and 161 of the *Act*, there is no distinction between a physician and a qualified practitioner.

Where a worker wishes to make a change of physician or qualified practitioner, the following guidelines apply:

(a) Where a worker moves residence, a new physician or qualified practitioner may be selected in the new community without prior permission from the Board.

(b) Where a worker receives emergency treatment from a physician who is not the family physician, the worker may transfer to the family physician without prior permission from the Board.

(c) Where a worker wishes to change physician or qualified practitioner because of a loss of rapport with him or her, or because of a preference for a type of treatment available from a different type of physician or qualified practitioner, the change will be permitted unless the Board concludes that it is likely to be harmful, or medically unsound by reason of the circumstances relating to that particular case.

(d) Where a worker makes multiple changes of physicians or qualified practitioners and it appears to the Board that the worker is looking to find the physician or qualified practitioner whom the worker thinks is likely to provide a more favourable report, the Board may deny the change, and may not pay for treatment from the new physician or qualified practitioner. In determining whether to approve and pay for treatment from the worker's change of physician or qualified practitioner, the Board considers whether a rational treatment program is being followed.

(e) Where a worker attends walk-in clinics instead of, or in addition to, having a family physician and therefore does not see the same physician, the Board does not deny a worker's change of physician on this basis alone.

If the Board concludes that a worker's choice of physician or qualified practitioner is harmful or unsound, the decision is communicated to all physicians and qualified practitioners concerned, as well as to the worker. In these circumstances, the Board may reduce or suspend compensation if the circumstances in Item C10-74.00 are met.

Where a worker attends a physician or qualified practitioner whose right to render health care has been cancelled or suspended by the Board under the provisions referred to in policy item #95.30, the Board will not pay for the treatment or services rendered.

3. CONCURRENT TREATMENT

Concurrent treatment occurs when a worker's treatment is overseen by more than one physician or qualified practitioner at a time.

The Board's general position is that a worker's treatment should be overseen by only one physician or qualified practitioner at a time.

There are cases, however, where the Board may consider concurrent treatment to be reasonable.

The Board may consider concurrent treatment reasonable in situations such as when a worker's disability requires treatment by a physician and a specialist, by two or more specialists, or by a qualified practitioner with concurrent monitoring by a physician. The Board may also consider concurrent treatment reasonable when a worker is transitioning from one form of treatment to another. In this instance, the Board may determine that it is warranted for the treatments to overlap for a limited time.

The Board does not refuse concurrent treatment simply because it is inconsistent with a rule or policy of a professional organization.

4. AUTHORIZATION OF ELECTIVE SURGERY

Elective surgery is considered optional or not urgently necessary surgical treatment.

The Board does not expect physicians or qualified practitioners working under emergency conditions to obtain prior authorization from the Board before performing necessary surgical treatments. However, the Board does not generally pay for any elective surgical treatments unless prior authorization from the Board has been obtained.

The Board determines whether to authorize elective surgery based on the applicable medical evidence. The Board may refuse to authorize an elective surgical treatment if the Board considers it to be:

- unduly hazardous, having regard to its potential benefits and the risks involved in not having the surgery;
- unlikely to promote recovery;
- unnecessary; or

- reasonable to try less invasive measures first.

Before the Board refuses authorization of an elective surgical treatment, the Board normally discusses this decision with the worker's physician or qualified practitioner. The Board notifies the worker and the worker's physician or qualified practitioner of its decision.

If the worker decides to proceed with the unauthorized elective surgical treatment, the Board does not pay for the treatment or any expenses associated with recovery from that treatment. As well, the Board may consider the worker to have engaged in an unsanitary or injurious practice, and may reduce or suspend the worker's compensation, if the circumstances in Item C10-74.00 are met.

5. EXAMINATIONS

An injured worker's physician, qualified practitioner or other recognized health care professional may request that the Board conduct a medical examination of the injured worker. Similarly, the Board may direct an injured worker to submit to a medical examination.

A "medical examination" is not limited to examinations performed by physicians. It also includes examinations by qualified practitioners and other recognized health care professionals. The term "examination" may include a consultation (e.g. with a dentist), or an assessment (e.g. by a psychologist).

A Board-directed medical examination may be conducted by the worker's own physician, the Board or an external physician, qualified practitioner or other recognized health care professional, as determined by the Board.

In all cases, the Board notifies the injured worker in advance of the type of physician, qualified practitioner or other recognized health care professional who will conduct the examination. The Board also notifies the injured worker's physician, qualified practitioner, or other recognized health care professional of its intention to proceed with a Board-directed medical examination.

Following a Board-directed medical examination, the Board notifies the worker's physician, qualified practitioner or other recognized health care professional of those medical matters that should be brought to their attention following the examination.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 1, 154, 156, 157, 158, and 160 of the *Act.*
CROSS REFERENCES:	Item C3-22.00, *Compensable Consequences*; Item C10-74.00, *Reduction or Suspension of Compensation*; Item C10-75.00, *Health Care Accounts – General*; Item C10-76.00, *Physicians and Qualified Practitioners*;

Item C10-77.00, *Other Recognized Health Care Professionals*;
Item C10-79.00, *Health Care Supplies and Equipment*;
Item C10-84.00, *Additional Benefits for Severely Disabled Workers*;
Policy item #95.30, *Failure to Report*;
Policy item #97.30, *Medical Evidence*;
Policy item #97.34, *Conflict of Medical Opinion*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

January 1, 2024 – Reorganization of policy direction from former policy item #34.51 into this Item, consequential to the reformatting and renumbering of policies in Chapter 5, *Wage-Loss Benefits and Return to Work Obligations*.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 − This policy consolidated and replaced former policy items #74.23, #74.25, #74.50, #74.60, #78.00, #78.10, #78.11, #78.20 and #78.21 of the *Rehabilitation Services & Claims Manual,* Volume II.
June 1, 2009 – deleted references to Board officer, Board Medical Advisors, Medical Advisor, and Medical Advisor/Consultant.

APPLICATION:

Applies to all decisions made on or after January 1,2024.

(b) If the Board determines the worker is engaging in an unsanitary or injurious practice, the Board then advises the worker that the practice may inhibit recovery or lead to further injury and must be discontinued, otherwise some or all of the compensation on the claim may be reduced or suspended.

(c) If the worker persists in the unsanitary or injurious practice, the Board gives the worker an opportunity to provide an explanation for the worker's conduct.

(d) If the Board does not consider the worker's explanation to be reasonable, the Board determines whether to reduce the worker's compensation on the claim (e.g. suspend wage-loss benefits or permanent disability benefits, but not health care) or suspend all of the worker's compensation on the claim (including health care).

If the Board reduces or suspends the worker's compensation on the claim under section 154(3)(a) of the *Act*, the worker must satisfy the Board that the unsanitary or injurious practice has ceased and will not be repeated, before the Board reinstates full compensation.

Compensation may be terminated on other grounds if the unsanitary or injurious practice a worker is engaged in shows that the worker was not disabled during the period in question, or if the evidence indicates that the worker's disability is due to the unsanitary or injurious practice rather than to the original compensable personal injury, occupational disease or mental disorder.

4. REFUSAL TO SUBMIT TO MEDICAL OR SURGICAL TREATMENT

The Board has discretion under section 154(3)(b) of the *Act* to reduce or suspend a worker's compensation if the worker refuses to submit to medical or surgical treatment that the Board considers, based on expert medical or surgical opinion, or other expert professional advice, is reasonably essential to promote the worker's recovery.

If the Board chooses to reduce or suspend the worker's compensation, the Board has the further discretion to determine whether the reduction or suspension of the compensation applies to the health care on that claim and/or the wage-loss benefits or permanent disability benefits on that claim.

In applying this section of the *Act*, the Board does not limit the phrase "medical or surgical treatment" to treatment performed by physicians. It also includes treatment provided by qualified practitioners and other recognized health care professionals that the Board considers, based on medical opinion or other expert professional advice, reasonably essential to promote the worker's recovery.

Before the Board reduces or suspends a worker's compensation for refusing to submit to treatment, the Board takes the following actions:

(a) The Board determines whether the worker is refusing to submit to treatment.

(b) If the Board determines the worker is refusing to submit to treatment, the Board obtains a medical opinion or other expert professional advice that the treatment in question is reasonably essential to promote the worker's recovery.

(c) If the Board determines the worker is refusing to submit to treatment that, based on medical opinion or other expert professional advice, is reasonably essential to promote the worker's recovery, the Board then:

- advises the worker of this decision and that some or all of the compensation on the claim may be reduced or suspended if the worker does not submit to the treatment; and
- gives the worker an opportunity to provide an explanation for the worker's conduct.

(d) If the Board does not consider the worker's explanation to be reasonable, the Board determines whether to reduce the worker's compensation on the claim (e.g. suspend wage-loss benefits or permanent disability benefits payments, but not health care) or suspend all of the worker's compensation on the claim (including health care).

If the Board reduces or suspends the worker's compensation on the claim under section 154(3)(b) of the *Act*, the worker must submit to the Board-approved medical or surgical treatment, before the Board reinstates compensation.

EFFECTIVE DATE:	January 1, 2015
AUTHORITY:	Sections 1 and 154 of the *Act*.
CROSS REFERENCES:	Item C5-34.00, *Duration of Wage-Loss Benefits*; Item C10-72.00, *Health Care – Introduction*; Item C10-73.00, *Direction, Supervision, and Control of Health Care*; Item C10-75.00, *Health Care Accounts – General*; Policy item #93.26, *Obligation to Provide Information*; Policy item #93.30, *Medical Treatment and Examination*; Item C14-102.01, *Changing Previous Decisions – Reopenings*; Item C14-104.01, *Changing Previous Decisions – Fraud and Misrepresentation*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 − This policy incorporated concepts from former policy item #73.30, and consolidated and replaced former policy items #78.12, #78.13, and #78.24 of the *Rehabilitation Services & Claims Manual*, Volume II.
June 1, 2009 – Deleted references to Board officer and Medical Advisor from former policy items.

APPLICATION: This Item applies on or after January 1, 2015.

RE: Clothing Allowances **ITEM: C10-82.00**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on a worker's entitlement to clothing allowances.

2. The Act

Section 156:

See Item C10-72.00.

POLICY

1. GENERAL

The Board may pay the clothing allowances set out below to upper and/or lower limb amputees wearing prostheses, and to workers wearing an upper or lower limb brace, or a back brace. The amputation must be at or above the wrist, or at or above the ankle. An upper limb brace is a brace worn at or above the wrist. The brace must be either a major joint brace with rigid frame or contain rigid materials; or a hard back brace, with a rigid frame or shell.

Workers are paid a clothing allowance under one category as set out below:

	Jan. 1, 2023 – Dec. 31, 2023	Jan. 1, 2024 – Dec. 31, 2024
Upper Limb	$409.86	$422.65
Lower Limb	$821.72	$847.37
Bilateral Limb	$821.72	$847.37
Upper and Lower Limb	$1,231.71	$1,270.15

If required, earlier figures may be obtained by contacting the Board.

The Board also pays the allowance to a worker confined to a wheelchair, who is not otherwise entitled, at the upper and lower limb rate. The Board pays the allowance to a worker wearing a back brace at the upper and lower limb rate.

Effective January 1st, 2008, the Board adjusts the amounts of the clothing allowances on January 1st of each year. The Board determines the percentage change to be applied annually to these amounts by comparing the percentage change in the consumer price index for Canada for October of the previous year with the consumer price index for Canada for October of the year prior to the previous year.

The Board automatically pays the clothing allowance to a worker with an amputation at or above the wrist, or at or above the ankle. Proof is not required of the wearing of the prosthesis or prostheses, nor of the replacement, repair, or damage to clothing. In the case of braces however, the Board only pays the clothing allowance contingent on the worker's continued wearing of the apparatus as prescribed. Similarly, in the case of a worker confined to a wheelchair, the Board only pays the clothing allowance contingent on the worker's continued use of the wheelchair as prescribed.

Entitlement to the clothing allowance commences as of the date of the amputation or the worker commencing to use the brace or wheelchair. The Board makes the first payment following the initiation of the permanent disability benefits payments and this first payment includes any retroactive entitlement for prior periods of disability not previously paid. Subsequent payments are made annually.

The Board withholds payment of the clothing allowance while a worker is in prison. The Board pays the amount withheld to the worker on release, if the period in prison was less than one year. If the period in prison was more than one year, the Board does not pay the clothing allowance for each full year the worker was in prison.

EFFECTIVE DATE:	January 1, 2018
AUTHORITY:	Section 156 of the *Act.*
CROSS REFERENCES:	Item C10-79.00, *Health Care Supplies and Equipment*; Item C10-84.00, *Additional Benefits for Severely Disabled Workers*, of the *Rehabilitation Services & Claims Manual*, Volume II.

In these cases, the worker may also be required to reimburse the Board for additional costs, and any change or cancellation fees associated with the transportation if the Board determines:

(a) there is no reasonable explanation that would justify the worker's actions, such as unexpected illness or compelling personal reasons (e.g. a death in the family); or

(b) the change or cancellation was due to the worker's personal choice or preference, not related to the worker's compensable or non-compensable disability.

If it is not possible for the Board to schedule transportation directly or if mileage is paid, the Board may pay a transportation allowance to the worker in advance of the travel for the expected transportation costs incurred, up to an amount the Board considers reasonable. A worker is required to reimburse the Board for the transportation allowance if:

(a) the worker either does not attend, or does not attend in part, the health care in respect of which the transportation allowance was paid; and

(b) the allowance cannot be applied towards the transportation at another time.

The Board may recover the amounts paid:

- for transportation booked directly,
- through the provision of a transportation allowance, and/or
- for change fees, cancellation fees, or additional costs.

The Board may recover the above amounts by treating them as an overpayment and deducting them from the worker's compensation, or the worker may reimburse the Board directly.

If direct booking or payment by way of a travel allowance is not possible, the worker generally pays transportation costs as they are incurred, and advises the Board of the amount paid. The Board then calculates the amount of transportation payable and reimburses the worker for that amount.

5. AMOUNT PAYABLE

If the worker chooses to take a mode of transportation other than the one recommended by the Board, the Board pays for the more cost effective option, which is usually bus

fare, together with transportation to and from the bus terminal. In this regard, the Board may establish a schedule of rates, adjusted periodically. Otherwise, the following sections set out how the Board determines how much it will pay for transportation for a worker's receipt of health care.

5.1 Travel by Air

Where the Board considers travel by air to be the most appropriate mode of transportation for the worker, the Board pays for transportation equal to the cost of the airfare, together with the cost of transportation to and from airports.

5.2 Travel by Public Transportation

Where the Board considers travel by public transportation to be the most appropriate mode of local transportation for the worker, the Board pays for transportation equal to the actual cost of the public transportation.

Generally, the Board considers travel by public transportation the most appropriate mode of local transportation where it is available and is a reasonable means of travel for the journey to be made by the worker.

5.3 Travel by Private Vehicle

Where the Board considers travel by private vehicle to be the most appropriate mode of transportation for the worker, the Board pays for transportation based on mileage at the rate set out below:

Date	Amount Per Kilometre
January 1, 2023 – December 31, 2023	68¢
January 1, 2024 – December 31, 2024	70¢

If required, earlier figures may be obtained by contacting the Board.

The Board adjusts the mileage rate annually on January 1st of each year to the maximum tax-exempt mileage allowance as determined by the Canada Revenue Agency for British Columbia, as prescribed by section 7306 of the Canadian *Income Tax Regulations*.

- travels by air; or
- is required to be away from the worker's residence for 10 hours or more.

In these cases, the Board may pay a subsistence allowance to cover the cost of those meals missed due to the worker being away from the worker's residence over the entire meal period(s).

For the purposes of this policy, meal periods are defined as follows:

Meal	Time Period
Breakfast	6:30 to 8 am
Lunch	12 to 1 pm
Dinner	5 to 6:30 pm

If a worker is eligible for payment for transportation to visit the worker's residence while participating in a Board-approved health care program, the worker may also be eligible for a subsistence allowance for meals during the course of travel to and from the worker's residence.

The Board only pays the subsistence allowance for meals during the course of travel if the worker chooses the Board's recommended mode of transportation. For example, if the Board recommends air travel, but the worker chooses to drive, the Board pays the subsistence allowance for meals based on the meal periods that would have been missed had the worker travelled by air.

4.2 Amounts Payable

Where the eligibility requirements are met, the Board pays a subsistence allowance for meals with reference to the full or partial per diem meal allowance rates set out below:

Date	Breakfast	Lunch	Dinner	Per Day
January 1, 2023 – December 31, 2023	$15.47	$19.09	$32.84	$67.40
January 1, 2024 – December 31, 2024	$15.95	$19.69	$33.86	$69.50

If required, earlier figures may be obtained by contacting the Board.

Effective June 30, 2002, the Board adjusts the meal allowance rates annually on January 1st of each year using the percentage change in the consumer price index for Canada.

Where meals are included in the amount the Board pays to a health care facility, the Board does not pay any additional subsistence allowances for meals.

5. INCOME LOSS

5.1 Eligibility

Where a worker who is not disabled from working loses time from work to attend Board-approved health care, and thereby incurs a loss of income, the Board may pay a subsistence allowance to compensate the worker for that income loss. These situations involve either:

- a worker who has never been declared disabled as the result of a compensable personal injury, occupational disease or mental disorder; or
- a worker who has returned to work following a period of compensable disability, but is still undergoing Board-approved health care.

When evaluating whether to pay a subsistence allowance for income loss and how much to pay, the Board takes into account whether the income loss is due to the worker's personal choice of health care provider. If it involves bypassing a closer health care provider whom the Board considers adequate, the Board may not pay any, or as much, subsistence allowance for income loss.

The Board pays a subsistence allowance for income loss where the Board determines it is unreasonable for the worker to attend health care outside of work hours. Generally, the Board does not pay a subsistence allowance for income loss if the time loss incurred is under two hours; however, the Board may pay a subsistence allowance for income loss if the worker's aggregate time loss resulting from multiple appointments results in a significant income loss.

While these payments are not temporary disability wage-loss benefit payments, the Board applies the provisions of section 134(4) of the *Act*. As such, the Board does not pay a subsistence allowance for income loss for losses incurred on the day of the injury.

In situations where the worker is maintained on full salary by the employer and an entitlement to a subsistence allowance for income loss has arisen, the Board may pay the subsistence allowance for income loss to the employer under the terms of section 233(2) of the *Act*.

5.2 Amounts Payable

A subsistence allowance for income loss is equal to 90% of the worker's average net earnings for the time lost. However, it is subject to the same maximum and minimum rules that are applicable to temporary total disability wage-loss benefits.

6. TEMPORARY DEPENDANT CARE DURING PERIOD OF DISABILITY

6.1 Eligibility

The Board may cover the cost of temporary dependant care during a period of disability if the Board determines that:

(a) the costs are incurred by a worker as a result of the worker's compensable personal injury, occupational disease or mental disorder;

(b) the costs are over and above dependant care costs the worker normally incurred prior to the compensable personal injury, occupational disease or mental disorder; and

(c) no other suitable arrangements can be made with family, friends, or through the use of community resources.

The types of situations where the Board may pay a subsistence allowance on a temporary basis to cover dependant care costs include, but are not limited to, situations where:

(a) the worker requires emergency treatment and must be immediately transported to a health care facility, thereby leaving dependants unattended;

(b) the worker is required to attend Board-approved health care; or

(c) the severity of the disability resulting from the worker's compensable personal injury, occupational disease or mental disorder temporarily prevents the worker from being able to personally provide dependant care.

6.2 Amounts Payable

The Board pays a reasonable amount for dependant care as a subsistence allowance to eligible workers where the costs exceed the costs the worker normally incurred prior to the compensable personal injury, occupational disease or mental disorder.

The Board pays the additional new costs above any amount the worker paid prior to the compensable personal injury, occupational disease or mental disorder. The Board does

not pay additional costs that arise due to factors unrelated to the compensable personal injury, occupational disease or mental disorder.

When determining the amount to be paid, the Board considers reasonable community rates for the services provided and provincial government rates for dependant care subsidies.

EFFECTIVE DATE:	January 1, 2015
AUTHORITY:	Sections 1, 134, 156, 202, 233, and 334 of the *Act*.
CROSS REFERENCES:	Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*; Item C5-34.10, *Payment of Wage-Loss Benefits;* Policy item #51.20, *Dollar Amounts in the Act*; Policy item #68.22, *Room and Board*; Policy item #69.00, *Maximum Amount of Average Earnings*; Item C10-84.00*, Additional Benefits for Severely Injured Workers*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. January 1, 2015 − This policy incorporated the concepts from and replaced former policy items #83.00, #83.10, #83.13, #83.20, #84.20 and #84A.00 of the *Rehabilitation Services & Claims Manual*, Volume II. June 1, 2009 – Deleted references to Board officer, Rehabilitation Centre, Vocational Rehabilitation Services and Board officer in Vocational Rehabilitation Services.
APPLICATION:	This Item applies to health care expenses incurred and health care provided on or after January 1, 2015.

4.1.3 Categories of Personal Care Allowances

There are five categories of disability for which the Board considers paying personal care allowances:

Category 1: The worker requires minimal assistance with activities of daily living. For example, the worker has restricted mobility and needs some assistance with transferring, and/or requires some daily supervision to perform activities of daily living due to cognitive impairment and/or safety issues caused by the compensable disability. The worker, however, can feed, groom and clothe themselves.

Examples of compensable disabilities that might entitle a worker to a Category 1 personal care allowance include, but are not limited to:

- moderate brain injury,
- blindness or near blindness,
- multiple amputations at the wrist or ankle,
- aphasia, and
- hemiplegia.

Category 2: The worker has restricted mobility and requires assistance with regard to bowel or bladder malfunction. The worker can feed, clothe and wash themselves but needs assistance in other aspects of personal care and activities of daily living.

An example of a compensable disability that might entitle a worker to a Category 2 personal care allowance is paraplegia with bowel and bladder functions impaired.

Category 3: The worker requires moderate assistance with activities of daily living. The worker requires assistance with feeding, cleansing, grooming, and dressing.

Examples of compensable disabilities that might entitle a worker to a Category 3 personal care allowance include, but are not limited to:

- severe head injury resulting in brain damage to the extent that the worker is not bedridden, but is dependent upon assistance and ongoing care; and
- quadriplegia.

Category 4: The worker is almost totally immobile and requires extensive assistance in all activities of daily living.

Examples of compensable disabilities that might entitle a worker to a Category 4 personal care allowance include, but are not limited to:

- high lesion quadriplegia; and
- severe head injuries.

Category 5: The worker is totally immobile and requires extensive assistance in all activities of daily living.

Examples of disabilities that might entitle a worker to a Category 5 personal care allowance include, but are not limited to:

- high lesion quadriplegia with ventilator dependency;
- disabilities requiring palliative care in the home;
- severe head injuries that require constant attendance and care; and
- a combination of quadriplegia and head injury.

4.1.4 Personal Care Allowance Payable at Each Category

The Board pays each category of personal care allowance as set out below:

	Category 1	Category 2	Category 3	Category 4	Category 5
January 1, 2023 – December 31, 2023					
Daily Amount	$20.78	$35.41	$52.68	$68.21	$84.11
Monthly Amount	$625.67	$1,094.60	$1,581.03	$2,049.96	$2,519.51
January 1, 2024 – December 31, 2024					
Daily Amount	$21.43	$36.52	$54.32	$70.34	$86.74
Monthly Amount	$645.20	$1,128.76	$1,630.37	$2,113.94	$2,598.14

If required, earlier figures may be obtained by contacting the Board.

Effective June 30, 2002, the Board adjusts personal care allowances annually on January 1st of each year, using the percentage change in the consumer price index for Canada.

4.2 Respite Care

Severely disabled workers in receipt of a personal care allowance may qualify for respite care.

“Respite care” is short-term, temporary care provided to a severely disabled worker to relieve the worker’s informal caregiver from providing the worker with care and assistance with the worker’s activities of daily living. Respite care is provided by an agency or in a facility registered to provide health care services to severely disabled workers.

- whether the worker lives in and maintains the worker's primary residence.

A worker who does not live in and/or maintain a primary residence, but owns another form of accommodation may be eligible for the allowance if the Board determines that the worker would have contributed to its maintenance had the disability not occurred.

In addition, a worker who lives in a health care facility, but whose spouse and/or child(ren) continue to live in the family home, may be eligible for the allowance if the Board determines that the spouse and/or child(ren) are responsible for the maintenance activities covered by the allowance.

Where the worker has a pre-existing disability that is non-compensable, the compensable disability must be at least half the worker's combined total disability, and be a significant factor in the worker's inability to do the activities covered by the allowance.

A worker's eligibility for the independence and home maintenance allowance commences as of the date the Board determines the worker has an inability to perform instrumental activities of daily living and/or perform home maintenance activities that most other workers would have the physical capacity to do on their own. This includes the date the worker begins living in a health care facility where the worker's spouse and/or child(ren) continue to live in the family home.

A worker's eligibility for the independence and home maintenance allowance terminates upon the death of the worker, when the worker requires long-term care in a health care facility, or when the Board determines the worker is actually able to perform instrumental activities of daily living and/or the home maintenance activities that most other workers would have the physical capacity to do on their own.

If the worker lives in a health care facility and the Board is providing the home maintenance allowance for the spouse or child(ren) living in the family home, the Board stops paying the allowance at the earliest of:

- the spouse and/or child(ren) no longer living in the family home;
- the spouse and/or child(ren) living in the family home but no longer being responsible for the maintenance activities covered by the allowance; or
- the death of the worker.

The Board adjusts the independence and home maintenance allowance annually on January 1st of each year, using the percentage change in the consumer price index for Canada.

The amount of the independence and home maintenance allowance is set out below:

Date	Monthly Amount
January 1, 2023 – December 31, 2023	$366.49
January 1, 2024 – December 31, 2024	$377.93

If required, earlier figures may be obtained by contacting the Board.

4.6 Extensions of Health Care Treatments and Services for Severely Disabled Workers

The Board applies the policy in Items C10-76.00 and C10-77.00, in determining a severely disabled worker's general entitlement to the services of a physician, qualified practitioner or other recognized health care professional.

The Board may consider it reasonable to provide routine or long-term health care to severely disabled workers, based upon the nature and extent of their compensable personal injury or occupational disease. For example, the Board may pay for physiotherapy treatments beyond the limits set out in policy.

In extending the duration of health care, the Board considers the medical evidence that the health care will provide functional, preventative, or pain management benefits.

The Board may consider it reasonable to pay for treatment by more than one other recognized health care professional at a time (for example, treatment by a physiotherapist and a massage therapist), if both types of treatment are expected to lessen the impact of the worker's compensable personal injury or occupational disease.

4.7 Palliative Care Benefit

The Board, in consultation with the worker's physician, determines a worker's eligibility for a palliative care benefit. Generally the Board gives consideration to a worker for the palliative care benefit where the worker:

- has been diagnosed with a compensable injury or occupational disease;
- has a life expectancy of less than six months due to the compensable injury or occupational disease;
- is at or below 50% on the Palliative Performance Scale; and

6. Effective vocational rehabilitation recognizes, within reason, workers' personal preferences and their accountability for independent vocational choices and outcomes.

7. The gravity of the injury and residual disability is a relevant factor in determining the nature and extent of the vocational rehabilitation assistance provided. The Board should go to greater lengths in cases where the disability is serious than in cases where it is minor, including measures to assist workers to maintain useful and satisfying lives.

8. Where the worker has a compensable injury or disease together with some other impediment to returning to work, rehabilitation assistance may sometimes be needed and provided to address the combined problems. Rehabilitation assistance should not be initiated or continued when the primary obstacle to a return to work is non-compensable.

9. Vocational rehabilitation services should be provided in a cost-effective manner.

Goals

The objective of vocational programs and services is timely return to safe and durable work.

The goals of vocational rehabilitation are:

1. For workers with a temporary total disability, the goal is to assist injured workers in expediting recovery and return to work with the pre-injury employer. As these workers are considered unable to perform their pre-injury employment due to the disability, the goal is to assist a worker to return to work with the pre-injury employer in a suitable work arrangement.

2. For workers with a temporary partial disability, the goal is to assist injured workers in their efforts to return to work in a suitable occupation and maximize short-term earning capacity up to the pre-injury wage rate. This goal reflects the wording of section 192 of the *Act,* which refers to a consideration of what a worker is earning, or is capable of earning in a suitable occupation.

3. For workers entitled to permanent partial disability benefits, the goal is to assist injured workers in their efforts to return to work in a suitable occupation and maximize long-term earning capacity up to the pre-injury wage rate.

4. For workers entitled to permanent total disability benefits, the goal is to assist in improving quality of life and minimizing the impact of the disability.

5. For dependent spouses, the goal is to provide counselling and vocational assistance to overcome the impact of the fatality.

6. For other dependants of deceased workers, the goal is to provide counselling and placement services to overcome the impact of the fatality.

In all cases, the goal is to provide reassurances, encouragement and counselling to help those entitled to compensation to maintain a positive outlook and remain motivated toward future economic and social capability.

Services Provided

These goals are met by providing the following services to its clients:

- counselling;
- vocational assessment and planning;
- job readiness/skill development;
- placement assistance;
- residual employability assessment; and
- evaluation of a worker's need or continued need for rehabilitation and health care services and supports, where a worker's permanent total disability will continue past retirement age.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 155 and 162 of the *Act*.
CROSS REFERENCES:	Sections 154.2, 154.3, 190, 191, 192, 194, 195, and 196 of the *Act*; Item C5-35.10, *Duty to Cooperate*; Item C5-35.20, *Duty to Maintain Employment*; Item C11-91.00, *Vocational Rehabilitation – Vocational Assistance for Dependent Spouses and Dependants of Deceased Workers*; Item C18-116.30, *Retirement Benefits – Retirement Services and Personal Supports*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 – Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

February 1, 2020 – Policy amended to add statements related to VR principles and goals.
September 1, 2015 – Policy amended to ensure consistent treatment of workers with permanent partial disability compensation under sections 195 and 196 of the *Act.*
June 1, 2009 – Deleted references to Vocational Rehabilitation Services.
November 1, 2002 – Policy changed to set out the mission, principles and goals of Vocational Rehabilitation Services. Replaced policy items #85.00 to #85.60, of the *Rehabilitation Services & Claims Manual*, Volume II. Applies to decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended by the *Workers Compensation Amendment Act, 2002*.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

RE:	Vocational Rehabilitation − Eligibility Criteria	ITEM:	C11-86.00

BACKGROUND

1. Explanatory Notes

This policy sets out eligibility criteria for vocational rehabilitation services.

2. The Act

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 190:

> Compensation under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] is subject to the following provisions:
>
> (a) section 230 *[manner of compensation payment: periodic or lump sum]*;
>
> (b) section 231 *[payment of compensation in specific circumstances]*;
>
> (c) section 232 *[Board authority to discontinue or suspend payments]*;
>
> (d) section 233 *[deduction in relation to payments from employer]*.

Section 191(1), in part:

> … if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

Section 192(1), in part:

> … if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
>
> (a) the worker's average net earnings before the injury, and
>
> (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
>
> (i) the average net earnings that the worker is earning after the injury;
>
> (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

Section 194(1), in part:

> … if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

Section 195(1):

> Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must
>
> (a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
>
> (b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.

Section 196:

> (1) This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.
>
> (2) *Repealed*.
>
> (3) The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the average net earnings of the worker before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

POLICY

Eligibility

Rehabilitation assistance may be provided in cases where it appears to the Board that such assistance may be of value, and where a decision has been made that the injury, occupational disease or death is compensable.

Eligibility for vocational rehabilitation services will be determined in relation to the entitlement provisions of the *Act* as follows:

Temporary total disability

Vocational rehabilitation services are usually not provided to a worker with a temporary total disability, as the worker's medical condition often precludes the necessity of vocational rehabilitation initiatives. Limited vocational rehabilitation services may be considered where the Board determines that such services will assist in the worker's recovery and/or in making suitable work arrangements.

Temporary partial disability

Vocational rehabilitation services may be made available to a worker who is no longer considered to be "totally" disabled from working in the pre-injury occupation. The worker is considered capable of returning to a suitable occupation but may require vocational rehabilitation assistance to maximize short-term earning capacity up to the pre-injury wage rate.

Eligibility arises where:

- the compensable condition necessitates vocational rehabilitation assistance in early and safe return to work in the pre-injury occupation or another suitable occupation available over the short term;

- the compensable condition is complicated by non-compensable factors, the combination of which creates an impediment to return to work over the short term, necessitating assistance in an early and safe return to the pre-injury occupation or another suitable occupation;

- the pre-injury work is no longer available due to the injury and the worker requires assistance to return to work in another suitable occupation.

Permanent partial disability

Vocational rehabilitation services may be provided where a worker's temporary disability has ceased and the worker's medical condition has stabilized. Workers receiving permanent disability benefits are generally able to return to their pre-injury occupation or another suitable occupation but may need assistance in their return to the workforce.

Eligibility arises where:

- the compensable condition necessitates vocational rehabilitation to assist the worker in the worker's efforts to return to the pre-injury occupation;

- the compensable condition is complicated by non-compensable factors, the combination of which creates an impediment to return to work, necessitating assistance in the worker's efforts to return to the pre-injury occupation or another suitable occupation;

- the pre-injury work is no longer available due to the injury and the worker requires assistance to return to another suitable occupation; or

- the worker requires assistance in the worker's efforts to return to the workforce in another suitable occupation and maximize long-term earning capacity up to the pre-injury wage rate.

Permanent total disability

Vocational rehabilitation services will be provided to a worker with a permanent total disability where the worker needs assistance in improving the worker's quality of life. It may include evaluation of a worker's need or continued need for rehabilitation and health care services and supports, where a worker's permanent total disability will continue past retirement age.

Non-Compensable Problems

Where a worker has a compensable injury or disease together with some other impediment to a return to work (e.g. substance abuse), rehabilitation assistance may sometimes be needed and provided to address the combined problems.

Rehabilitation assistance should not be provided when the primary obstacle to a return to work is non-compensable.

Third-Party Claims

In the case of third-party claims, where a worker has a right of election, a worker is not eligible for rehabilitation assistance until the worker has elected to claim compensation with the Board.

Continuation of Assistance

In cases where the severity of an injury warrants immediate referral, intervention may precede the formal acceptance of the claim. Where this occurs, no substantial expenditures are initiated prior to acceptance of the claim. Should the claim be denied, any vocational rehabilitation assistance already being provided will terminate within 15 days unless a request for a review by the Review Division has been filed. In such cases, assistance may be continued pending disposition of the review.

Once a decision has been made that an injury or disease is compensable, there is no requirement that vocational rehabilitation assistance end at the same time payment of wage-loss benefits is concluded. The worker may no longer be eligible for wage-loss benefits, but vocational rehabilitation assistance may still be required and, where necessary, should be provided.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 154.2, 154.3, 155, 190, 191, 192, 194, 195, 196, and 270(3) of the *Act*.
CROSS REFERENCES:	Item C5-35.10, *Duty to Cooperate*; Item C5-35.20, *Duty to Maintain Employment*; Item C11-86.10, *Vocational Rehabilitation − Referral Guidelines*; Policy item #111.20, *Injury Not Caused by Worker or Employer*; Item C18-116.30, *Retirement Benefits − Retirement Services and Personal Supports*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 − Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). December 1, 2023 – Housekeeping amendment. January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted reference to Board officer in Vocational Rehabilitation Services.

March 3, 2003 − The policy in this Item was amended to remove the reference to appeal and include a reference to review, consequential to the *Workers Compensation Amendment Act (No.2), 2002*.
November 1, 2002 − Replaces policy items #86.00, #86.20, #86.40 and #86.70 of the *Rehabilitation Services & Claims Manual*, Volume II.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

EFFECTIVE DATE:	September 1, 2015
AUTHORITY:	Section 155 of the *Act*.
CROSS REFERENCES:	Sections 156, 157, 162, 190, 192, 194, 195, 196, and 203 of the *Act;* and Item C5-33.10*, Wage-Loss Benefits For Temporary Total Disability*; Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*; Item C6-45.00, *Lump Sums and Commutations*; Item C6-46.00, *Reconsideration of Prescribed Compensation Claims under Section 203*; Item C10-83.10, *Subsistence Allowances* (Section 6 Temporary Dependant Care During Period of Disability); Item C10-84.00, *Additional Benefits for Severely Disabled Workers* (Section 4.1 Personal Care Expenses or Allowances); Item C10-84.00, *Additional Benefits for Severely Disabled Workers* (Section 4.5 Independence and Home Maintenance Allowance); Item C11-86.00, *Vocational Rehabilitation – Eligibility Criteria*; Item C11-89.00, *Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability*; Item C18-116.30, *Retirement Benefits – Retirement Services and Personal Supports*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2021 – Housekeeping changes made to cross-references consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. September 1, 2015 – Policy revisions to remove referrals addressed elsewhere in policy. June 1, 2009 – Deleted references to Board officers. March 3, 2003 – Policy was amended to remove the reference to a review of then section 23(3) permanent partial disability award, consequential to the *Workers Compensation Amendment Act (No. 2), 2002*. November 1, 2002 – Clarification of guidelines for immediate and general vocational rehabilitation referrals. Replaced policy items, #86.10, #86.11, #86.12, #86.50, #86.60, and #86.80 of the *Rehabilitation Services & Claims Manual*, Volume II. Applied to decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492*,* as amended by the *Workers Compensation Amendment Act, 2002*.
APPLICATION:	Applies to all decisions made on or after September 1, 2015.

RE:	Vocational Rehabilitation − Process	ITEM:	C11-87.00

BACKGROUND

1. Explanatory Notes

This policy sets out the vocational rehabilitation process.

2. The Act

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

The vocational rehabilitation process addresses the individual needs and circumstances of each worker.

Consultative Process

The Board functions as a catalyst, coordinator, initiator and expediter of all the disciplines involved in helping a worker to overcome the effects of a compensable injury/occupational disease. This demands a team approach, which involves the injured worker, the Board, medical practitioners, employers, union representatives, other agencies and members of the worker's family.

The rehabilitation process emphasizes ongoing consultation with the worker, the employer and, where applicable, the union, in order to maximize and maintain all opportunities for suitable re-employment.

The consultative process is guided by the Board in response to the worker's determination for vocational success.

While it is up to the Board to assess workers' needs and appropriate levels of rehabilitation assistance, it is ultimately the responsibility of workers to decide their own vocational future.

In order to carry out the disclosure of information necessary to administer this consultative process, a consent from the worker will normally be requested in advance.

Operational Process

The rehabilitation process involves five sequential phases of vocational exploration. The Board expedites this process in accordance with the vocational rehabilitation principles and goals.

PHASE I

Principle:

All efforts will be made to help the worker return to the same job with the same employer. Under the *Act*, some employers have a duty to maintain the employment of an injured worker, and to make any change to the work and/or the workplace that is necessary to accommodate a worker, to the point of undue hardship (see Item C5-35.20, *Duty to Maintain Employment*).

Rationale:

The worker returns to a known environment, maintains seniority and company benefits and, where applicable, remains in the same union. The employer benefits by virtue of retaining a trained and experienced employee.

Method:

Programs of physical conditioning, work assessment, refresher training or skill upgrading may be appropriate.

PHASE II

Principle:

Where the worker cannot return to the same job, the employer will be encouraged to accommodate job modification or alternate in-service placement. Under the *Act*, some employers have a duty to maintain the employment of an injured worker, and to make any change to the work and/or the workplace that is necessary to accommodate a worker, to the point of undue hardship (see Item C5-35.20, *Duty to Maintain Employment*).

Rationale:

As in Phase I, the worker and the employer mutually benefit from the continuation of the employment relationship.

Method:

Programs relevant to Phase I may be appropriate. In addition, work site/job modification and/or supplementary skill development involving training-on-the-job and/or formal training may be required.

PHASE III

Principle:

Where the employer is unable to accommodate the worker in any capacity, vocational exploration will progress to suitable occupational options in the same or in a related industrial sector, capitalizing on the worker's directly transferable skills.

Rationale:

The worker returns to a known or related industry**,** which best utilizes existing skills to optimize occupational potential. This may also allow the worker to retain union status where applicable.

Method:

The programs relevant to the preceding phases may be applicable. In addition, job search assistance may be indicated.

PHASE IV

Principle:

Where the worker is unable to return to alternate employment in the same or related industry, vocational exploration will progress to suitable occupational opportunities in all industries, recognizing the worker's inventory of transferable skills, aptitudes and interests.

Rationale:

The worker returns to suitable employment in a different industry, which best utilizes existing skills to optimize occupational potential.

Method:

All programs relevant to the preceding phases may apply.

PHASE V

Principle:

Where existing skills are insufficient to restore the worker to suitable employment, the development of new occupational skills will be considered.

Rationale:

The worker is equipped with new marketable skills with a view to optimizing occupational potential.

Method:

Training programs will be considered for the development of new occupational skills. Programs relevant to the preceding phases may apply to help the worker secure employment once trained.

EFFECTIVE DATE: January 1, 2024

AUTHORITY: Section 155 of the *Act*.

CROSS REFERENCES:
Item C5-35.10, *Duty to Cooperate*;
Item C5-35.20, *Duty to Maintain Employment*;
Item C11-85.00, *Vocational Rehabilitation − Principles and Goals*;
Item C11-88.00, *Vocational Rehabilitation − Nature and Extent of Programs and Services*;
Item C11-88.10, *Vocational Rehabilitation − Work Assessments*;
Item C11-88.20, *Vocational Rehabilitation − Work Site and Job Modification*;
Item C11-88.30, *Vocational Rehabilitation − Job Search Assistance*;
Item C11-88.40, *Vocational Rehabilitation − Training-on-the-Job*;
Item C11-88.50, *Vocational Rehabilitation − Formal Training*;
Item C11-88.60, *Vocational Rehabilitation − Business Start-ups*;
Item C11-88.70, *Vocational Rehabilitation − Legal Services*;
Item C11-88.80, *Vocational Rehabilitation − Preventative Rehabilitation*;
Item C11-88.90, *Vocational Rehabilitation − Relocation*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:
January 1, 2024 − Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officers.
November 1, 2002 − Reformatted and revised policy to set out the vocational rehabilitation process and the five sequential phases of vocational exploration. Replaced policy items #87.10 and #87.20 of the *Rehabilitation Services & Claims Manual*, Volume II. Applies to decisions made on or after November 1, 2002 on claims adjudicated

under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 as amended by the *Workers Compensation Amendment Act, 2002*.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

RE: Vocational Rehabilitation – Nature and Extent of Programs and Services **ITEM: C11-88.00**

BACKGROUND

1. Explanatory Notes

This policy sets out the nature and extent of vocational rehabilitation programs and services available for injured workers.

2. The Act

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

PROGRAMS AND SERVICES

General

Programs and services in support of the vocational rehabilitation process may be implemented individually or in combination, as part of a rehabilitation plan.

Early Intervention

Vocational rehabilitation assistance should be provided as soon as a worker is medically able to participate in the worker's own vocational future.

Application of the Vocational Rehabilitation Process

The vocational rehabilitation process is generally applicable as follows:

Temporary total disability under section 191 of the *Act* – Phases I and II of the vocational rehabilitation process apply. Vocational rehabilitation services are limited to work assessments, work site/job modifications and to an advisory role regarding the worker's recovery and/or return to suitable work with pre-injury employer.

Temporary partial disability under section 192 of the *Act* – Phases I and II of the vocational rehabilitation process apply. Vocational rehabilitation services are limited to counselling, work assessments, graduated return to work ("GRTW"), placement assistance, mediation between worker and employer, and work site/job modifications.

Permanent partial disability under section 195 or 196 of the *Act* – Phases I through V of the vocational rehabilitation process apply. Vocational rehabilitation services may include counselling, work assessments (GRTW), placement assistance, mediation between worker and employer, work site/job modifications, job search, training-on-the-job, and formal training.

Permanent total disability under section 194 of the *Act* – Quality of life assistance may include vehicle modifications, home modifications, personal care allowances, independence and home maintenance allowances and temporary dependant care subsistence allowances.

Rehabilitation Plan

A rehabilitation plan is developed for each eligible worker. Ongoing medical opinion and a variety of Board and community resources assist the Board and the worker in developing the plan. The principles regarding medical opinion apply equally to the rehabilitation process.

The Board develops the plan in collaboration with the worker, the employer and appropriate health care providers. To demonstrate understanding of the plan, the plan should be signed by the worker, the Board and where appropriate, the employer.

The written rehabilitation plan:

- Defines the overall vocational goal. The plan is considered appropriate if the worker has a reasonable probability of successfully achieving the vocational goal.

- Outlines the supporting rationale, which makes the vocational goal attainable. The plan will clearly document how the worker's vocational profile matches the targeted suitable occupation. A description of the worker's vocational profile will include objective functional capacity, education, existing transitional skills or projected skills, aptitudes, training, interests and personal and occupationally significant characteristics.

- Describes a suitable occupation in which the worker can competitively pursue employment upon achievement of the vocational goal. This will be based on recognized methods of occupational classification. Where applicable, the description will include community-specific features of the occupation as determined through job analysis.

- Details the specific programs and services for the vocational goal to be attained and outlines the obligations of the participants.

- Details the methods, techniques and supports, which will be utilized to assist the worker in attaining the vocational goal. The sponsorship opportunities of other agencies are considered in providing integrated service delivery. Their availability does not limit the Board's provision of additional services in accordance with its policies.

- Outlines the wage-loss equivalency benefits and/or other allowances (such as transportation and subsistence allowances) which will accompany the plan.

- Indicates the timeframes associated with the overall plan and its component steps.

A worker is entitled to one rehabilitation plan. The Board will monitor the plan to determine if the plan is progressing as anticipated. A plan may be modified or a new plan substituted where:

- The worker's compensable condition deteriorates or improves, making the initial plan inappropriate in relation to the goal; and/or

- There are significant developments in the vocational rehabilitation process, impacting the expected outcome of the plan.

Approval by the Director of Vocational Rehabilitation Services is required in order to proceed with the development of a new plan.

All involved parties will acknowledge the modified or new plan. The requirements for developing the initial plan apply to the modified or new plan.

Financial Implications/Cost Effectiveness

Each plan must set out the financial implications of implementing the plan and/or its cost effectiveness. The analysis may include such things as a comparison of the estimated cost of the necessary vocational services, the remaining compensation benefits that the worker is entitled to, the estimated cost of alternative rehabilitation plans, and the estimated benefit costs if no return to work services are provided. The analysis must also set out when it is expected that specific costs will be experienced.

Discontinuation of Vocational Rehabilitation Services

Vocational rehabilitation services may be discontinued where:

- the worker refuses available employment that is considered suitable;
- the worker fails to cooperate with the vocational rehabilitation process;
- the worker has, for personal reasons, withdrawn from the labour force;
- non-compensable medical, psycho-social or financial problems alone preclude active participation in the rehabilitation process;
- the worker retires or is deemed to have retired; or
- the plan is completed and it is neither necessary nor cost effective to provide further vocational rehabilitation assistance.

Wage-Loss Equivalency and Other Benefits

Wage-loss equivalency benefits provided by the Board are payable only when wage-loss benefits have concluded and follow the same rules with regard to the deduction of permanent disability benefits. These benefits may be provided while workers are either awaiting or undertaking specific vocational programs.

Transportation allowances and subsistence allowances may also be considered in support of vocational programs.

The sponsorship opportunities of other agencies are considered in providing integrated service delivery, but their availability does not diminish the Board's primary service and funding responsibilities.

EFFECTIVE DATE: January 1, 2024
AUTHORITY: Section 155 of the *Act*.
CROSS REFERENCES: Sections 154.2, 154.3 190, 191, 192, 194, 195, and 196 of the *Act;*
Chapter 9 Average Earnings;
Item C5-35.10, *Duty to Cooperate*;
Item C5-35.20, *Duty to Maintain Employment*;
Policy item #69.10, *Deduction of Permanent Disability Periodic Payments from Wage-Loss Benefits*;
Policy item #70.30, *Permanent Disability Compensation*;
Item C10-83.00, *Transportation*;
Item C10-83.10, *Subsistence Allowances*;
Item C10-84.00, *Additional Benefits for Severely Disabled Workers*;

Item C11-85.00, *Vocational Rehabilitation – Principles and Goals*;
Item C11-87.00, *Vocational Rehabilitation – Process*;
Policy item #97.30, *Medical Evidence*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

January 1, 2024 – Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
February 1, 2020 – Policy amended to add heading related to wage-loss equivalency and other benefits and to remove language that developments in VR process allowing a VR plan to be changed be 'unanticipated'.
September 1, 2015 – Policy revised to remove Vice President approval, and direct that the Director of VR Services is only required to approve the development of a new VR plan. Amendments also ensure workers who receive permanent partial disability compensation under sections 195 and 196 of the *Act* are treated consistently, and the elements that must be included in the financial analysis of a VR plan are revised.
June 1, 2009 – Deleted references to Board officer, Vocational Rehabilitation Services and Compensation and Rehabilitation Services.
November 1, 2002 – Reformatted and revised policy to set out the nature and extent of programs and services generally applicable in relation to the entitlement provisions of the *Act*. Amendments also included the criteria for modifying or creating a new plan and guidance on when vocational rehabilitation services may be discontinued. Replaced policy items #87.00 and #88.00 of the *Rehabilitation Services & Claims Manual*, Volume II and applies to decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended by the *Workers Compensation Amendment Act, 2002*.

APPLICATION:

Applies to all decisions made on or after January 1, 2024.

RE:	Vocational Rehabilitation − Work Site and Job Modification	ITEM:	C11-88.20

BACKGROUND

1. Explanatory Notes

This policy describes work site and job modification.

Under section 154.3, some employers must make any change to the work and/or the workplace that is necessary to accommodate a worker, short of undue hardship.

In addition to the obligations imposed by section 154.3, all employers have an obligation to comply with human rights legislation to accommodate workers with disabilities. This obligation is set out in British Columbia's *Human Rights Code*, and for federally regulated employers, the *Canadian Human Rights Act*.

2. The Act

Section 154.3, in part:

(1) Except as provided in subsection (2), this section applies in relation to an employer and a worker of the employer if the worker has been employed by the employer, on a full- or part-time basis, for a continuous period of at least 12 months before the date the worker was injured.

(2) This section does not apply in relation to the following:

(a) a person who is a worker only because the person is deemed under the Act to be a worker;

(b) an employer who regularly employs fewer than 20 workers;

(c) a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.

…

(5) An employer must, to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker.

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Work Site and Job Modification

All employers are encouraged to accommodate an injured worker, which includes making any change to the work and/or the workplace that is necessary. The Board may provide assistance to alter work sites or modify jobs to facilitate re-employment.

Some employers have an obligation under section 154.3 to change the work and/or the workplace to the point of undue hardship (see policy in Item C5-35.20, *Duty to Maintain Employment*). In these cases, if the change would result in undue hardship for the employer, the Board may consider assisting the employer with altering the work site or modifying the job.

Guidelines

Subject to policy in Item C11-88.00, the following guidelines on work site and job modification apply.

1. Assistance of this nature may occur where it is advantageous in returning workers to employment.

2. Modifications are considered and undertaken in consultation with workers, employers, unions and treating professionals.

Expenditures

1. The Board may provide financial assistance for the modification of jobs and work sites, including expenditures for special equipment and/or tools, if appropriate and necessary in facilitating the worker's return to employment.

2. In some instances, it may be appropriate to share the costs of these expenditures with employers.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 155 of the *Act*.
CROSS REFERENCES:	Item C5-35.20, *Duty to Maintain Employment*; Item C11-87.00, *Vocational Rehabilitation − Process*; Item C11-88.00, *Vocational Rehabilitation − Nature and Extent of Programs and Services*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 – Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. November 1, 2002 − Replaced policy items #88.20, #88.21, and #88.22 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

primary factor will be the deciding factor unless the other factors considered either separately or in combination clearly outweigh the mitigation of the worker's loss of earning capacity.

The Board will pay reasonable expenses of relocation. Expenses paid by any other agency, may be deducted from the amount to be paid by the Board.

If the Board determines that relocation is reasonable and relocation expenses have been offered, the worker's benefits may be calculated as if the worker relocated.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Sections 155, 192 and 196 of the *Act*.
CROSS REFERENCES:	Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*; Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*; Item C11-89.00, *Vocational Rehabilitation − Employability Assessments − Temporary Partial Disability and Permanent Partial Disability*, of the *Rehabilitation Services & Claims Manual,* Volume II.
HISTORY:	January 1, 2021 – Housekeeping changes made to the *Act* portion of the Background section to reflect amendments to the *Act* by the *Workers Compensation Amendment Act*, *2020* (Bill 23). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof and evidence. Replaced, in part, policy item #40.12.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

RE:	**Vocational Rehabilitation − Employability Assessments − Temporary Partial Disability and Permanent Partial Disability**	**ITEM: C11-89.00**

BACKGROUND

1. Explanatory Notes

This policy sets out the employability assessment process for temporary partial disability and permanent partial disability.

2. The Act

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 192(1), in part:

> … if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
>
> (a) the worker's average net earnings before the injury, and
>
> (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
>
> (i) the average net earnings that the worker is earning after the injury;
>
> (ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury*. (emphasis added)

Section 196:

(1) This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.

(2) *Repealed*.

(3) The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the average net earnings of the worker before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.* (emphasis added)

POLICY

Employability Assessments

Sections 192 and 196 of the *Act* direct the Board to estimate what a worker is capable of earning in a suitable occupation. This may require an employability assessment.

One of the functions of Vocational Rehabilitation Services is to assist in the assessment of employability for temporary partial disability and permanent partial disability under sections 192 and 196 of the *Act*.

Temporary Partial Disability

Where a worker is medically judged to be only partially disabled and the condition remains temporary, any further wage-loss benefits may be processed under section 192 of the *Act*. In most cases, the employability assessment under section 192 is conducted without a referral to Vocational Rehabilitation Services. The goal is to identify suitable occupations, along with estimated earnings, that maximize the worker's short-term earning capacity up to the pre-injury wage rate. In most cases, the focus of the assessment is a return to work with the pre-injury employer.

In cases where the worker is not able to return to work in some capacity, a referral to Vocational Rehabilitation Services may be required. In these situations, a more comprehensive employability assessment may need to be completed where a suitable return to work cannot be arranged. For example, if there is no attachment to the pre-injury employer, suitable and available occupations in the labour market will be considered.

Vocational Rehabilitation Services provides the documented objective evidence of what the worker is earning or is capable of earning, not the decision on a worker's entitlement under section 192 itself.

In determining section 192 wage-loss benefits, the employment opportunity or opportunities should be available immediately or within the short-term, and the worker should have a reasonable chance of securing employment in a suitable occupation, should they choose to apply.

Where the Board and a worker are engaged in carrying out a rehabilitation plan, and all parties are cooperating in good faith, it is not required that temporary partial disability wage-loss benefits be based on short-term, temporary or lesser paying jobs that the worker could do, but which would be incompatible with the demands and commitment required to meet the overall vocational objective.

Permanent Partial Disability

A worker's entitlement to permanent partial disability benefits is considered under sections 195 and 196 of the *Act*. Entitlement under section 196 may require an employability assessment.

The goal is to identify suitable occupations, along with estimated earnings, that maximize the worker's long-term earning capacity up to the pre-injury wage rate. In most cases, "long-term" refers to three to five years.

The employability assessment process is conducted in light of all possible rehabilitation measures that may be of assistance and appropriate to the circumstances of each worker.

The rehabilitation plan may form the basis for the employability assessment. A functional capacity evaluation may be used to assess the worker's capacity for work. This provides information on the worker's residual maximum functional capabilities, confirmation of identified alternative job options and plans for vocational reintegration.

Labour market data in conjunction with the objective functional capacity information is used to create a residual vocational profile. A list of suitable occupations based on the profile is then produced. Consideration is then given to whether these occupations are reasonably available.

Where workers are given a copy of the assessment, they are allowed 30 days in which to respond. Unless this timeframe is waived by the worker, submissions received within this time frame are considered before the Board makes a decision on section 196 entitlement.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 155, 192, and 196 of the *Act*.
CROSS REFERENCES:	Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability* (Section 3 From Temporary Total Disability to Temporary Partial Disability); Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability* (Section 3, Amount of Compensation for Temporary Partial Disability Payment); Item C5-35.10, *Duty to Cooperate*; Item C5-35.20, *Duty to Maintain Employment*; Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*; Item C11-89.10, *Vocational Rehabilitation – Income Continuity*, of the *Rehabilitation Services & Claims Manual,* Volume II.
HISTORY:	January 1, 2024 – Consequential changes to reflect language updates to Chapter 5, *Wage-Loss Benefits and Return to Work Obligations*, and to implement Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41 of 2022). January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Policy updated to reflect the wording of the legislation and to remove outdated references to decision-makers, departments, appellate bodies and external agencies. November 1, 2002 − Reformatted and revised policy to set out the employability assessment process for temporary partial disability and permanent partial disability. Replaced policy items #89.00, #89.10, and #89.20 of the *Rehabilitation Services & Claims Manual,* Volume II. Applied to decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended by the *Workers Compensation Amendment Act, 2002*.
APPLICATION:	Applies to all decisions made on or after January 1, 2024

Claims are generally not paid without a worker's application form unless there is a report from the employer or other equivalent documentation and a medical report on file. The Board can however exercise discretion if the circumstances warrant a deviation from this requirement.

The Board will not accept a claim and pay compensation if the worker indicates that the worker does not wish to claim.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officer.
March 3, 2003 – Amended to reference preliminary determinations under policy item #96.21.
APPLICATION: Applies on or after June 1, 2009.

#93.25 Signature on an Application for Compensation

Section 151(1)(b) provides that an application for compensation must be signed by the worker or the worker's dependant making the application. A teleclaim or online application submitted for compensation by the worker or the worker's dependant satisfies the requirement that an application be signed under section 151(1)(b).

An "X" in lieu of signature is acceptable if the worker is unable to sign because of the injury or is unable to read or write. Such a signature must be countersigned by another adult. It is preferable but not mandatory that the signature should read "witnessed by" followed by the countersignor's signature and address.

If the worker has a condition which prevents the signing of an application, the Board may accept an application signed by someone on the worker's behalf. This might be an adult with a close personal attachment to the worker.

Pursuant to section 121 of the *Act*, unless otherwise disabled, a worker under the age of 19 years can and should sign the application form.

EFFECTIVE DATE: September 1, 2022
AUTHORITY: Sections 121 and 151(1) of the *Act*.
CROSS REFERENCES: Policy item #49.00, *Incapacity of a Worker;*
Policy item #93.20, *Application for Compensation;*
Policy item #93.21, *Time Allowed for Submission of Application;*
Policy item #93.22, *Application Made Out of Time,* of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: September 1, 2022 – Amended to clarify online or teleclaim applications satisfy legislative requirements. Housekeeping changes to update language.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: Applies to all decisions made on or after September 1, 2022.

#93.26 Obligation to Provide Information

Section 153 of the *Act* provides:

> (1) A worker who applies for or is receiving compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] must provide the Board with the information that the Board considers necessary to administer the worker's claim.
>
> (2) If a worker fails to comply with subsection (1), the Board may reduce or suspend payments to the worker until the worker complies.

Section 154.2 (2) of the *Act* provides, in part:

> A worker must cooperate with … the Board in the worker's early and safe return to, or continuation of, work by doing the following:
>
> …
>
> (c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;
>
> …

The Board operates under an inquiry system and as such, reasonable efforts are made to obtain information directly from the source. However, it is recognized that, in the course of administering a claim, the Board may have to rely on a worker to obtain relevant information.

Policy in Item C5-35.10, *Duty to Cooperate*, provides guidance regarding a worker's obligation to provide the Board with information the Board requires in relation to the worker's return to, or continuation of, work. This policy provides guidance regarding a worker's obligation to provide any other information the Board requires to administer the worker's claim.

A worker's obligation to provide information may arise at any time during the claim cycle. Necessary information includes, but is not limited to, information related to the worker's compensable disability, pre- and post-injury earnings, tax status and Canada Pension Plan disability benefits.

The Board will set a timeframe for the worker to provide the necessary information. The timeframe may vary depending upon the nature of the information requested. However, it should not extend past 30 days, except where the Board is satisfied that the worker is making best efforts to obtain the necessary information.

Where the Board requires information from a worker that it considers necessary to administer the worker's claim, notification must be provided in writing. Notification to the worker must specify:

- what information is required;
- the worker's obligation to provide the information;
- the timeframe for compliance; and
- the consequences for failing to comply.

The Board may reduce or suspend a worker's payments if, after providing written notification of the obligation to provide necessary information and the consequences of failing to comply, the worker:

- fails or refuses to supply the information within the specified timeframe; and
- does not have a valid reason for failing to comply.

If a worker has to obtain the information from a third party (e.g. the department continued under the *Department of Employment and Social Development Act* (Employment and Social Development Canada – "ESDC") or the agency continued under the *Canada Revenue Agency Act* (Canada Revenue Agency)), the Board must be satisfied that the worker failed to take all reasonable steps to acquire the information before determining that a worker has failed to comply.

The Board recognizes that, in the course of obtaining requested information from third parties, certain fees may be levied. In these cases, the Board will provide reimbursement for necessary and reasonable costs incurred by the worker.

When a worker fails to fulfill the obligation to provide information, the Board will determine whether there was a valid reason. Payments will not be reduced or suspended for non-compliance if there is a valid reason acceptable to the Board, such as a sudden illness or a death in the family.

Once the worker has fulfilled the obligation to provide information, the Board will restore payments for any period for which they were reduced or suspended.

This policy does not restrict the Board from pursuing all available courses of action in response to fraud or misrepresentation.

EFFECTIVE DATE:	January 1, 2024
HISTORY:	January 1, 2024 − Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Updated reference to then titled Human Resources and Skills Development Canada and Canada Revenue Agency.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

#93.30 Medical Treatment and Examination

The obligations of an injured worker to undertake medical treatment and examination are discussed in Item C10-73.00.

#93.40 Working While Receiving Wage-Loss Benefits

A worker is obliged to report to the Board any earnings which are received while being paid wage-loss benefits. Such earnings will be taken into account in computing wage-loss benefits under the rules discussed in Section 6 of the policy in Item C5-33.00 and the policy in Item C5-33.20.

CROSS REFERENCES: Item C5-33.00, *Introduction to Compensation For Temporary Disability*; Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2024 − Housekeeping change to update internal cross references.

#94.00 RESPONSIBILITIES OF EMPLOYERS

#94.10 Report to the Board

Subject to policy items #94.12 and #94.13, section 150(1) of the *Act* provides that an employer must report to the Board, within three days after its occurrence, every injury to a worker that is or is claimed to be an injury arising out of and in the course of the worker's employment.

Subject to policy items #94.12 and #94.13, section 150(2) of the *Act* provides that an employer must report to the Board, within three days after receiving information under section 149, every disabling occupational disease or claim for or allegation of an occupational disease in relation to a worker.

Section 150(3) of the *Act* provides that an employer must report immediately to the Board the death of a worker if the death is or is claimed to be a death arising out of and in the course of the worker's employment.

The application of the above provisions to claims by commercial fishers is discussed in sections 4 and 10 of the *Fishing Industry Regulations*.

EFFECTIVE DATE: October 21, 2020

HISTORY: October 21, 2020 – Amended to reflect amendment to employer's reporting obligations provision in the *Act* by the *Workers Compensation Amendment Act*, 2020 (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 18, 2003 – Deleted references to the *Workers' Compensation Reporter* Decision Nos. 223 and 224.

APPLICATION: Applies on or after October 21, 2020.

#94.11 Form of Report

The report must be on the form directed by the Board and must provide the following information:

1. the name and address of the worker;

2. the time and place of the injury, disease or death;

3. the nature of the injury or alleged injury;

4. the name and address of any physician or qualified practitioner who attended the worker; and

5. any other particulars required by the Board or by the regulations.

The report may be made by mailing copies of the form addressed to the Board at the address specified by the Board.

The Board has directed forms for employers to report injuries, occupational diseases, or deaths. These are as follows:

Form 7 Employer's Report of Injury or Occupational disease

Form 9 Employer's Subsequent Statement (Completed at the employer's option or at the Board's request, as soon as the injured worker has returned, or is able to work.)

The report must be approved by an authorized official of the employer other than the worker.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#94.12 *What Injuries Must Be Reported*

Section 2 of the *Reports of Injuries Regulations* provides that a reportable injury is an injury arising out of and in the course of a worker's employment, or which is claimed by the worker concerned to have arisen out of and in the course of such employment, and in respect of which any one of the following conditions is present or subsequently occurs:

(a) the worker loses consciousness following the injury;

(b) the worker is transported, or directed by a first aid attendant or other representative of the employer to a hospital or other place of medical treatment, or is recommended by such person to go to such place;

(c) the injury is one that obviously requires medical treatment;

(d) the worker states an intention to seek medical treatment;

(e) the worker has received medical treatment for the injury;

(f) the worker is unable or claims to be unable by reason of the injury to return to the worker's usual job function on any working day subsequent to the day of injury;

(g) the injury or accident resulted or is claimed to have resulted in the breakage of an artificial member, eyeglasses, dentures, or a hearing aid;

(h) the worker or the Board has requested that an employer's report be sent to the Board.

Section 150(7) provides in part that, ". . . the Board may make regulations as follows:

(a) establishing a category of minor injuries not required to be reported under this section; . . ."

If none of the conditions listed (a) through (h) above are present, an injury is a minor injury and not required to be reported to the Board unless one of those conditions subsequently occurs.

AUTHORITY: Section 150 of the *Act*, and the *Reports of Injuries Regulations*, B.C. Reg. 713/74.

HISTORY: September 1, 2020 – Housekeeping change to correct the title of *Reports of Injuries Regulations*, B.C. Reg. 713/74.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#94.13 Commencement of the Obligation to Report

Section 3 of the *Reports of Injuries Regulations* provides that the obligation of the employer to report the injury to the Board commences when a supervisor, first aid attendant, or other representative of the employer first becomes aware of any one of the conditions listed in section 2 of the Regulations (see policy item #94.12), or when notification of any such condition is received by mail or telephone at the local or head office of the employer.

An employer who protests a claim should take care not to delay the submission of the Form 7 Employer's Report to the Board. If the employer wishes to investigate further, the employer should submit the Form 7 stating that an investigation report will follow, and give reasons for the delay.

AUTHORITY: Section 150(7) of the *Act*;
Reports of Injuries Regulations, B.C. Reg. 713/74.

CROSS REFERENCES: Policy item #94.11, *Form of Report*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: September 1, 2020 – Housekeeping change to correct the title of *Reports of Injuries Regulations*, B.C. Reg. 713/74.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#94.14 Adjudication and Payment without Employer's Report

An employer is always given an adequate opportunity to submit a Form 7 Employer's Report before a claim is adjudicated in its absence. If a claim is adjudicated without a Form 7 Employer's Report and then, after adjudication to allow and pay the claim, the employer's report is received objecting to the acceptability of the claim, the Board will investigate any of the matters raised in the objection. If, following investigation the Board is satisfied that the claim was properly accepted, the employer will be advised of the details and informed of the relevant rights of review and/or appeal. Payments to the worker will be continued during the investigation unless there is evidence suggesting fraud. If, following an investigation:

- within 75 days of when the decision on the claim was made, the Board is satisfied that the claim should not have been accepted based on applicable law and policy, and the merits and justice of the case, the Board may reconsider the decision under section 123(1) of the *Act*; or

- after 75 days of when the decision on the claim was made, where the Board is satisfied the decision contains an obvious error or omission, the Board may reconsider the decision under section 123(3) of the Act.

EFFECTIVE DATE: October 29, 2020
AUTHORITY: Section 150(8) of the *Act*.
HISTORY: October 29, 2020 – Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officer.
March 3, 2003 – Inserted references to review, appeal and reconsideration.
APPLICATION: Applies on or after October 29, 2020.

#94.15 Penalties for Failure to Report

Section 150(6) provides that "An employer who fails to make a report required under this section commits an offence unless excused by the Board on the ground that the report, for some sufficient reason, could not have been made." The maximum fine for committing this offence is set out in Appendix 5.

Section 150(8) provides:

> If a report required under this section is not received by the Board within 7 days after an injury or death, or any other time prescribed by regulation under subsection 7, [see policy item #94.13], the Board

(a) may make an interim adjudication of the claim, and

(b) if the Board allows the claim on an interim basis, may begin the payment of compensation in whole or in part.

Section 262(2) provides that "If compensation is paid under section 150(8) before 3 days after the Board receives the report required by that section, that compensation may be levied and collected from the employer by way of additional assessment . . ., and payment may be enforced in the same manner as other assessments."

Section 262(3) provides that if the Board is satisfied that the delay in reporting was excusable, it may relieve the employer in whole or in part of the additional assessment imposed under section 262 of the *Act*.

The Board follows the following procedure for making interim adjudications on claims without employer reports, and levying corresponding assessments.

At the end of each six-month period, a review is undertaken of employers who have been late in filing their reports of injury to the Board. As a result of this review, a first letter may be sent out to defaulting employers informing them of their records over the past six months and warning them of the effect of section 262 of the *Act*. At the end of the following six-month period, any employers who received the initial letter and who continue to default will receive a second letter. This will warn them that, on any future claims if an interim adjudication is made under section 150(8) accepting the claim, they will be charged with the full amount of costs incurred up to the elapse of three days after the Board receives their employer's report.

Prior to charging the cost of any particular claim to an employer under section 262(2), the Board will first send a letter asking if there is any reason why the employer should be excused from the penalty. Following the employer's reply or if there is no reply, the Board will then make a decision and notify the employer.

Set out below are some reasons why employers may be excused for late reporting. These are guidelines only, as each case must be considered individually.

1. The worker lays off some time after the day of the injury and when the days are counted from the date of lay-off to the date of the Form 7's arrival, they number fewer than ten.

2. A report is requested by the Board to start a new claim after investigation of a reopening indicates a new incident. However, the Form 7 must be received within three days from the date the firm is notified of the new claim.

3. The worker does not report the incident to the employer until some time after the lay-off.

4. There is no wage loss involved and the employer was not aware the worker sought medical attention.

5. The decision to accept the claim is made on the 11th day after the injury, and the Form 7 arrived at the Board, but not on file, before the 10th day.

The costs charged to the employer will consist of all health care benefits, vocational rehabilitation, and wage-loss benefits relating to the period in question, even if they are not actually paid until some time afterwards.

The employer will continue to be charged with the costs incurred on claims on which the employer is late in reporting until the overall reporting record is shown to have improved sufficiently at a subsequent six-month review.

The term "interim adjudication" used in this context should not be confused with the term "preliminary determination" when it applies to the processing of payments on an apparently acceptable claim in the absence of some information which is likely to be delayed. The latter procedure is set out in policy item #96.21. The requirements of the preliminary determination procedure do not have to be met for an interim adjudication under section 150(8). It is sufficient if the claim does appear to be an acceptable one and is only being held up by the technicality of the employer's failure to submit a report.

When the Form 7 Employer's Report does arrive, it can be considered as evidence in making the final adjudication of the claim. The rules set out in policy item #96.21 regarding the non-recovery of payments made under a preliminary determination also apply here. If the employer's report protests the acceptance of the claim, but the final adjudication is that it remains allowed, the employer will receive the usual notification of the relevant rights of review and/or appeal.

The above procedure applies to pay employer claims (see Section 3 of the policy in Item C5-34.10) and to employers with deposit accounts, but not to personal optional protection or Federal Government claims.

Unless the Board receives the Form 7 Employer's Report, the interim adjudication becomes the final decision on the acceptability of the claim and is subject to the provisions of section 123 of the *Act*.

If the Board receives the Form 7 Employer's Report, the final adjudication becomes the final decision on the acceptability of the claim and is subject to the provisions of section 123 of the *Act*.

The final adjudication does not constitute a reconsideration of the interim adjudication for purpose of section 123 of the *Act*. Section 150(8) contemplates that a final adjudication will be made, whenever the Form 7 Employer's Report is received.

EFFECTIVE DATE: October 29, 2020
AUTHORITY: Sections 150 and 262 of the *Act*.

CROSS REFERENCES: Item C5-34.10, *Payment of Wage-Loss Benefits* (Section 3 Reimbursing Employers for Amounts Deducted from Compensation);
Policy item #94.13, *Commencement of the Obligation to Report*;
Policy item #96.21, *Preliminary Determinations*;
Item C14-103.01, *Reconsiderations*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2024 − Housekeeping change to update internal cross reference.
October 29, 2020 – Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officer.
March 3, 2003 – Inserted references to preliminary determination and the status of final adjudication for the purposes of then sections 96(4) and (5) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.
January 1, 1978 – the Board established a procedure for implementing then sections 54(7) and (8) (to make interim adjudications on claims without employer reports, and to levy assessments paid on these interim adjudications, against employers).

APPLICATION: Applies on or after October 29, 2020.

#94.20 Employer or Supervisor Must Not Attempt to Prevent Reporting

Section 73 of the *Act* provides:

(1) An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting any of the following to the Board:

(a) an injury or allegation of injury, whether or not the injury occurred or is compensable under the compensation provisions [of the *Act*];

(b) an illness, whether or not the illness exists or is an occupational disease compensable under the compensation provisions [of the *Act*];

(c) a death, whether or not the death is compensable under the compensation provisions [of the *Act*];

(d) a hazardous condition or allegation of hazardous condition in any work to which the OHS provisions [of the *Act*] apply.

(2) An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from

(a) making or maintaining an application for compensation under the compensation provisions [of the *Act*], or

(b) receiving compensation under the compensation provisions [of the *Act*].

The Board may impose an OHS administrative penalty if it is determined that an employer has violated section 73. The general criteria for calculating OHS administrative penalties are provided in the *Prevention Manual* at Item P2-95-5.

Item P2-95-5 also provides for the recovery of potential or actual benefits obtained from non-compliance.

As an alternative to imposing an OHS administrative penalty, the Board may refer the case to Crown Counsel for consideration of prosecution.

AUTHORITY:	Section 73 of the *Act*.
CROSS REFERENCES:	Item P2-95-5, *OHS Penalty Amounts*, of the *Prevention Manual*.
HISTORY:	January 1, 2024 – Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). November 24, 2022 – Housekeeping changes consequential to implementing the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 1, 2016 − Consequential housekeeping amendments made to reflect changes to then Item D12-196-6, the *OHS Penalty Amounts*, of the *Prevention Manual*, which became effective March 1, 2016.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

#95.00 RESPONSIBILITIES OF PHYSICIANS/QUALIFIED PRACTITIONERS

Section 163(1)(a) of the *Act* provides that it is the duty of every physician or qualified practitioner attending or consulted on a case of injury to a worker, in any industry within the scope of the compensation provisions of the *Act*, or of an alleged case of such an injury, to provide reports in respect of the injury in the form required by regulation or directed by the Board.

The first report containing all requested information in it must be provided to the Board within three days after the date of the physician's or qualified practitioner's first attendance on the worker.

If treatment continues, progress reports must be provided.

Section 163(1)(b) of the *Act* provides that the physician or qualified practitioner must provide a report to the Board within three days after the worker is, in the opinion of the physician or qualified practitioner, able to resume work and, if treatment is being continued after resumption of work, to provide further adequate reports to the Board.

The duties described in this policy item apply to a psychiatrist or psychologist who diagnoses a worker with a mental disorder under section 135(1)(b) of the *Act*.

EFFECTIVE DATE: December 31, 2003
CROSS REFERENCES: Item C10-76.00, *Physicians and Qualified Practitioners*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
December 31, 2003 – This policy was amended to reflect the amendment of then section 5.1(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 and the introduction of then sections 5.1(2) to 4 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.
APPLICATION: The amended policy applies to injuries on or after December 31, 2003.

#95.10 Form of Reports

The Board has prescribed forms for each type of report, the most common of which are as follows:

Form 8	Physician's First Report
Form 11	Physician's Progress Report
Form 11A	Physician's Report and Account

Similar forms are provided for qualified practitioners and other persons authorized to treat workers under the *Act*.

All medical reports must be signed by the person making the report with reference to the professional designation of a partnership or clinic. A medical report submitted electronically in a form acceptable to the Board satisfies the requirement that medical reports be signed. Any change in status of a partnership or clinic, or change in its address, should be reported to the Board without delay to assure proper direction of payment.

EFFECTIVE DATE: September 1, 2022
AUTHORITY: Sections 163 and 164 of the *Act.*
CROSS REFERENCES: Item C10-75.00, *Health Care Accounts – General;*
Item C10-76.00, *Physicians and Qualified Practitioners;*
Item C10-77.00, *Other Recognized Health Care Professionals;*
Policy item #95.00, *Responsibilities of Physicians/Qualified Practitioners;*
Policy item #95.20, *Reports by Specialists;*
Policy item #95.30, *Failure to Report,* of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: September 1, 2022 – Amended to clarify that electronic submission of medical forms meets reporting requirements.
APPLICATION: Applies to all decisions made on or after September 1, 2022.

#95.20 Reports by Specialist

Section 163(1)(c) of the *Act* provides that if the physician is a specialist whose opinion is requested by the attending physician, the worker, or the Board, or if the physician continues to treat the worker after the physician is consulted as a specialist, the physician must provide the first report to the Board within three days after the consultation is completed and, if the physician is regularly treating the worker, the

physician must provide further reports to the Board as required in paragraphs (a) and (b) of section 163(1) (see policy item #95.00).

Section 1 of the *Act* defines a "specialist" as "a physician residing and practising in British Columbia and listed by the Royal College of Physicians and Surgeons of Canada as having specialist qualifications."

AUTHORITY:	Sections 1 and 163 of the *Act*.
CROSS REFERENCES:	Policy item #95.00, *Responsibilities of Physicians/Qualified Practitioners*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1

#95.30 Failure to Report

Section 164(3) of the *Act* provides that physicians, qualified practitioners, or other persons authorized to provide health care under the compensation provisions of the *Act* who fail to submit prompt, adequate and accurate reports and accounts as required by the *Act* or by the Board commit an offence. If a person fails to submit such reports and accounts, section 164(4) provides that the Board may

(a) cancel the right of the person to be selected by a worker to provide health care, or

(b) suspend the person for a period determined by the Board.

If the right of a person to provide health care is cancelled or suspended, section 164(5)(a) provides that the Board must

(i) notify the person of the cancellation or suspension, and

(ii) inform the applicable governing body under the *Health Professions Act*, and

Section 164(5)(b) of the *Act* provides that the person whose right to provide health care is cancelled or suspended must also notify any injured workers who seek treatment from that person of the cancellation or suspension.

The maximum fine for the offence committed under the *Act* is set out in Appendix 5.

The Board may refuse to pay accounts where reports are inadequate.

EFFECTIVE DATE:	October 21, 2020
AUTHORITY:	Section 164 of the *Act*.
HISTORY:	October 21, 2020 – Amended to reflect amendments to the *Act* by the *Workers Compensation Amendment Ac*t, 2020 (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION:	Applies on or after October 21, 2020.

#95.31 Payment of Wage-Loss Benefits without Medical Reports

Wage-loss benefits are normally paid on the basis of medical evidence supporting a disability. This medical evidence is usually in the form of a signed medical report from a physician or a qualified practitioner.

Exceptions can be made in cases of short-term disability where the worker receives brief treatment from a first aid attendant or a hospital emergency department. If the circumstances are in all other respects acceptable, and the facts support the conclusion that the inability to earn full wages was a result of the injury, then wage-loss benefits may be paid. Normally, wage-loss benefits should not be paid for periods of disability exceeding three days or in any case of occupational disease unless supported by proper medical evidence.

Exceptions can also be made in cases of longer term disability. Where there is evidence to support the existence of a disability, but there has been no receipt of a medical report and where the claim has been adjudicated and accepted, a first payment should be processed on the claim. Moreover, there must be some discretion to depart from the principle that wage-loss benefits are to be paid only on medical confirmation of disability. That confirmation may appear at the time the disability begins, some time during the disability or, in some cases, after it has ceased. The question is always whether the worker was disabled. The best evidence of that disability is almost always medical evidence, but on some occasions, evidence from the worker or from other sources may be sufficient to establish the existence and continuation of the disability.

In summary, if there is acceptable evidence of disability, and that evidence is clearly documented, wage-loss benefits can be paid in the absence of medical reports although these will, in almost all cases, be the most acceptable evidence.

The Board accepts reports received from nurses in remote locations as medical reports if there is no physician in the immediate area.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#95.40 Obligation to Advise and Assist Worker

Section 163(1)(d) provides that the physician or qualified practitioner has the duty, without charge to the worker, to give all reasonable and necessary information, advice, and assistance they need to

(i) make an application for compensation, and

(ii) provide the certificates and proofs, required in relation to the application.

This duty applies to a psychiatrist or psychologist who diagnoses a worker with a mental disorder under section 135(1)(b) of the *Act.*

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	Section 163 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. December 31, 2003 – This policy was amended to reflect the amendment of then section 5.1(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 and the introduction of then sections 5.1(2) to 4 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.
APPLICATION:	The amended policy applies to injuries on or after December 31, 2003.

#96.00 THE ADJUDICATION OF COMPENSATION CLAIMS

Section 122(1) of the *Act* provides that "Subject to sections 288 and 289 *[appeals to appeal tribunal]*, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under the compensation provisions [of the *Act*], and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court."

Section 122(2) of the *Act* provides:

> Without restricting the generality of subsection (1), the Board has exclusive jurisdiction to inquire into, hear and determine the following:
>
> (a) whether a worker's injury has arisen out of or in the course of an employment within the scope of the compensation provisions [of the *Act*];
>
> (b) the existence and degree of a worker's disability by reason of an injury;
>
> (c) the permanence of a worker's disability by reason of an injury;
>
> (d) the degree of impairment of a worker's earning capacity by reason of an injury;
>
> (e) the existence, for the purposes of the compensation provisions [of the *Act*], of the relationship of a family member of a worker;
>
> (f) the existence of dependency in relation to a worker;
>
> (g) the amount of the average earnings of a worker for purposes of payment of compensation;
>
> (h) whether a person is a worker, subcontractor, contractor or employer within the meaning of the compensation provisions [of the *Act*];

(i) the amount of the average earnings of a worker, whether paid in cash or board or lodging or other form of remuneration, for the purpose of levying assessments;

(j) whether an industry or a part, branch or department of an industry is within the scope of the compensation provisions [of the *Act*] . . .;

(k) whether a worker in an industry that is within the scope of the compensation provisions [of the *Act*] is within the scope of those provisions and entitled to compensation under those provisions.

Section 332 of the *Act* provides:

> An action may not be maintained or brought against the Board or a director, officer or employee of the Board in respect of any act, omission or decision
>
> (a) that was within the jurisdiction of the Board, or
>
> (b) that the Board, director, officer or employee believed was within the jurisdiction of the Board.

Section 340 of the *Act* provides:

> Proceedings by or before the Board must not be
>
> (a) restrained by injunction, prohibition or other process or proceeding in any court, or
>
> (b) removed by certiorari or otherwise into any court.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended to reflect the new wording of then section 96(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

#96.10 Policy of the Board of Directors

Section 319 provides that the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment. While Board officers and the Workers' Compensation Appeal Tribunal ("WCAT") may make decisions on individual cases, only the Board of Directors has the authority and responsibility to set the policies of the Board.

The Board of Directors' Bylaw re Policies of the Board of Directors, provides that as of February 11, 2003, the policies of the Board of Directors consist of the following:

"(a) The statements contained under the heading "Policy" in the *Assessment Manual*;

(b) The *Occupational Safety and Health Division Policy and Procedure Manual*;

(c) The statements contained under the heading "Policy" in the *Prevention Manual*;

(d) The *Rehabilitation Services & Claims Manual* Volume I and Volume II, except statements under the headings "Background" and "Practice" and explanatory material at the end of each Item appearing in the new manual format;

(e) The *Classification and Rate List*, as approved annually by the Board of Directors;

(f) *Workers' Compensation Reporter* Decisions No. 1 – 423 not retired prior to February 11, 2003 (see Appendix 1); and

(g) Policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003."

The Bylaw further provides that after February 11, 2003, the policies of the Board of Directors consist of the documents listed above, amendments to policy in the policy manuals, any new or replacement manuals issued by the Board of Directors, any documents published by the Board that are adopted by the Board of Directors as policies of the Board of Directors, and all decisions of the Board of Directors declared to be policy decisions. As of December 31, 2003, the Board of Directors' policies do not include the *Occupational Safety and Health Division Policy and Procedure Manual*. As of December 11, 2013, the Board of Directors' policies do not include any of *Workers' Compensation Reporter* Decisions No. 1 – 423.

The Bylaw also directs that in the event of a conflict between policies of the Board of Directors:

(a) if the policies were approved by the Board of Directors on the same date, the policy most consistent with the *Act* or Regulations is paramount.

(b) if the policies were approved on different dates, the most recently approved policy is paramount.

The Bylaw directs that the policies of the Board of Directors are published in print. It also states that the policies may also be published through an accessible electronic

medium or in some other fashion that allows the public easy access to the policies of the Board of Directors.

The Bylaw provides that the Chair of the Board of Directors supervises the publication of the *Workers' Compensation Reporter.* It will include decisions of the Board of Directors and selected decisions of WCAT. It may also include key decisions of the Courts on matters affecting the interpretation and administration of the *Act* or other matters of interest to the community.

The Bylaw makes clear that WCAT decisions do not become policy of the Board of Directors by virtue of having been published in the *Workers' Compensation Reporter*. It states that WCAT decisions are published in the *Reporter* to provide guidance on the interpretation of the *Act*, the Regulations and Board policies, practices and procedures.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	BOD Resolution No. 2003/02/11-04.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 3, 2003 – Deleted references to how policy is to be applied.

#96.21 Preliminary Determinations

A preliminary determination on a claim will be made, to provide temporary financial relief to the worker until the Board receives the information necessary to make a decision on the validity of the claim, when the following conditions are present:

1. The worker appears to be currently disabled from work.

2. On the available evidence, it appears probable that the worker has a compensable injury or occupational disease, or at least it appears that the evidence is evenly weighted.

3. There is some significant delay in obtaining evidence necessary to arrive at a conclusion on the validity of the claim, and the Board is unable to avoid that delay.

4. The worker is not causing the delay.

5. The delay appears to be causing an interruption of income for the worker. For example, the case is not one in which the worker is still being paid by the employer or another source.

6. The claim is not a third party one. (See Chapter 16.)

7. An application for compensation has been received.

The above criteria apply whether or not the claim is protested by the employer.

When a preliminary determination is made, the following rules will apply:

1. Wage-loss benefits will be commenced, with an explanation to the worker, employer and attending physician.

2. Payments of wage-loss benefits under the preliminary determination will commence as of the date when the Board makes the determination. Arrears of wage-loss benefits for any time period prior to that date will not be paid until a decision on the validity of the claim is made, except that the Board may pay such arrears on a preliminary determination to the extent that this may be necessary to avoid hardship.

3. The Board will proceed to obtain the evidence necessary to reach a decision on the claim as soon as possible.

4. Health care benefit bills will not be paid under a preliminary determination. If a preliminary determination has been made on a claim and there has been a request for surgery, it will be handled in the same manner as with other claims that have yet to be formally adjudicated. In such cases, the patient and physician should proceed privately, pending a decision on the claim. This principle also applies with respect to other medical referrals, with the exception of a consultation with a specialist that may be paid on an investigation basis.

5. If a preliminary determination has been made on a claim and payment of wage-loss benefits has commenced, and subsequently a decision is made to disallow the claim, then:

   (a) no recovery of the payments will be made in the absence of fraud or misrepresentation;

   (b) the employer's sector or rate group will be relieved of the cost of any unrecovered payments pursuant to policy item #113.10.

The above rules governing preliminary determinations apply to applications to reopen a previous claim as well as applications commencing new claims.

A preliminary determination made in accordance with this policy is not a "decision" for the purposes of section 123. Rather, it is a Board administrative action that is intended to provide temporary financial relief to the worker until the Board receives the information required in order to make a decision on the validity of a claim. However, once the Board receives the required information and makes a decision, that decision is subject to the provisions of section 123.

EFFECTIVE DATE: October 29, 2020
CROSS REFERENCES: Chapter 16 − Third Party/Out-of-Province Claims;
Policy item #113.10, *Investigation Costs*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: October 29, 2020 – Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officer.
March 3, 2003 – Amended to clarify that a preliminary determination is made to provide temporary financial relief until the Board receives information. Addition of requirement that an application for compensation must have been received. Amendments substitute the term "preliminary determination" for "interim decision" Addition of statements discussing the application of then section 96(5) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492. Policy applied to all preliminary determinations made on or after March 3, 2003.

APPLICATION: Applies on or after October 29, 2020.

#96.22 Suspension of Claim

If a report is submitted to the Board simply for the record, and if the worker did not receive medical treatment or was not disabled from work, or no other costs were incurred, no adjudication is necessary and the file will simply be marked "nothing to consider".

If information necessary to the adjudication of a claim can only be provided by the worker, and the worker ignores a request for that information, refuses to provide it or hampers the investigation, the claim may be suspended (see policy item #93.26 regarding a worker's obligation to provide information).

If a claim file is opened, and it is later established that the claim will be fully administered and paid by another Board under the terms of the Interjurisdictional Agreement, the British Columbia file will be placed in suspense. (See policy items #112.30 and #113.30.)

Wage-loss benefits may also be suspended in the following situations:

(1) if the worker leaves British Columbia without notifying the Board or receiving prior consent from the Board (see Item C10-72.00);

(2) if the worker is being paid full salary by the Federal Government (see Section 3 of the policy in Item C5-34.10);

(3) if the worker refuses to accept the cheques;

(4) if a worker moves and the worker's whereabouts are unknown.

If a claim has been suspended, all parties are notified of this fact and of the reasons for it. This includes any party from whom an account has been received. When the information required has been received or any other ground which gave rise to the suspension has been removed, the suspension will be lifted. In that event, the parties involved will again be notified.

CROSS REFERENCES: Item C5-34.10, *Payment of Wage-Loss Benefits* (Section 3 Reimbursing Employers for Amounts Deducted from Compensation);
Item C10-72.00, *Health Care – Introduction*;
Policy item #93.26, *Obligation to Provide Information*;
Policy item #112.30, *Worker Also Entitled to Compensation Outside of British Columbia*;
Policy item #113.30, *Interjurisdictional Agreements*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2024 – Housekeeping change to update internal cross reference.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#96.30 Permanent Disability Benefits Decision-Making Procedures

The Board determines whether an actual or potential permanent disability is accepted on a claim.

If the Board has accepted an actual or potential permanent disability, the Board then determines the extent of the disability and the worker's permanent disability benefit entitlement. This requires a determination under section 194, or sections 195 and 196 of the *Act.*

The Board may proceed to assess permanent disability benefits without a section 195(1) evaluation if there is sufficient medical evidence already available. Except for those cases, the normal practice is for a section 195(1) evaluation to be conducted for permanent disability benefits purposes by the Board or a Board-authorized External Service Provider (see Item C6-39.00).

Although the evaluation is not the only medical evidence that the Board may use, it will usually be the primary input.

The decision-making procedure for assessing entitlement to permanent disability benefits for psychological impairment under section 195(1) of the *Act* is discussed in Item C6-39.00.

In those cases where the worker has a section 195(1) assessment, the Board is required to notify the worker indicating the results of the assessment, which may include the results of a section 195(1) evaluation, and the conclusions reached regarding entitlement to permanent partial disability benefits.

When the Board adjudicates requests for the commutation of permanent disability benefits, it may obtain input from Vocational Rehabilitation Services before making a decision.

EFFECTIVE DATE: January 1, 2021
AUTHORITY: Sections 194, 195,196, and 339 of the *Act*.
CROSS REFERENCES: Item C6-39.00, *Section 195 Permanent Partial Disability Benefits*;

Item C11-89.00, *Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23).
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 − Inserted reference that a Board officer determines whether an actual or potential disability is accepted on the claim. Deleted references to Board officer in Disability Awards, Medical Services and Consultant.
October 1, 2007 – Revised to delete references to memos and memorandums.
July 2, 2004 – Revisions to the role of Board officers applied to all decisions, including appellate decisions, made on or after July 2, 2004.

APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

#97.00 EVIDENCE

The term “onus” or “burden of proof” refers to who has the obligation to prove an issue in question. The workers compensation system in British Columbia operates on an inquiry basis, rather than an adversarial basis, so there is no onus or burden of proof on the worker or employer. The Board gathers the relevant evidence and determines whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Board considers what other evidence might be obtained, and must take the initiative in seeking further evidence.

The term “standard of proof” refers to the level of certainty required to prove an issue in question. For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 339(3) of the *Act* is “at least as likely as not.” If, on weighing the available evidence, the disputed possibilities are evenly balanced then section 339(3) requires that the issue be resolved in a manner that favours the worker. For other decisions, the standard of proof is the balance of probabilities. Balance of probabilities means “more likely than not.”

It is important to distinguish between the standard of proof and the test for the issue in question, such as causation. For example, for a worker to be entitled to compensation for an injury, the worker’s employment has to be of causative significance in the occurrence of the injury, which means more than a trivial or insignificant aspect of the injury. The standard of proof applies to this determination, so the question for the Board is whether it is “at least as likely as not” that the worker’s employment was more than a trivial or insignificant aspect of the injury.

Although there is no burden of proof on the worker, the *Act* contains prerequisites for benefits. Compensation will not be paid simply because, for example, a telephone call is received from someone claiming to be a worker, who has been hurt, and was disabled for a certain number of days. Some basic evidence must be submitted by the

worker to show that there is a proper claim. The extent of that basic evidence necessary, and the weight to be attached to it, is entirely in the hands of the Board.

It is therefore not uncommon to see that a claim will be denied when a worker, away from employment, begins to feel some pain and discomfort in the lower back, and seeking to find a reason for this condition, thinks back to the work being done over a period of time and concludes that the problem must have resulted from something which occurred on a certain day when certain heavy work was being performed. The question then arises whether there was anything other than the worker's hindsight which would allow the Board to conclude that the work done some weeks or months previously had causative significance. It is at this point that investigation takes place and the evidence is weighed. If the evidence does not support a finding it is "at least as likely as not" that any activity at work was of causative significance in the reported condition, at or near the time alleged by the worker, it can fairly be said that causation has not been established. The worker has simply failed to present those fundamental facts which bring the provisions of the *Act* into play.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Sections 134 and 339 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation. June 1, 2009 – Deleted references to officer and Adjudicator.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#97.10 Evidence Evenly Weighted

For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 339(3) of the *Act* is "at least as likely as not."

Complaints are sometimes received at the Board that a worker has not been given the benefit of the doubt. Usually, these complaints relate to a situation in which the worker has a disability, but the issue is whether it is one arising out of or in the course of the worker's employment. The essence of the complaint is often that if there is some possibility that the injury arose out of the worker's employment, the worker should be given the benefit of the doubt. For the Board to take that view, however, would be inconsistent with the terms of the *Act*. Where it appears from the evidence that two conclusions are possible, but that one is more likely than the other, the Board must decide the matter in accordance with that possibility that is more likely.

Under the terms of section 339(3), the Board is required to decide an issue in a manner that favours the worker if it appears that "the evidence supporting different findings on an issue is evenly weighted in that case". This applies only if there is evidence of roughly equal weight for and against the claim. It does not come into play if the evidence indicates that one possibility is more likely than the other.

The Board, as a quasi-judicial body, must make its decisions according to the evidence or lack of evidence received, not in accordance with speculations unsupported by evidence. Section 339(3) of the *Act* applies when "the evidence supporting different findings on an issue is evenly weighted in that case". However, if the evidence before the Board does not support a finding that a particular condition can result from a worker's employment, there is no doubt on the issue; the Board's only possible decision is to deny the claim. If one speculates as to the cause of a condition of unknown origin, one might attribute it to the person's work or to any other cause, and one speculated cause is no doubt just as tenable as any other. However, the Board can only be concerned with possibilities for which there is evidential support and only when the evidence is evenly weighted does section 339(3) apply.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 339 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation. March 3, 2003 – Updated to reflect the new wording of then section 99 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#97.20 Presumptions

There are statutory presumptions in favour of workers or dependants already discussed in earlier chapters. These are as follows:

(1) Section 134(3) provides that in cases where the injury is caused by accident, if the accident arose out of the worker's employment, unless the contrary is shown, it must be presumed that the injury occurred in the course of the worker's employment; and if the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that the injury arose out of that employment.
(See Item C3-14.20.)

(2) Section 135(2) provides that if a worker who is or has been employed in an eligible occupation:

- is exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and

- has a mental disorder that, at the time of the diagnosis under subsection 135(1)(b), is recognized in the manual referred to in subsection 135(1)(b) as a mental or physical condition that may arise from exposure to a traumatic event,

the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's

employment in that eligible occupation, unless the contrary is proved. (See Section B. of Item C4-25.20.)

(3) Section 137 provides that if, on or immediately before the date of the disablement, the worker was employed in a process or industry described in column 2 of Schedule 1 opposite the occupational disease that has resulted in the disablement, the occupational disease must be presumed to have been due to the nature of the worker's employment unless the contrary is proved. (See Section A. of Item C4-25.20.)

(4) Subject to the exposure and date of first disability requirements of section 139(4), section 139(2) provides that if a worker is disabled as a result of a heart disease, and was employed as a firefighter on or immediately before the date of disablement from the heart disease, the heart disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved. (See Section B. of Item C4-25.20.)

(5) Subject to the exposure and first date of disability requirements of section 139(4), section 139(3) provides that if a worker is disabled as a result of a heart injury, and was employed as a firefighter on or immediately before the date of disablement from the heart injury, the heart injury must be presumed to have arisen out of and in the course of the worker's employment as a firefighter, unless the contrary is proved. (See Section B. of Item C4-25.20.)

(6) Subject to subsections (2) and (3), section 140(1) applies to a worker who is or has been a firefighter who contracts a primary site lung cancer or a disease prescribed by the *Firefighters' Occupational Disease Regulation*. It provides that the disease must be presumed to be due to the nature of the worker's employment as a firefighter unless the contrary is proved. (See Section B. of Item C4-25.20 and BC Reg 125/2009.)

(7) Section 143 applies to a deceased worker who, on the date of the worker's death, was under 70 years of age and had an occupational disease of a type that impairs the capacity of function of the lungs. It provides that if the death was caused by an ailment or impairment of the lungs or heart of non-traumatic origin, it must be conclusively presumed that the death resulted from the occupational disease. (See Item C4-29.20.)

(8) Section 144 applies if:

- a worker is an applicant, as defined in the *Emergency Intervention Disclosure Act*, who has obtained a testing order under that Act respecting a source individual, as defined in that Act,

- the worker has contracted a communicable disease prescribed for the purposes of the *Emergency Intervention Disclosure Act*,

- the worker came into contact with the bodily substance of the source individual in the course of the worker's employment, and

- test results obtained under the testing order indicated that the source individual is infected with a pathogen that causes a communicable disease contracted by the worker.

It provides that it must be presumed, unless there is evidence to the contrary, that the communicable disease of the worker is due to the nature of the worker's employment. (See Section B. of Item C4-25.20.)

The *Act* contains no general presumption either in favour of the worker or against the claim.

EFFECTIVE DATE:	July 23, 2018
AUTHORITY:	Section 339 of the *Act*.
CROSS REFERENCES:	Item C4-25.20, *Establishing Work Causation* (Section B. Additional Presumptions in the Workers Compensation Act), of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. July 23, 2018 – Policy consequentially amended in accordance with changes to then section 5.1 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, resulting from the *Workers Compensation Amendment Act, 2018*, Bill 9 of 2018. May 1, 2017 – Added to policy a reference to the firefighters' presumption and communicable disease presumption provided in the *Act.*
APPLICATION:	Applies on or after July 23, 2018.

#97.30 Medical Evidence

It is the responsibility of the Board to make all the decisions relating to the validity of a claim and to make all the decisions relating to compensation payments. This includes decisions relating to medical as well as other aspects of the claim.

This does not mean, of course, that a lay judgment is preferred to a medical opinion on a question of medical expertise. What it means is that the Board is responsible for the decision-making process, and for reaching the conclusions on the claim. But this will, of course, require an input of medical evidence, or sometimes other expert advice, on any issue requiring professional expertise.

In reaching conclusions on a medical question, the guide-rules are set out below.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Section 339 of the *Act*.

HISTORY: June 1, 2009 – Deleted references to Claims Adjudicator, Claims Officer, the Disability Awards Officer and the Adjudicator in Disability Awards.
APPLICATION: Applies on or after June 1, 2009.

#97.31 Matter Requiring Medical Expertise

If the matter is one requiring medical expertise, the decision must be preceded by a consideration of medical evidence (this term includes medical opinion or advice). Medical evidence might consist of a statement in the Form 8 Physician's First Report, or some information or opinion from the attending physician, or it might consist of advice provided from a Board Medical Advisor or another doctor. It is for the Board to decide when medical evidence is needed, what kind of medical evidence is needed, and on what questions.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 339 of the *Act*.
CROSS REFERENCES: Policy item #95.10, *Form of Reports*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 − Deleted references to Claims Adjudicator and Claims Officer.
APPLICATION: Applies on or after June 1, 2009.

#97.32 Statement of Worker about Own Condition

A statement of a worker about the worker's own condition is evidence insofar as it relates to matters that would be within the worker's knowledge, and it should not be rejected simply by reference to an assumption that it must be biased. Also, there is no requirement that the statement of a worker about the worker's own condition must be corroborated. The absence of corroboration is, however, a ground for considering whether the worker should be interviewed by the Board, or telephone enquiries made, or whether anything relevant could be discovered by having the worker medically examined. A conclusion against the statement of the worker about the worker's own condition may be reached if the conclusion rests on a substantial foundation, such as clinical findings, other medical or non-medical evidence, or serious weakness demonstrated by questioning the worker, or if the statement of the worker relates to a matter that could not possibly be within the worker's knowledge.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 339 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Claims Adjudicator, Claims Officer and Board Medical Advisor.
APPLICATION: Applies on or after June 1, 2009.

#97.33 *Statement by Lay Witness on Medical Question*

A statement by a lay witness on a medical question may be considered as evidence if it relates to matters recognizable by a layperson; but not if it relates to matters that can only be determined by expertise in medical science. For example, a statement by a fellow worker that he or she saw the worker suffering from silicosis would be worthless; but a statement by a fellow worker reporting to have seen the worker bleeding from the forehead would be evidence of a head wound. Statements made by a first aid attendant or other categories of paramedical personnel can be considered insofar as they relate to matters within the normal experience or training of that category of paramedical personnel. But they must obviously be treated very cautiously if they go beyond that into areas requiring greater medical expertise, or if they conflict with the opinion of a doctor.

AUTHORITY: Section 339 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#97.34 *Conflict of Medical Opinion*

If there are differences of opinion among doctors, or other conflicts of medical evidence, the Board must select from among them. The Board must not do it by automatically preferring the opinions of one category of doctors to another category, nor should it be done by counting heads, so many opinions one way and so many another. The Board must analyze the opinions and conflicts as best as possible on each issue and arrive at its own conclusions about where the weight of the evidence lies. If it is concluded that there is doubt on any issue, and that the evidence supporting different findings on an issue is evenly weighted in that case, the Board must follow the mandate of section 339 and resolve that issue in a manner that favours the worker. (See policy item #97.10.)

It should never be assumed that there is a conflict of medical opinion simply because the opinions of different doctors indicate different conclusions. A difference in conclusion between doctors may or may not result from a difference in medical opinion. For example, the difference could result from different assumptions of non-medical fact. Where there are two or more medical reports or memos on file from physicians, indicating different conclusions, the Board will not simply select among them as a first step. The Board should first think about why they are different and consider whether the relevant non-medical facts have been clearly established. The Board may seek advice to determine whether the best medical evidence has been obtained and, for example, find out if any appropriate medical procedures can be instituted that would assist in arriving at a more definite conclusion.

If two or more medical reports or memos indicate a probable difference of medical opinion and the issue is serious, the matter will normally be discussed with the physicians involved.

The Board has no rule that states that the evidence of a physician is always to be preferred to that of a chiropractor or other qualified practitioner. Reports from both

types of practitioner are acceptable evidence and are weighed on their merits. This principle applies even if the referral to the practitioner is contrary to Board policy. Should there, for example, be concurrent treatment by a physician and a chiropractor, the Board might not pay for the chiropractor, but any chiropractor reports received must be weighed as evidence. They are not ignored just because the referral was unauthorized. (See Item C10-73.00.)

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 339 of the *Act*.
CROSS REFERENCES:	Item C10-73.00, *Direction, Supervision, and Control of Health Care*; Policy item #97.10, *Evidence Evenly Weighted*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof and evidence. June 1, 2009 – Deleted references to officers. March 3, 2003 – Inserted new wording of then section 99 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#97.35 Termination of Benefits

If a treating physician expresses an opinion that a worker is disabled from work by reason of a compensable disability, the Board may rely upon overall existing medical evidence from a doctor who has examined the worker or other substantive evidence on the file to reach a conclusion contrary to that opinion, or may decide to carry out further investigation which may involve a Board medical examination.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Section 339 of the *Act*.
HISTORY:	June 1, 2009 – Deleted references to Claims Adjudicator, Claims Officer and Board physician.
APPLICATION:	Applies on or after June 1, 2009.

#97.40 Permanent Disability Benefits

The Board may proceed to assess permanent disability benefits without a section 195(1) evaluation, if there is sufficient medical evidence already available. Except for those cases, the normal practice is for a section 195(1) evaluation to be conducted for permanent disability purposes by the Board or an External Service Provider.

It is the responsibility of the Board to classify the disability as a percentage of total disability. In doing this, it is proper for the Board to consider other factual and medical evidence as well as the section 195(1) evaluation report prepared by the Board or the External Service Provider. However, although the report of the Board or the External Service Provider is not the only medical input that the Board may use, it will usually be the primary input, and caution will be used in referring to any other medical opinion.

The section 195(1) evaluation report takes the form of expert evidence which, in the absence of other expert evidence to the contrary, should not be disregarded. It is always open to the Board to conclude that the worker's functional impairment is greater or less than the section 195(1) evaluation report indicates.

The decision-making procedure for assessing entitlement to permanent disability benefits for psychological impairment under section 195(1) of the *Act* is discussed in Item C6-39.00.

In making a determination under section 195(1), the Board will enquire carefully into all of the circumstances of a worker's condition resulting from a compensable injury.

EFFECTIVE DATE:	January 1, 2021
AUTHORITY:	Sections 195 and 339 of the *Act*.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to officers in Disability Awards and officer. January 1, 2003 – References to prior Subjective Complaints policy removed. Applied to new claims received and all active claims that were then awaiting an initial adjudication.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

#97.50 Rumours and Hearsay

Hearsay must only be used very cautiously as evidence, and rumour must not be used as evidence at all. But even rumour is often valuable as a lead to investigation.

AUTHORITY: Section 339 of the *Act*.

#97.60 Lies

A lie may be ground for drawing an adverse inference with regard to the facts to which it relates. But it is not in itself ground for denying compensation, particularly when it relates to something not relevant to the claim at all.

AUTHORITY: Section 339 of the *Act*.

#97.70 Surveillance

Section 122 of the *Act* provides the Board with authority to investigate claims for compensation. Under section 346 of the *Act*, the Board has authority to make necessary inquiries and to appoint others to make such inquiries.

The Board is required to gather the evidence necessary to adjudicate claims, and surveillance is one method to obtain such evidence. Surveillance is the discreet

observation of a worker, and includes video-recording, audio-recording, and photographing the worker.

The Board conducts surveillance and uses surveillance evidence in compliance with applicable legislation, including the *Freedom of Information and Protection of Privacy Act* and the *Canadian Charter of Rights and Freedoms*.

Surveillance is a tool of last resort to be used when determining if a worker has engaged in fraud or misrepresentation where there is other existing evidence of fraud or misrepresentation and a strong likelihood the surveillance evidence will assist in establishing the fraud or misrepresentation.

Director or Vice-President approval is required to approve surveillance requests.

Surveillance evidence is assessed by the Board for accuracy and relevancy to the issues being decided, and is considered in conjunction with all other evidence.

The worker is given a reasonable opportunity to view and respond to surveillance evidence before the Board finalizes any decision based on that evidence.

EFFECTIVE DATE:	March 1, 2019
AUTHORITY:	Sections 122 and 346 of the *Act.*
CROSS-REFERENCES:	#97.00, *Evidence*; #99.00, *Disclosure of Information*; #99.23, *Unsolicited Information*; #99.35, *Complaints Regarding File Contents*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 1, 2019 – Policy item added to address use of surveillance and treatment of surveillance evidence.
APPLICATION:	Applies on or after March 1, 2019.

#98.00 INVESTIGATION OF CLAIMS

In the majority of claims the issues are decided by reference to the information received in the worker's application and the employer's and medical reports. Any insufficiency in the information is usually made good by telephone, correspondence, or by informal interview. In a minority of claims, a more formal inquiry, or medical examination, may be necessary.

#98.10 Powers of the Board

Section 342 of the *Act* provides:

(1) The Board has the same powers as the Supreme Court

(a) to compel the attendance of witnesses and examine them under oath, and

(b) to compel the production and inspection of records and things.

(2) The Board may require depositions of witnesses residing in or out of British Columbia to be taken before a person appointed by the Board and in a manner similar to that established by the Rules of the Supreme Court for the taking of depositions in that court.

Usually, the Board receives the willing cooperation of all concerned, and the power of subpoena is not used as a normal routine.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: Section 342 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended to reflect the new wording of then section 87 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

#98.11 Powers of Officers of the Board

Section 341 provides:

The Board may act

(a) on the report of any of its officers, and

(b) in relation to an inquiry under this Part [Part 8 of the *Act* – Workers' Compensation Board and General Matters], on the report of the person making the inquiry as to the result of the inquiry.

Section 346 provides:

(1) If the Board considers that an inquiry is necessary, the inquiry may be made by an officer of the Board or by another person appointed by the Board to make the inquiry.

(2) For the purposes of an inquiry under this section, the person making the inquiry has the powers conferred on the Board under section 342 *[authority to compel witnesses and production of evidence]*.

Section 348 provides:

An officer of the Board or person authorized by the Board to make an inquiry under section 346 or 347 may

(a) require and take affidavits, affirmations or declarations as to any matter of the inquiry,

(b) take affidavits for the purposes of this Act, and

(c) in relation to these, administer oaths, affirmations and declarations and certify that they were made.

The Board has ruled that, for the purpose of Division 5 of Part 8 of the *Act* – *Board Inquiry Powers* − employees of the Board, who, in the performance of their prescribed duties, do those things which are reserved to be done by an officer of the Board, are, and have been, for matters arising out of the compensation provisions of the *Act*, appointed officers of the Board.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: Sections 341, 346, and 348 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended to reflect the new wording of then section 88 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

#98.12 Examination of Books and Accounts of Employer

Section 347 provides:

(1) The Board, an officer of the Board or a person authorized by the Board for this purpose may examine the books and accounts of an employer and make any other inquiry the Board considers necessary to determine any of the following:

(a) whether an industry or person is within the scope of the compensation provisions [of the *Act*];

(b) the amount of the payroll of the employer;

(c) whether a statement provided to the Board under section 245 *[employer to provide estimate of payroll]* is an accurate statement of the matters that are required to be stated in it.

(2) For the purpose of an inquiry under this section, the Board or person authorized to make the inquiry may give notice in writing to an employer or agent of the employer requiring the employer to bring or produce before the Board or person, at a time and place specified in the notice, records in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the inquiry referred to in the notice.

(3) The time specified in a notice under subsection (2) must be at least 10 days after the notice is given.

(4) An employer or agent named in and served with a notice under subsection (2) must, at the time and place specified in the notice, produce all records in accordance with the notice.

(5) A person who does any of the following commits an offence:

(a) obstructs or hinders the making of an inquiry under this section;

(b) refuses to permit such an inquiry to be made;

(c) neglects or refuses to produce the required records at the time and place specified in the notice under subsection (2).

The maximum fine for committing this offence is set out in Appendix 5.

AUTHORITY: Section 347 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#98.13 Medical Examinations and Opinions

The authority of the Board to require a worker to be medically examined is dealt with in Item C10-73.00.

The medical resources of the Board cannot be used to provide a medical opinion to anyone on request. The Board will, therefore, decline to provide a medical opinion if the request does not come from someone authorized to make the request. Those authorized are Board staff whose duties require an input of medical advice.

A Workers' Adviser and an Employers' Adviser have access to medical opinions already on file, but have no right to require any further medical opinions to be produced.

EFFECTIVE DATE: June 1, 2009
CROSS REFERENCES: Policy item #109.10, *Workers' Advisers*;
Policy item #109.20, *Employers' Advisers*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services & Claims Manual*, Volume II.
June 1, 2009 – Deleted references to Medical Advisor and officers.
March 3, 2003 – Deleted references to Review Division and Appeal Division.
APPLICATION: Applies on or after June 1, 2009.

#98.20 Conduct of Inquiries

The Board operates on an inquiry as opposed to an adversary system. It does not, like a court operating under the adversary system, decide between the arguments and evidence submitted by two opposing parties at a hearing and limit itself to the material presented at that hearing. While the judge under the adversary system has little or no authority to carry out investigations, the Board is obliged by section 122 of the *Act* both to investigate and to adjudicate claims for compensation. Oral hearings or interviews are not always conducted before a decision is reached and, when they are conducted, provide only part of the information relied on by the Board. The other written reports on

the file will also be considered. Such hearings are informal in nature and not subject to the formal rules of evidence and procedure followed in court hearings.

AUTHORITY: Section 122 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#98.21 Place of Inquiry

For the purposes of claims adjudication, an officer of the Board may enter premises and make such inspections as considered necessary, notwithstanding that another agency may have inspection jurisdiction for accident prevention purposes. Where an inspection is of a technical nature and can only be carried out by someone technically qualified, perhaps an Occupational Hygiene Officer, such technical personnel may be used to make an inspection for the purposes of claims adjudication.

Where appropriate, the worker should be offered the opportunity to accompany the Board officer on the workplace visit.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 346 of the *Act*.
HISTORY: June 1, 2009 – Deleted references to Adjudicators and Claims Adjudicators.
APPLICATION: Applies on or after June 1, 2009.

#98.22 Failure of Worker to Appear

If the worker fails or refuses to appear at an inquiry, the worker's claim may be suspended, or decided in the worker's absence, or a further appointment may be arranged.

AUTHORITY: Section 122 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#98.23 Representation

A worker has a right to bring a representative to any enquiry, both at first instance and on appeal.

If the worker is unable to communicate effectively in English, an interpreter is arranged.

AUTHORITY: Section 122 of the *Act*.

#98.24 Presence of Employer

If a worker is unrepresented, and the employer or employer's representative appears, it must be determined whether the employer is appearing on behalf of the worker. If the employer is appearing on behalf of the worker, the worker will be asked (but not in the

presence of the employer) whether the worker has any objection to the employer being present. If there is no objection, the employer can be invited to attend the interview. If the worker does object, the employer will be asked to wait outside, and can be interviewed separately.

If appearing against the worker, the employer is not allowed to be present at the interview with the worker and must be interviewed separately. If there is any doubt as to the employer's intentions, the employer will be interviewed separately.

If a worker is represented, an employer may be permitted to be present even if the employer is appearing against the worker.

AUTHORITY: Section 122 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#98.25 Oaths

The oath is not administered as a normal routine in every inquiry, but is used when considered appropriate.

If:

1. a person called to give evidence objects to taking an oath, or is objected to as incompetent to take an oath, and the Board is satisfied of the sincerity of the objection of the witness from conscientious motives to be sworn or that the taking of an oath would have no binding effect on the witness' conscience;

2. or the Board is satisfied that the form or manner of oath which a person called to give evidence declares to have a binding effect on the person's conscience is not such that it can be taken in the place where the inquiry is being held, or that it is not fitting so to do, and the Board so directs,

Section 20(3) of the *Evidence Act* directs that the person must, instead of taking an oath, make an affirmation. An employer or representative or a worker's representative need not be placed under oath unless they have something specific or pertinent to contribute to the inquiry.

AUTHORITY: Section 122 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#98.26 Witnesses and Other Evidence

A worker may bring to an inquiry such witnesses, and may submit such verbal and documentary evidence, as the worker thinks will be of assistance.

Wherever possible, witnesses will be interviewed separately without the worker being present. They will not be present while the worker is being interviewed.

AUTHORITY: Section 122 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#98.27 Cross-examination

Under the inquiry system (contrary to the adversary system), there is no right of cross-examination of the parties or witnesses. If, in the process of an inquiry, one of the parties wishes to ask a question of the person whose evidence is being taken, the question should be referred to the interviewer conducting the inquiry who, in turn, can relay the question if it is felt it would be helpful.

Cross-examination may, however, sometimes be permitted.

AUTHORITY: Section 122 of the *Act*.

#99.00 DISCLOSURE OF INFORMATION

The Board, for the purposes of administering the *Act*, collects and maintains information for the purpose of adjudication and managing claims for workers or their dependants. In order to carry out all aspects of this activity, the Board in a variety of situations discloses information contained in claim files.

Provincial legislation, known as *Freedom of Information and Protection of Privacy Act ("FIPPA")* provides access for the public to the information maintained by the Board while at the same time protecting personal privacy.

FIPPA differentiates among "personal information", information relating to third party business interests and other types of information in the possession of a Public Body such as the Board. Personal information means recorded information about an identifiable individual.

Freedom of information and protection of privacy can be competing principles in many situations. Which principle is to be paramount in any particular case is sometimes difficult to determine. Until advised otherwise by the Information and Privacy Commissioner appointed under section 37 of *FIPPA*, openness prevails as far as possible in the area of compensation services. Exceptions to access should be narrowly construed. Since claim files deal with an identifiable individual, they contain personal and sensitive information. The privacy provisions of *FIPPA* will, therefore, prevail other than for the specific exceptions contained in *FIPPA*. Examples of such exceptions include the rights in section 3(2) of a party to a proceeding to access information, or the variety of exceptions listed in sections 33.1 and 33.2 such as the need to comply with the requirements of a specific enactment of British Columbia or Canada.

Sections 271 and 295 of the *Act* require a copy of records related to a matter under review or appeal to be provided to the parties to a review or appeal.

Section 3(2) of *FIPPA* states that the *Act* does not limit the information available by law to a party to a proceeding. A proceeding does not take place until either the worker or the employer has initiated a formal review or appeal.

Before a review or appeal is initiated, the Board must apply *FIPPA* to requests for claim information. Before a review or appeal is initiated, an employer is not entitled to a copy of the worker's claim file. Disclosure to an employer in such circumstances, is limited to that information necessary for the adjudication or administration of the claim, that is on a "need to know" basis. Once a review or appeal has been initiated, full disclosure is available to either a worker or an employer. These disclosure rules are considered to be in accordance with *FIPPA* and the rules of natural justice.

Requests for disclosure for information in a situation not covered by the policies in this *Manual* should be directed to the FIPP Department of the Board. These requests will be considered on an individual basis in accordance with *FIPPA.*

Dispute Resolution

A request for a review of the FIPP Department's decision by the Information and Privacy Commissioner may be made within 30 days of the date the person asking for the review is notified of the latest decision.

The Chair of the board of directors has ultimate responsibility within the Board for implementation of *FIPPA* for the purposes of workers' compensation.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Sections 235, 271, and 295 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to Manager and Service Delivery Locations. March 3, 2003 – Reference added to the provision of copies of records related to a matter under review or appeal.
APPLICATION:	Applies on or after June 1, 2009.

#99.10 Disclosure of Issues Prior to Adjudication

If a claim is protested by an employer, the Board is required to investigate the matter. In most cases this investigation involves contact with the worker. Normally, most workers at that time become aware of the protest. In some situations a protested claim may be quickly resolved and the claim accepted. In such cases workers may not be aware of the protest.

As part of the investigation which precedes a decision to disallow a claim, the Board in virtually every case will have communicated with the worker. These communications may be by telephone, in person or in writing. Through the medium of these

communications the worker is made aware of the nature of the problem and has an opportunity for input and comment. If, however, for some reason the Board concludes that a claim may not be acceptable, the worker is contacted before a decision is reached. The contact provides the worker with an opportunity for input and comment. In situations involving serious cases or complex issues where no prior contact has been made with the worker, the details should be communicated in writing. Where this is done, the possibility of obtaining assistance from a union official or other adviser may be brought to the worker's attention.

Written authorization is required in order to release information to any advocate, representative or other person designated by the worker or employer. Once received, the Board will cooperate with and notify workers' or employers' advocates or representatives of any decisions which have been made and communicated to the worker or employer.

If an employer has protested a claim which, upon investigation, appears to be valid, the Board should, before making the decision, phone the employer to ensure that the employer is aware of the issues relevant to the protest and has an opportunity to comment.

EFFECTIVE DATE:	June 1, 2009
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to Adjudicator. January 1, 2005 – Housekeeping amendment to require written authorization for disclosure.
APPLICATION:	Applies on or after June 1, 2009.

#99.20 Notification of Decisions

1. Definitions

A "decision" is a determination of the Board to give, deny, reconsider or limit entitlement to benefits and services, or impose or relieve an obligation, pertaining to compensation or rehabilitation matters under the compensation provisions of the *Act* or policy.

An "affected person" is a worker, dependant of a deceased worker, or an employer; or a person who claims to be an affected person, who is directly affected by a decision and may request a review or appeal of that decision.

2. Communicating Decisions

A decision is made, for the purpose of triggering the timelines for reconsiderations and reviews, on the date the decision is communicated to the affected person.

If the decision is communicated to affected persons on different dates, the statutory timelines commence on the date the decision is first communicated to an affected person.

The Board also communicates decisions to an affected person's advocate or representative if valid authorization is in place.

In occupational disease claims, where there are a number of different employers identified, but none of the employers is responsible for 20% of the exposure or more, decision letters and review and/or appeal information are sent to the employers' association that best represents the appropriate sector and rate group of that industry.

A. Written Communication

The Board will communicate the following decisions through a decision letter:

- Decisions on whether a claim is accepted, denied or rejected;
- Decisions on initial entitlement to wage-loss benefits, permanent disability benefits, dependant benefits, payments to a worker where the employer failed to comply with the obligations under the duty to maintain employment, and vocational rehabilitation assistance;
- Decisions on initial and long-term average earnings;
- Decisions that deny or limit benefits to a worker;
- Decisions regarding the re-opening of a matter previously decided;
- Decisions resulting from the reconsideration process;
- Decisions regarding the acceptance of a compensable consequence;
- Decisions that have been protested by the employer;
- Decisions on whether an employer may be granted a relief of costs; and
- Decisions to impose an administrative penalty on the employer for failure to comply with the duty to cooperate or duty to maintain employment.

The communication of the above decisions in writing triggers the timelines for reconsideration and review. The fact that a decision was not communicated in writing does not void the decision.

If one of the above decisions is not communicated in writing, the Board will determine whether the decision was satisfactorily communicated through other means, for example, verbally, through the payment or termination of compensation, or the referral of a worker for medical treatment or examination, in order to determine the timelines for reconsideration and review.

A decision letter will include an explanation of the relevant rights of review and/or appeal, and should, where appropriate, include the following elements:

1. The matter being adjudicated;

2. The evidence that was considered;

3. An explanation of the weight apportioned to the evidence and the reasons for the weighting;

4. Review of on-going communication with the worker where the relevant issues were discussed and details of the worker's response;

5. Reference to any relevant sections of the *Act* or Board policy;

6. The formal decision; and

7. An explanation of the impact of the decision on payment of compensation or entitlement to other benefits or services.

Decision letters are provided to persons directly affected by the decision.

Before a review or appeal is initiated, the type of information from a worker's claim that can be disclosed to the employer and/or authorized advocates and representatives is limited. Disclosure of personal and medical information is limited to information that is relevant to the claim and the issues involved, and that the employer has a need to know. The same approach applies for notification of decisions to health care providers, such as physicians and pharmacists.

If a decision is provided in writing and mailed to an affected person, the decision is deemed to have been communicated on the 8th day after it was mailed. Therefore, the reconsideration timeline starts at the end of the 8-day mailing period.

B. Verbal and Other Communication

The Board may also communicate decisions such as health care decisions or administrative actions, verbally. Examples of the types of decisions the Board may communicate verbally include:

- a decision to approve an additional two weeks of physiotherapy benefits beyond the initial entitlement period; or

- a referral to a specialist.

When a decision is communicated verbally, an explanation of the rights of review and/or appeal will be verbally provided to the affected person. The verbal communication also should, where appropriate, include an explanation of the decision in accordance with the elements of a decision letter.

Documentation on the claim is sufficient evidence that verbal communication of the decision, including the reasons for the decision and notice of review and appeal rights, has occurred.

A copy of the written record of the decision is provided upon request following the verbal communication of a decision; however, it does not constitute a new decision. The statutory timelines for reconsiderations and reviews commence from the date of the verbal communication.

The Board may communicate decisions through the ongoing payment of temporary or permanent disability benefits, the payment of health care invoices, or the final payment of temporary disability or health care benefits, where the decision is uncontested and/or is in favour of the worker.

For example, if a claim is allowed for ongoing wage-loss benefits and there has been no protest from the employer, the Board does not provide a letter outlining the reasons for the continued payment of benefits.

3. Finding of Facts

A finding of fact is not a decision. It is the factual basis on which a decision is made.

Findings of fact may change based on new information and are not subject to the limits on the Board's reconsideration authority.

A finding of fact may not be reviewed or appealed in the absence of an expressed or implied decision under review or appeal.

4. Rejected Claims

The term "reject" is different than a "disallow" and refers to a claim where:

1. a self-employed worker has no personal optional protection;
2. the worker was employed by an employer not covered under the *Act*;
3. a report was submitted in error. Normally, this occurs when a physician, on the basis of a misunderstanding, submits a report in error.

If a claim is rejected, notification of the review and/or appeal procedures is provided to the person making the claim.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 123 and 319 of the *Act*.
HISTORY:	January 1, 2024 − Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). October 29, 2020 − Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.

April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
April 1, 2010 − Amended to provide a definition of decisions; clarify when a decision is made and how it is communicated; define a finding of fact; and confirm that rights of review and appeal are communicated on rejected claims.
June 1, 2009 – Deleted reference to "send a cheque" and replaced with "may make a payment".
January 1, 2005 – Housekeeping amendment to require written authorization for disclosure, and to clarify appropriate disclosure principles.
March 3, 2003 – Inserted references to evenly weighted evidence and the rights of review and/or appeal.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

#99.22 Procedure for Handling Complaints or Inquiries About a Decision

The Board frequently receives letters, telephone calls and visits from workers, employers and their representatives concerning the decisions the Board makes on claims. Generally, the party in question will be either asking for further explanation of the decision or expressing dissatisfaction with the substance of the decision.

If the worker or employer is requesting further explanation, this should be given. In the case of advocates and representatives, disclosure of information will only be provided if proper written authorization is in place. If, however, dissatisfaction is expressed with the substance of the decision, the policy outlined in Item C14-103.01 is followed. This policy is intended only to cover situations where the worker, employer or representative is dissatisfied with the substance of a decision on a claim. It is not intended to cover complaints concerning the general administration of the claim, for example, delays in processing.

At no time is a letter expressing dissatisfaction with the substance of a decision to be simply committed to the claim with no further action taken.

EFFECTIVE DATE: June 1, 2009

HISTORY:
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 − Deleted references to officers and manager in the Compensation Services Division.
January 1, 2005 – Housekeeping amendment to require written authorization for disclosure of information.
March 3, 2003 – Inserted reference to Item C14-103.01 and deleted references to Review Board.

APPLICATION: Applies on or after June 1, 2009.

#99.23 Unsolicited Information

Unsolicited information will not be placed on the worker's claim until it has been assessed for relevancy and accuracy.

If the Board receives unsolicited information about a worker, the following principles apply:

1. Unsolicited information that is clearly irrelevant to the administration of the worker's claim will be destroyed.

2. Unsolicited information that appears to be relevant or potentially relevant to the administration of the worker's claim will be investigated for accuracy.

3. If, after investigation, the information is determined to be inaccurate or its accuracy is unknown, the information will be destroyed, including any record that initiated the investigation, the investigation report, and any documentation obtained in connection with the investigation.

4. If, after investigation, the information is determined to be accurate, a final assessment as to relevancy will be made.

5. If accurate information is considered to be irrelevant to the administration of the worker's claim, the information will be destroyed, including any record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation.

6. If accurate information is considered to be relevant or potentially relevant to the administration of the worker's claim, the information is placed on the worker's claim as follows:

   (a) anonymous information — The investigation report and any documentation obtained in connection with the investigation will be placed on the claim. The record that initiated the investigation will be destroyed and the claim will state that the investigation was initiated on the basis of information received.

   (b) information from identified source — The record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation will be placed on the claim.

   An identified source will be advised that the information may be disclosed to the worker. If the identified source wishes to become anonymous at any time, the information will be treated as anonymous information under (a) above. If the identified source wishes to remain identified, this will be recorded on the worker's claim.

7. If only some of the information is accurate and only some of the accurate information is relevant or potentially relevant to the administration of the worker's claim, the record that initiated the investigation will be destroyed

and reference will only be made on the worker's claim to information that is both accurate and relevant or potentially relevant.

8. If, during the investigation, accurate information is discovered that is unrelated to the subject matter of the unsolicited information, but is relevant to the administration of the worker's claim, that information will be recorded separately on the worker's claim.

9. If unsolicited information is found to be accurate and relevant or potentially relevant to the administration of the worker's claim, the worker will be advised of the information and given an opportunity to comment. Complaints about the accuracy and relevancy of unsolicited information will be dealt with according to policy item #99.35.

CROSS REFERENCES: Policy item #99.35, *Complaints Regarding File Contents*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#99.24 Notification of Permanent Disability Benefits

When permanent disability benefits are granted, the letter advising of the compensation will include the permanent functional impairment evaluation report on which the benefits have been based. It will also contain the percentage rate of disability assessed. If the case is one of Proportionate Entitlement, the letter will state the nature and extent of the pre-existing disability and the nature and extent of the further disability. A copy of the letter is sent to the employer. This letter will include information regarding the relevant rights of review and/or appeal.

Other than to the employer or the worker, the amount being paid per month for permanent disability benefits will only be disclosed to public or private agencies in accordance with the criteria for disclosure as set out in policy item #99.50.

The amount of the capital reserve is disclosed to the employer when notified of the permanent disability benefit. The reserve amounts will be given to the worker on request.

EFFECTIVE DATE: March 3, 2003

CROSS REFERENCES: Policy item #44.00, *Proportionate Entitlement*;
Policy item #44.10, *Meaning of Already Existing Disability*;
Policy item #44.20, *Wage-Loss Benefits and Health Care Benefits*;
Policy item #44.30, *Permanent Disability Benefits*;
Policy item #44.31, *Application of Proportionate Entitlement*;
Policy item #99.50, *Disclosure to Public or Private Agencies*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended regarding references to review and appeal.

#99.30 Disclosure of Claim Files

The claim file is the master file for recording information used in the adjudication and administration of a claim. Information may exist outside of the claim file. However, all evidence used in the adjudication of the claim is contained in the claim file. Medical opinions, as well as any further comments, are all recorded on, and become part of, the claim file.

Sensitive personal information that is received, which has not been specifically requested and which is not relevant to the adjudication or administration of the claim will not become part of the claim file. It will normally be destroyed. However, where the original document is still in the Board's possession, it will be returned to the sender when requested by the worker or sender.

Discretion is necessary in documenting the file to ensure that rumour or innuendo is not mistakenly reported as fact where it is unsupported or cannot be verified. Comments regarding claimants, employers and other persons involved in the claim are confined to relevant matters which have been observed personally or for which there is other supporting evidence. Observations should be confined to the particular circumstances of the claim or other matter and should not make general comments about an individual's personality. Comments should be worded in the least offensive way possible and avoid derogatory terms.

In recognition of the sensitive nature of sexual assault claims where the employer is alleged to be the perpetrator of the assault, all such cases, regardless of the residence of the worker, are assigned to the Sensitive Claims Area. Disclosure of these claim files for review or appeal and other legal purposes is administered by the Sensitive Claims Area.

EFFECTIVE DATE:	June 1, 2009
HISTORY:	June 1, 2009 – Deleted references to Adjudicator, Board officers, physicians, Board Medical Advisors, Manager and Board staff. March 3, 2003 – Inserted reference to review.
APPLICATION:	Applies on or after June 1, 2009.

#99.31 Eligibility for Disclosure

Disclosure of their claim files is provided to a worker or dependant on request. Only one copy is provided and no fee is charged for this disclosure.

After a review or appeal has been initiated, an employer may obtain disclosure. An employer may obtain disclosure even though the worker has not requested disclosure.

Disclosure will be provided to the representative of the employer or worker if authorized in writing.

Where there is a valid review or appeal in process regarding a matter arising under a claim to which another claim is also relevant, disclosure to the employer will also be

allowed of the other claim. However, there must be a request for disclosure of that particular claim. The Board will not accept requests of a general nature for any files which may be relevant to the reviewable or appealable decision or the issue under review or appeal.

A worker may submit a request for update disclosure where information has been added to the file since the previous disclosure. Where disclosure has been granted to a worker, dependant or employer in situations involving a review or appeal, file updates are automatically provided up to the time the review or appeal is heard. The file may be inspected if it is so desired.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: Sections 271 and 295 of the *Act*.
HISTORY: March 3, 2003 – Amended regarding reference to review.

#99.32 Provision of Copies of File Documents

A copy of all the documents on the claim file will be sent out automatically on receipt of a request for disclosure from a worker or an authorized representative.

Where an employer has a right to receive disclosure of a claim file, that disclosure will consist of the same disclosure which would be granted to the worker.

Only one copy of each claim file is provided. The person entitled to disclosure must decide whether the copy is to go to them or to an authorized or a designated advocate or representative or, if there is more than one, which of them should receive the copy.

File copies may be mailed out or picked up at a Board office.

No fees are charged to workers for the copy of their claim files. Fees are also not charged to employers for a copy of claim files where they are entitled to disclosure.

EFFECTIVE DATE: May 1, 1993
AUTHORITY: Sections 271 and 295 of the *Act.*
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
May 1, 1993 – Disclosure fees terminated for the provision of copies of assessment files, claims files, and occupational safety and health files to authorized persons for the purposes of appeals and certain other proceedings (see Governors' Decision No. 37 (1993) 9:3 *W.C.R.* 337.)

#99.33 Personal Inspection of Files

If the recipient of the copies wishes, an appointment may be made to inspect the file in person.

Personal inspection of the file may take place at the Board's Richmond office or at any other Board office outside the Richmond area by prior appointment only. The office used in each case will be the one closest to the requestor's residence, unless another office is specifically named.

Any person attending at a Board office to view a file in person or to pick up copies will normally be required to provide personal identification containing the person's photograph (e.g. driver's licence) and a social insurance card.

Explanations about what is in the file must be sought from the person or body dealing with the matter, a Workers' Adviser, an Employers' Adviser, or the person's own representative.

EFFECTIVE DATE: June 1, 2009
HISTORY: June 1, 2009 – Deleted references to Board officers.
APPLICATION: Applies on or after June 1, 2009.

#99.34 Disclosure

As soon as practicable, after a request for a review has been filed, the Board must provide the parties to the review with a copy of its records respecting the matter under review.

As soon as practicable after the Board has been notified by the Workers' Compensation Appeal Tribunal that an appeal has been filed, the Board must provide the parties to the appeal with a copy of its records respecting the matter under appeal.

If it is not a review or appeal situation, a worker may obtain disclosure from the Board. Where disclosure is available pursuant to the disclosure policies and it is desired simply to inspect the original file in person at an office of the Board, without receiving a copy of the file or after the receipt of a copy, the request may be made directly to the Board office concerned.

Requests for disclosure involving information relating to sexual assault claims where the employer is alleged to be the perpetrator of the assault will be referred to the Sensitive Claims Area (see policy item #99.30).

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Sections 271 and 295 of the *Act*.
HISTORY: June 1, 2009 – Deleted references to Client Service Managers of the appropriate Service Delivery Location and outside the Richmond area.
March 3, 2003 – Added provision for disclosure after request for review and after appeal filed to WCAT. Deleted reference to address where requests for disclosure must be submitted by employers and workers. Applied to all decisions made on or after March 3, 2003.
APPLICATION: Applies on or after June 1, 2009.

#99.35 Complaints Regarding File Contents

Only where it is personal information which is irrelevant to the claim, does the Board permit the deletion or removal from claim files of statements or documents to which a worker, employer or other person referred to on the file objects. A person making an objection as to the accuracy of file information will be allowed to place on the file statements or material to rebut the statements to which there is an objection. However,

the Board will not make a ruling on a dispute over the accuracy of file information save when it is necessary in the normal course of events for the purpose of reaching a decision on the merits of the claim or other matter. Where the person making the objection is the worker, anyone who had access to the file in the one-year period prior to the annotation to the record will be informed.

A complaint that a comment on a Board file is pejorative may be forwarded to the President. If it is concluded that the comment is pejorative, the comment will be stamped, or annotated electronically where appropriate, to identify the comment as pejorative and to refer the reader to the correcting documentation.

#99.40 Tape Recordings of Interviews

Where an enquiry interview has been conducted by the Board, a copy of the tape recording of the interview will be supplied upon request to the worker or the worker's authorized or designated representative. If a review has been requested or an appeal has been filed, a copy may also be provided to the employer or the employer's authorized representative.

A person being interviewed, or any other person entitled to be present at an enquiry, may, if desired, record the proceedings.

EFFECTIVE DATE:	June 1, 2009
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted reference to officer. March 3, 2003 – Inserted reference to review.
APPLICATION:	Applies on or after June 1, 2009.

#99.50 Disclosure to Public or Private Agencies

Where a public or private agency requests disclosure of all or part of a claim file, the Board will only comply with the request in keeping with the provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The following are the more common examples where disclosure will be provided in response to such a request:

(a) Where an appropriate signed consent has been received from the worker.

(b) To any agency having statutory authority allowing access to personal information.

(c) To comply with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of the information.

(d) To a member of the Legislative Assembly who has been requested by the worker to assist in resolving a problem.

(e) If the Board determines that compelling circumstances exist which affect the health or safety of an individual.

AUTHORITY: Section 235 and 349 of the *Act.*

#99.51 Legal Matters

If a staff member is directly served with a subpoena, the Board's General Counsel or delegate must be advised immediately. If a request is received from a lawyer for information from a claim file, the request is forwarded to the Records Management Edit Clerk.

At the request of the Board's General Counsel, a Director or designate will be asked to respond to a subpoena or other request for information from a lawyer.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 332 of the *Act*.
HISTORY: June 1, 2009 – Deleted references to Compensation Services Division, Adjudicator and Board officer.
APPLICATION: Applies on or after June 1, 2009.

#99.52 Other Workers Compensation Boards

The Board has authorized the exchange of copy documents with other Boards. The Board will also inform other Boards of the amount of any permanent disability benefits being paid to a worker by this Board.

AUTHORITY: Section 349 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#99.53 Government of Canada

In referring workers to a department of the Government of Canada for assistance in job placement, the Board may, with the worker's signed consent, furnish that department with a brief description of the worker's physical limitations.

AUTHORITY: Section 349 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#99.54 Canada Pension Plan

The Board will take all reasonable steps to assist a disabled worker in obtaining benefits to which the worker may be entitled. The Board will provide the Canada Pension Plan, on request and with the worker's release, a report setting out the facts pertaining to the claim, a report to include the date and nature of the accident, the nature of the injury, a very brief résumé of the medical findings and the medical assessment of the remaining permanent disability. The Canada Pension Plan is provided with the names of

practising doctors who had been involved in the case. There is no charge for this information.

The F.I.P.P. Office of the Board handles requests from the Canada Pension Plan for information. Where the Board receives a request authorized by the worker or by statute, the F.I.P.P. Office provides the Canada Pension Plan with copies of documents specified in the request. Any charge for this service is paid by the Canada Pension Plan.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 349 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted reference to Medical Services Department and updated reference to F.I.P.P. Office.
September 3, 1996 – Policy that F.I.P.P. Office handles Canada Pension Plan requests came into effect.
APPLICATION: Applies on or after June 1, 2009.

#99.55 Ministry of Social Development and Poverty Reduction

If the Ministry of Social Development and Poverty Reduction has a debt owing to it, the Board will disclose to the Ministry the amount of any compensation being paid by the Board.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 349 of the *Act*.
CROSS REFERENCES: Policy item #48.22, *Social Assistance Payments*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: June 1, 2009 – Updated reference to Ministry of Housing and Social Development.
APPLICATION: Applies on or after June 1, 2009.

#99.56 Police

Information may be disclosed to police departments for the purpose of contacting a next of kin or for the purposes of a law enforcement proceeding.

AUTHORITY: Section 349 of the *Act*.

#99.57 Government Employees Compensation Act

Where an election form signed by the worker is on file, information contained in third party claims for employees covered under the *Government Employees Compensation Act* may be released to the Government of Canada in order to properly pursue the right of action to which it is subrogated.

#99.60 Information to Other Board Departments

For inspection and prevention purposes, the details of any claims received where there is a potential to prevent further recurrences of the situation are referred to the Prevention Division. Examples of this would be scaffolding collapses, explosions, excavation cave-ins, dangerous work practices, etc. Referral is also made in every case where a worker complains about work safety conditions. Where the Board becomes aware of an excessive number of injuries of the same type or even of a different type with one employer, a notification of this observation is also sent to the Prevention Division.

EFFECTIVE DATE: June 1, 2009
HISTORY: June 1, 2009 – Deleted references to Claims Adjudicators and Claims Officers.
APPLICATION: Applies on or after June 1, 2009.

#99.70 Media Enquiries or Contacts

Unless designated as a media spokesperson, staff at the Board are to refer all media enquiries or contacts to the Communications Department.

EFFECTIVE DATE: June 1, 2009
HISTORY: June 1, 2009 – Updated reference to the Communications Department.
APPLICATION: Applies on or after June 1, 2009.

#99.80 Insurance Companies

On receipt of a signed consent from the worker or dependant, information from a claim file to which the worker or dependant would have access may be disclosed to an insurance company. The signed consent must be directed specifically to the Board and clearly state the information which may be released. It should also refer to a specific claim or specific claims, and must have been signed within 24 months of its date of receipt. See also policy item #48.20.

AUTHORITY: Section 235 of the *Act*.
CROSS REFERENCES: Policy item #48.20, *Money Owing by Worker to Other Agencies,* of the *Rehabilitation Services & Claims Manual*, Volume II.

#99.90 Disclosure for Research or Statistical Purposes

The Board may disclose personal information for a research purpose, including statistical research, only if:

(a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Information and Privacy Commissioner.

(b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest.

(c) the Board has approved conditions relating to the following:

(i) security and confidentiality;

(ii) the removal or destruction of individual identifiers at the earliest reasonable times;

(iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of the Board, and

(d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, the provisions of the *Freedom of Information and Protection of Privacy Act* and any of the Board's policies and procedures relating to the confidentiality of personal information.

#100.00 REIMBURSEMENT OF EXPENSES

Set out below are the rules relating to the reimbursement of expenses for people attending at the Board or elsewhere in connection with claims or Review Division inquiries.

The principles relating to expenses incurred in connection with medical examinations and treatment and vocational rehabilitation programs are dealt with in Item C10-83.00 and Item C10-83.10.

The Board may be ordered by the Workers' Compensation Appeal Tribunal to pay certain expenses. Section 7 of the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002) provides that the Board may be ordered by the Workers' Compensation Appeal Tribunal to reimburse a party to an appeal under Part 7 of the *Act* for the following kinds of expenses:

- expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the Workers' Compensation Appeal Tribunal to travel to the hearing or other proceeding;

- expenses associated with obtaining or producing evidence submitted to the Workers' Compensation Appeal Tribunal; and

- expenses associated with attending an examination required under section 302(3) of the *Act*.

However, the Workers' Compensation Appeal Tribunal may not order the Board to reimburse a party's expenses where those expenses arise from a person representing

the party or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: Section 315 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services & Claims Manual,* Volume II.
March 3, 2003 – Amended regarding references to the Review Division, the Workers' Compensation Appeal Tribunal and section 7 of the *Workers Compensation Act Appeal Regulation*.
APPLICATION: To adjudicative decisions on or after the effective date.

#100.10 Workers

In addition to the specific requirements set out below, the worker must satisfy the general requirements in Item C10-83.00 and Item C10-83.10 for the payment of transportation costs and subsistence allowances.

#100.12 Claims or Review Inquiries

Where a worker is attending a claims or review inquiry, the payment of expenses is discretionary. There will be no undertaking to pay expenses and no advance.

1. If the claims inquiry or review results in a decision for the worker, the discretion will normally be exercised in favour of payment. But payment should be refused if it is concluded that the inquiry or review was brought about unnecessarily by the worker.

   For example, payment might be refused on a review where it is concluded that the denial of the claim in the first instance resulted from misleading information supplied by the worker.

2. If the claims inquiry or review results in a decision against the worker, payment of expenses will normally be refused. But payment may be allowed if there is special reason. An example might be, where, although the claim was unfounded, the bringing of the review resulted from misleading reasons for the decision being given in the first instance.

These provisions apply only if people are notified to come for a formal claims or review inquiry. Expenses are not reimbursed for people coming to the Board to make enquiries, or for ordinary discussions.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended regarding references to review.

#100.13 Amount of Expenses

The amount of expenses paid is calculated in accordance with the rules set out in Item C10-83.00 (transportation costs) and Item C10-83.10 (subsistence allowances for meals, accommodation, and lost time from work where the worker is not already in receipt of wage-loss benefits or vocational rehabilitation benefits from the Board).

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including renumbering from policy item #100.14 to policy item #100.13.

#100.14 Worker Resides Outside British Columbia

The general principle stated in Item C10-83.00 is that, where the Board is paying travel costs of a worker located outside British Columbia, it will only pay the portion attributable to travel in British Columbia. This also applies to claims and review inquiries, but there are some exceptions to this principle which apply here.

If a worker resides outside British Columbia and is specifically requested by the Board to attend a claims inquiry or a review by the Review Division, the full cost of the trip will be paid by the Board.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including renumbering from policy item #100.14 to policy item #100.14.
January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services and Claims Manual,* Volume II.
June 1, 2009 – Deleted references to Medical Review Panel.
March 3, 2003 – Inserted references to review.
APPLICATION: Applies on or after June 1, 2009.

#100.20 Employers

The expenses of an employer's representative may be reimbursed on the same basis as for a worker, except that compensation for lost time from work is not payable.

Not more than one employer's representative will be eligible for reimbursement for attendance at a claims inquiry or a review by the Review Division unless the second or other representative is needed as an additional witness.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including renumbering from policy item #100.15.
March 3, 2003 – Amended regarding references to the Review Division.

#100.30 Witnesses and Interpreters

The expenses of a witness or interpreter will be paid when they have been subpoenaed or have been requested to attend by the Board.

In other cases, the expenses of an independent witness will be paid where, following the claims inquiry or review by the Review Division, it appears that it was reasonable for the worker or employer as the case may be to have assumed, prior to the claims inquiry or review by the Review Division, that the attendance of the witness would be necessary. (If a worker or employer intends to bring more than two witnesses, or intends to bring any witness from a distance of more than twenty-five miles, they should check first by telephone with the Board.)

Where the expenses of a witness are payable, the amount will be the same as for a worker. A subsistence allowance for income loss under Item C10-83.10 will be paid for lost time from work. The applicable maximum and minimum will be those in effect at the time the lost time is incurred.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services and Claims Manual*, Volume II.
June 1, 2009 – Deleted reference to officer or review officer.
March 3, 2003 – Inserted reference to the Review Division.
APPLICATION: Applies on or after June 1, 2009.

#100.40 Fees and Expenses of Lawyers and Other Advocates

No expenses are payable to or for any advocate. Nor does the Board pay fees for legal advice or advocacy in connection with a claim for compensation. (See policy item #48.10.) The Board will not pay the legal costs of a worker or employer in connection with court proceedings to challenge a Board decision beyond what it may become subject to pay following the court's decision under the general law of costs.

CROSS REFERENCES: Policy item #48.10, *Solicitors' Liens*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#100.50 Expenses Incurred in Producing Evidence

If a worker incurs expense in producing evidence of a kind which the Board would have sought had it not been produced by the worker, these expenses will be reimbursed by the Board as an item of administrative cost. In this connection, it makes no difference whether the expense was incurred directly or through a lawyer or other representative. However, confusion should not be made between the expenses incurred by the lawyer or other representative on behalf of the worker and the fees of the lawyer or representative for work done. Only the former are reimbursable.

The cost of medical reports obtained by a worker or employer will also be paid by the Board if, following the claims inquiry or review by the Review Division, it appears reasonable for them or their representative to have assumed, prior to the claims inquiry or review by the Review Division, that the provision of the report was necessary. These costs may be paid even if, after the matter is concluded, it is determined that they had not specifically served to assist in the enquiry.

The Board, in a decision on a claim, refused to pay for medical reports obtained by a worker's lawyer. Although it was a normal and prudent action on the part of a responsible lawyer to seek information in order to acquaint himself properly with the client's problem before pursuing it before the Board, the information contained in the reports could have been obtained from the worker's attending physician at no cost. A simple request to the attending physician, together with a release from the worker, would have been sufficient.

It is not the Board's intention that workers or employers should incur costs in obtaining evidence, for example, accountants' fees for producing earnings information. Rather, the general approach is that the worker or employer should advise the Board of possible sources of information and the Board should carry out the necessary inquiries. This may, for example, require the Board to request that the worker provide information considered necessary to administer the claim (see policy item #93.26).

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted reference to officer.
March 3, 2003 – Inserted references to the Review Division.
APPLICATION: Applies on or after June 1, 2009.

#100.60 Decision on Expenses

With regard to claims inquiries, any necessary decisions relating to expenses are made by the Board. With regard to reviews or appeals, decisions relating to expenses are made by the Review Division or the Workers' Compensation Appeal Tribunal, respectively.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted reference to officer.
March 3, 2003 – Inserted references to the Review Division and the Workers' Compensation Appeal Tribunal.
APPLICATION: Applies on or after June 1, 2009.

#100.70 The Awarding of Costs

The provisions in policy item #100.00 to policy item #100.60 relate to the payment of expenses by the Board. An order for the payment of costs by one party to another

under section 343 of the *Act* is a separate matter, and is an alternative that may be considered in an appropriate case.

Section 343 provides:

> (1) This section applies in relation to a contested claim for compensation or any other contested matter.
>
> (2) The Board may award to the successful party an amount the Board considers reasonable to meet the expenses to which the party has been put by reason of or incidental to contesting the matter.
>
> (3) An order of the Board for payment by an employer or worker of an amount awarded under this section, when filed in the manner provided for the filing of certificates under section 264(2) *[collection of unpaid assessment]*, becomes a judgment of the court in which the order is filed and may be enforced accordingly.

A "contested claim", for the purposes of section 343, is one in respect of which there has been a review by the Review Division by the worker or the employer.

An award under section 343 might be made on a review but only in unusual cases. The section is limited to cases where the worker or employer abuses their respective rights under the *Act*. For instance, the worker or employer may put the opposite party to the expense of an appeal for no good reason. In other words, it may appear that a review was pursued simply because the right to request a review existed and without any substantial grounds on which the position could be argued.

An award will not likely be made under section 343 in favour of a successful appellant. Section 343(2) requires that the expenses in respect of which the award is made be "by reason of or incidental to contesting the matter." Since the appeal will be proceeded with and resolved whether or not it is opposed by the other party, it cannot normally be said that the expenses of the appellant are due to the other party's "contesting" the review. If the review is not opposed by the other party, the reasons for not making an award become even stronger.

Section 6 of the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002) provides that the Workers' Compensation Appeal Tribunal may award costs related to an appeal under Part 7 of the *Act* to a party if the Workers' Compensation Appeal Tribunal determines that:

- another party caused costs to be incurred without reasonable cause, or caused costs to be wasted through delay, neglect or some other fault;
- the conduct of another party has been vexatious, frivolous or abusive; or
- there are exceptional circumstances that make it unjust to deprive the successful party of costs.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Sections 315 and 343 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted reference to Medical Review Panel.
March 3, 2003 – Inserted references to review and section 6 of the *Workers Compensation Act Appeal Regulation.*
APPLICATION: Applies on or after June 1, 2009.

#100.71 Application for Costs by Dependant

On an application under the predecessor to section 311 of the *Act*, the Board certified that the defendant to a third party action was not an employer under the *Act*. The plaintiff then applied for an order for costs of the proceedings before the Board to be paid by the third party defendant. The Board determined that:

". . . the authority of the Board to enforce payment of an order for costs is limited to an order for payment by an employer, or by a worker. The Third Party in this case is neither an employer nor a worker under [then] Part 1, and the Board has therefore no authority to make an order for costs against the Third Party. It may well be that this limitation under section 100 [now section 343] has a historical explanation that does not reflect any rational policy currently relevant. But it is a clear limitation in the *Act*, and it must therefore be followed."

The question arises whether an award under section 343 can be made in favour of the dependants of a deceased worker. Such an award would not contradict the previous determination, as the person against whom it would be made is an employer under the *Act*. However, it was considered unfair to make such an award if the employer could not get a like award against the dependant. Therefore, an award of costs will not be made in favour of a dependant of a deceased worker against an employer.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended regarding reference to section 11 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

#100.72 What Costs May Be Awarded?

It would not be reasonable to make an order for costs against a worker or employer in respect of an expense which the Board would not allow under the rules set out in policy item #100.00 to policy item #100.50. Therefore, an award of costs will not include the fees of lawyers and other persons paid to them for advice or advocacy in connection with a claim for compensation.

AUTHORITY: Section 133 of the *Act*.

#100.73 Decisions on Applications for Costs

Only in rare cases will a review by the Review Division be sufficiently without merit to justify an award under section 343.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended reference to the Review Division.

#100.75 Implementation of Review or Appeal Decision Directing Reassessment or Redetermination

It may happen that, instead of reaching a specific finding on a matter, the Review Division or the Workers' Compensation Appeal Tribunal will direct that the Board reassess or redetermine something, for example, permanent partial disability benefits. The Review Division or the Workers' Compensation Appeal Tribunal finding is properly implemented if the reassessment or redetermination is carried out even if the conclusion reached is the same as the one that was previously reviewed by the Review Division or appealed to the Workers' Compensation Appeal Tribunal. However, if the Board officer implementing the Review Division or the Workers' Compensation Appeal Tribunal finding is the same one who made the original decision against which the review or appeal was made, and if that person's decision is still negative, the matter is to be referred to a different Board officer for a second look. If a difference of opinion results from the second look, the decision of the second Board officer will prevail.

If, in addition to directing the reassessment or redetermination, the Review Division or the Workers' Compensation Appeal Tribunal makes some specific findings of fact, for example, that the worker was unable to carry out certain jobs, the Board is bound by those findings.

If the reassessment or redetermination results in no change in the original Board decision, a review or an appeal lies back to the Review Division or the Workers' Compensation Appeal Tribunal, respectively.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Compensation Services Division.
March 3, 2003 – This policy item was moved from Chapter 13 and amended to include references to the Review Division or the Workers' Compensation Appeal Tribunal.
APPLICATION: Applies on or after June 1, 2009.

#100.80 Payment of Claims Pending Appeals

#100.81 Appeals to the Review Division – New Claims

The general practice is that no payment is made on a new claim until there has been an adjudication that the claim is valid.

When a decision is made to allow a claim that has been protested by an employer, the employer will be advised of the decision and reasons, where possible by telephone, and given an opportunity to provide any additional information. This is similar to the requirement in policy item #99.10 that a worker be advised if the indication on a claim is that it may be disallowed. If the decision remains that the claim should be allowed, payments will be commenced immediately and a letter explaining the decision and reasons will be sent to the employer. The letter will advise the employer of their right to request a review by the Review Division.

Section 270 of the *Act* provides that an employer can request a review up to 90 days from the decision allowing a claim.

If the Review Division reverses the decision to allow the claim, payments are immediately terminated but no attempt is made to recover payment incorrectly made to the worker, unless there was evidence of fraud or misrepresentation. The employer's sector or rate group will be relieved of the claim costs pursuant to policy item #113.10.

EFFECTIVE DATE:	June 1, 2009
CROSS REFERENCES:	Policy item #48.41, *When Does an Overpayment of Compensation Occur?* Policy item #113.10, *Investigation Costs*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted reference to Claims Department. March 3, 2003 – Replaced policy item #105.10, which was deleted from Chapter 13 and amended to include references to the Review Division.
APPLICATION:	Applies on or after June 1, 2009.

#100.82 Appeals to the Workers' Compensation Appeal Tribunal – Reopening of Matters Previously Decided

If a decision is made to reopen a matter under section 125 of the *Act*, the employer is advised in writing. If the employer objects to this decision, the employer will be advised of the right to appeal directly to the Workers' Compensation Appeal Tribunal under section 289.

If the Workers' Compensation Appeal Tribunal reverses the decision to reopen the matter, payments are immediately terminated. No attempt is made to recover payments incorrectly made to the worker unless there was evidence of fraud or misrepresentation. The employer's sector or rate group will be relieved of the claim costs pursuant to policy item #113.10.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Sections 125 and 289 of the *Act*.
CROSS REFERENCES:	Policy item #113.10, *Investigation Costs*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted reference to Claims Department. March 3, 2003 – Replaced policy item #105.20, which was deleted from Chapter 13 and amended to include references to the Workers' Compensation Appeal Tribunal.
APPLICATION:	Applies on or after June 1, 2009.

#100.83 Implementation of Review Division Decisions

Section 275 of the *Act* provides:

(1) If, following a review under this Part [Part 6 – Review of Board Decisions], a review officer's decision requires payments to be made to a worker or a deceased worker's dependants, the Board must

(a) begin any periodic payments, and

(b) pay any lump sum due under section 167 *[payment to dependent spouse or foster parent]*.

(2) In the absence of fraud or misrepresentation, an amount paid under subsection (1) to a worker or a deceased worker's dependants is not recoverable.

(3) If a review officer has made a decision described under subsection (1), the Board must defer the payment of any compensation applicable to the time period before that decision

(a) for a period of 40 days following the review officer's decision, and

(b) if the review officer's decision is appealed under section 288 *[appeal of review decisions]*, for a further period until the appeal tribunal has made a final decision or the appeal has been withdrawn, as the case may be.

(4) Subsection (3) applies despite the following:

(a) section 168(2) *[dependants of deceased worker]*;

(b) section 191(1) *[temporary total disability]*;

(c) section 192(1) *[temporary partial disability]*;

(d) section 194(1) *[permanent total disability]*;

(e) section 195(1) *[permanent partial disability: general rules]*;

(f) section 196(3) *[permanent partial disability: exception to general rules]*.

Section 312 of the *Act* provides:

(1) If the appeal tribunal's decision on an appeal requires the payment of compensation, all or part of which was deferred under section 275(3) *[payment following review decision]*, interest must be paid on the deferred amount of that compensation as specified in subsection (2).

(2) Interest payable under subsection (1) must be calculated in accordance with the policies of the board of directors and begins

(a) 41 days after the review officer made the appealed decision, or

(b) on an earlier day determined in accordance with the policies of the board of directors.

The procedures for implementing all Review Division decisions are as follows:

1. Any benefits payable from the date of the Review Division decision forward will be paid without delay.

2. Any benefits payable for the period of time prior to the date of the Review Division decision (retroactive benefits) will be paid after 40 days have elapsed following the date of the Review Division decision, unless an appeal has been filed with the Workers' Compensation Appeal Tribunal.

3. If there is an appeal of the decision under section 288, retroactive benefits will not be paid until the Workers' Compensation Appeal Tribunal has made a final decision or the appeal has been withdrawn.

4. The decision of the Workers' Compensation Appeal Tribunal will be implemented upon its receipt by the Board. The worker's entitlement to retroactive benefits which were deferred according to #3 above will then be determined in accordance with the decision of the Workers' Compensation Appeal Tribunal.

5. Where retroactive benefits are payable, after the decision of the Workers' Compensation Appeal Tribunal, interest is to be paid in accordance with the Board's general policy on the payment of interest on retroactive benefits as set out in policy item #50.00. Where interest is payable under section 312(1), interest will be paid beginning 41 days after the date on which the Review Division made its decision. The amount of interest to be paid is to be calculated in accordance with the interest rates set out in policy item #50.00.

EFFECTIVE DATE:	January 1, 2014
CROSS REFERENCES:	Policy item #50.00, *Interest*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. January 1, 2015 – Housekeeping change to make consequential amendment to point #5 of policy, resulting from changes to policy item #50.00, *Interest,* of the *Rehabilitation Services & Claims Manual* Volume II made effective January 1, 2014. June 1, 2009 – Deleted reference to officer. March 3, 2003 – This policy was moved from Chapter 13 and amended to include references to then section 258 of the *Act*, the Review Division and the Workers' Compensation Appeal Tribunal and to delete a reference to former policy item #45.61.
APPLICATION:	This item applies to all decisions made on or after January 1, 2014.

(2) The Board may order that the compensation be charged, in whole or in part, to the other class or subclass of an employer referred to in subsection (1)(b)(i) or an independent operator referred to in subsection (1)(b)(ii)."

This provision permits the Board to transfer the costs of a claim from the class of the worker's employer to the class of another employer in certain circumstances. The requirements of such a transfer are discussed below.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#114.11 The Amount of Compensation Awarded Must Be Substantial

The Board has interpreted the word "substantial" as referring to a specific dollar amount. The amounts are set out below:

January 1, 2023 – December 31, 2023	$57,922.92
January 1, 2024 – December 31, 2024	$59,730.66

If required, earlier figures may be obtained by contacting the Board.

Effective June 30, 2002, the dollar amount will be adjusted on January 1 of each year. The percentage change in the consumer price index determined under section 333 of the *Act*, as described in policy item #51.20, will be used.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#114.12 Serious Breach of Duty of Care of Another Employer Must Have Caused or Substantially Contributed to Injury

"Duty of care" has the same meaning as it does in the law of tort. It is therefore relevant to consider what conclusions a court of common law would come to if a claim for damages for personal injury were brought by the worker against the other employer. The basic question considered is whether there was a failure to take reasonable care. The mere fact that the employer may have violated the *Occupational Health and Safety Regulation* is not sufficient since it often imposes strict liability.

The doctrine of vicarious liability has no application to section 249, and a transfer of costs is only available if the breach of duty of care consisted of acts or omissions by management personnel who can be identified as the employer, and not to cases where the breach of duty consists only of the act or omissions of other workers.

If there has been a breach of duty of care by the employer, the next question to be considered is whether it was a "serious" one. The word "serious" refers to the culpability

of the employer's behaviour rather than the consequences of that behaviour. Regard will be had to the probability of injury resulting from the breach and the predictable gravity of the likely consequences of such an injury.

The fact that the worker was negligent does not necessarily mean that the employer's breach of duty did not cause or substantially contribute to the injury. Lapses of attention are a normal part of ordinary human behaviour that should be foreseen and guarded against.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#114.13 Discretion of the Board

The Board has discretion, if the requirements set out in policy items #114.10 to #114.12 are satisfied, to transfer all or part of the cost of a claim. In exercising this discretion, the Board takes no account of any contributory negligence by the worker.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#114.20 Depletion or Extinction of Industries or Classes

Section 240(1)(b) requires the Board to "provide a reserve in aid of industries or classes which may become depleted or extinguished;"

Employers may apply to have the costs of a claim transferred from their class to that fund. This provision is very rarely used.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#114.30 Disaster or Other Circumstance that Unfairly Burdens a Rate Group

Section 240(1)(c) requires the Board to "provide a reserve … to meet the loss arising from a disaster or other circumstance that the Board considers would unfairly burden the employers in a class;"

Costs will not be charged to the fund created by section 240(1)(c) because there is an unfair burden on an individual employer. The unfair burden must be on a rate group or industry group of employers.

Each deposit account employer forms a classification unit, which is treated as a self-funded rate group by itself. This does not automatically mean that a burden on the deposit account employer is a burden on the rate group. The relief available to deposit accounts under section 240(1)(c) is limited to the same sorts of situations as for other employers.

EFFECTIVE DATE:	January 1, 2016
AUTHORITY:	Section 247 of the *Act.*
CROSS REFERENCES:	Item C3-22.00, *Compensable Consequences*; Item C3-22.10, *Compensable Consequences – Travel* (esp. for meaning of travel for exceptional treatment or examination); Item C10-83.30, *Date of Injury Transportation*; Policy item #115.30, *Experience Rating Cost Exclusions*; Policy item #115.34, *Experience Rating Exclusions for Certain Compensable Consequences*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. January 1, 2016 − Policy amended to clarify that the costs of injuries or aggravations arising out of surgery, Board-related assessment, and travel for exceptional medical treatment or examination will be excluded from an employer's experience rating per injuries or aggravations arising out of treatment. January 1, 2015 – Consequential amendments were made effective, arising from changes to Chapter 10, *Medical Assistance,* of the *Rehabilitation Services & Claims Manual*, Volume II. June 1, 2009 – Policy updated to reflect the wording of decision-makers, departments, appellate bodies, and external agencies. March 3, 2003 – Amended to delete references to the Review Board and the Appeal Division. June 30, 2002 – Housekeeping changes were made to update terminology.
APPLICATION:	This policy applies to all decisions made on or after January 1, 2016.

#115.32 Claims Involving a Permanent Disability and a Fatality

ER does not include the actual cost of the fatal claims experienced by an employer. Rather, it includes for each claim the average cost for all fatal claims in the year. A worker in receipt of permanent disability benefits may die as a result of the injury or disease accepted under the claim. If compensation is payable to dependants, the cost otherwise included in ER may be reduced to the extent set out below:

1. Where the average cost of compensation for a fatality is the same or less than that of the permanent disability benefits, the total cost of the compensation for the fatality is excluded.

2. Where the average cost of compensation for a fatality is greater than that of the permanent disability benefits, a portion of the cost of the compensation for the fatality equal to the reserve charged to the employer for the permanent disability benefits is excluded.

#115.33 Claims Relating to Subsequent Non-Compensable Incidents

A worker may continue to receive temporary disability wage-loss benefits where recovery from a compensable disability is delayed due to a subsequent non-compensable incident.

As set out in Section 3.6 of the policy in Item C5-34.00, the Board estimates when the worker would have reached maximum medical recovery. The Board continues to pay wage-loss benefits for the period that the Board estimates the worker would have taken to reach maximum medical recovery from the compensable injury had the subsequent non-compensable incident not occurred.

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, the Board makes a new decision as to whether the disability is due to the compensable injury, mental disorder, or occupational disease, or the subsequent non-compensable incident. If the disability is due to the compensable injury, mental disorder, or occupational disease, wage-loss benefits may be continued.

If the delay in recovery is due to the subsequent non-compensable incident, the cost of compensation associated with the delay in recovery beyond the estimated date for terminating temporary disability wage-loss benefits is excluded from the employer's experience rating. These costs will also not be charged to the employer's rates group, but will be spread across all rate groups.

Claims costs associated with permanent disability benefits would not be relieved under this policy.

EFFECTIVE DATE:	August 1, 2010
CROSS REFERENCES:	Item C5-34.00, *Duration of Wage-Loss Benefits* (Section 3.6 Subsequent Non-Compensable Incidents), of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 – Housekeeping changes to reflect language updates to Chapter 5, *Wage-Loss Benefits and Return to Work Obligations*, and to update internal cross reference. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION:	This policy applies to all decisions made on or after August 1, 2010.

#115.34 Experience Rating Exclusions for Certain Compensable Consequences

A. At Places of Treatment, Surgery, Board-Related Appointment, and Vocational Rehabilitation

The Board considers places of treatment, surgery, appointment (including pre-arranged appointments at the Board or Workers' Compensation Appeal Tribunal), or Vocational Rehabilitation that a worker attends because of a compensable injury analogous to the worker's place of employment.

A further injury, increased disablement, disease, or death arising at such a location may therefore be compensable, if the Board has determined that the parameters set out in Item C3-22.00 were met. This includes a further injury sustained by a worker stumbling down the stairs at the location in question while en route to the pre-arranged appointment.

The Board includes most costs of the compensable consequences that occur at the place of treatment, surgery, and pre-arranged appointment (including appointments at the Board or Workers' Compensation Appeal Tribunal) when calculating an employer's experience rating.

There are two exceptions. One is for compensable consequences that occur at the location in question, but which are not a direct consequence of the treatment, surgery, or Board-related assessment itself, or actually caused by the condition resulting from the compensable injury. The Board normally excludes the costs of these compensable consequences from the employer's experience rating.

The second exception is for the compensable consequences of Vocational Rehabilitation. With respect to Board-approved Vocational Rehabilitation plans, the Board normally excludes the following costs from the participating employer's experience rating:

- the costs arising from injuries or aggravations that occur during the course of Board-sponsored work assessments described in Item C11-88.10;
- the costs of certain employment injuries and aggravations occurring in the course of training-on-the-job programs described in Item C11-88.40; and
- the costs of an aggravation or new injury to a trainee participating in a Vocational Rehabilitation Formal Training program described in Item C11-88.50.

B. Travel to Places of Treatment, Surgery, Appointment, and Vocational Rehabilitation

As set out in Section A of Item C3-22.10, the Board considers travel to and from places of treatment, surgery, appointment, and Vocational Rehabilitation analogous to the worker's regular commute to and from work. For this reason, further injuries, increased disablement, or death sustained in the course of this travel are not generally compensable and cost allocation is not an issue.

However, the Board may have determined that a further injury, increased disablement, or death sustained in the course of such travel was a compensable consequence of the compensable injury, if the parameters set out in Section B of Item C3-22.10 were met. This includes traveling to pre-arranged appointments at the Board or Workers' Compensation Appeal Tribunal.

So long as the condition resulting from the compensable injury did not actually cause the accepted compensable consequence, the Board normally excludes the costs of the compensable consequences that occur in the course of travel to and from places of treatment, surgery, and pre-arranged appointment (including appointments at the Board or Workers' Compensation Appeal Tribunal) from the employer's experience rating.

C. Excluding the Costs for Further Temporary Disability

In order to exclude the costs of one of the exceptional compensable consequences discussed above from an employer's experience rating, the Board estimates when the worker would have recovered or stabilized from the original compensable injury.

When the Board's estimated date for recovery arrives, the Board excludes the claim costs beyond that date from the employer's experience rating if:

- the worker is still temporarily disabled; and
- there is no clear evidence that the continuing temporary disability is due to the original compensable injury.

D. Excluding the Costs for Further Permanent Disability

The Board may exclude the costs of one of the exceptional compensable consequences discussed above from an employer's experience rating for permanent disability or fatality compensation under policy item #115.31.

EFFECTIVE DATE:	January 1, 2016
AUTHORITY:	Section 247 of the *Act*.
CROSS REFERENCES:	Item C3-22.00, *Compensable Consequences*; Item C3-22.10, *Compensable Consequences – Travel*; Item C11-88.10, *Vocational Rehabilitation – Work Assessments*; Item C11-88.40, *Vocational Rehabilitation – Training-on-the-Job*; Item C11.88.50, *Vocational Rehabilitation – Formal Training*; Policy item #115.30, *Experience Rating Cost Exclusions*; Policy item #115.31, *Injuries or Aggravations Occurring in the Course of Treatment, Surgery, and Board-related Appointment, or Travel Thereto*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. This new policy was approved and brought into effect by BOD Resolution No. 2015/05/27-03.
APPLICATION:	This policy applies to all claims for injuries that occur on or after January 1, 2016.

(10) Ratio of the estimated difference in earnings to the B.C. average wage in the year age 65 was attained, i.e. (9)/(6). _____10) (4 decimals)

(11) Estimated average monthly wage for B.C. in the year of adjustment (see Supplement No. 1). _____11)

(12) Projection of estimated monthly wage-loss in the year age 65 was attained to the date of adjustment, i.e., (10) x (11). _____12)

(13) Total work months disabled due to compensable disability, i.e., 12 months/year x (2). _____13)

(14) Lifetime lost earnings to age 65 expressed in terms of most recent dollars, i.e., (12) x (13). _____14)

(15) Deemed total permanent disability benefit payments to age 65 = deemed current permanent disability benefit (including term pensions expiring at age 65) x (13). _____15)

(16) Net lifetime lost income, i.e., (14) – (15). _____16)

(17) Projected monthly loss of retirement income from reduced savings, i.e., 0.0005 x (16). _____17)

THE FIGURE SHOWN AS ITEM (17) IS TRANSFERRED TO ITEM (d) ON THE CALCULATION SHEET FOR WORKERS 65 AND OVER.

SUPPLEMENT NO. 5

MONTHLY REDUCTION OF POST-RETIREMENT EARNING CAPACITY

(1) Percentage of total disability that would be rated at the date of the adjustment for the worker's permanent disability. %_____1)

(2) Monthly compensation for loss of earning capacity from the disability.
$0.80 for each 1% of total disability, i.e.,
$0.80/per 1% x (1). $_____ 2)

THIS FIGURE SHOWN AS ITEM (2) IS TRANSFERRED TO ITEM (e) ON THE CALCULATION SHEET FOR WORKERS AGED 65 AND OVER.

The cash figure in Item (2) will be adjusted with the Consumer Price Index, the first such adjustment being made on July 1, 1976.

Since June 30, 2002, the percentage change in the Consumer Price Index determined under section 333 of the *Act*, as described in policy item #51.20, is used.

Rates

January 1, 2023	–	$4.19 for each 1%
January 1, 2024	–	$4.32 for each 1%

If required, earlier figures may be obtained by contacting the Board.

APPENDIX 5

MAXIMUM FINES FOR COMMITTING OFFENCES UNDER THE COMPENSATION PROVISIONS OF THE *ACT*

Section 236(1) provides that “A person who commits an offence under a compensation provision for which no other punishment has been provided is liable on conviction to a fine not greater than. . .” the amount set out below.

Date			Amount
January 1, 2023	–	December 31, 2023	$6,358.88
January 1, 2024	–	December 31, 2024	$6,557.34

If required, earlier figures may be obtained by contacting the Board.