

# Practice Directive #C5-1 (INTERIM)

## Duration of Benefits – Retirement Date

### General principles

Section 201 of the *Workers Compensation Act* (the “Act”) sets out the duration for which periodic payment of compensation for temporary or permanent disability may be paid to an injured worker. Unless WorkSafeBC is satisfied the worker would retire at a later date, benefits end at age 65 (for workers under age 63 at time of injury) or two years after the date of injury (for workers age 63 or older at the time of injury).

### Merits and justice

WorkSafeBC must make its decision based on the merits and justice of the case, but in so doing WorkSafeBC must apply policy that is applicable.

In making decisions, WorkSafeBC must take into account all relevant facts and circumstances relating to the case before it, including the worker’s individual circumstances. In doing so, WorkSafeBC must consider the relevant provisions of the *Act* and the relevant policies.

If there are specific directions in the *Act* or policy that are relevant to those facts and circumstances, WorkSafeBC applies them.

Where the *Act* and policy provide for discretion, the officer is also required to exercise that discretion based upon the merits and justice of the case, in accordance with the *Act* and applicable policy.

### Adjudicative guidelines

Section 201 of the *Act* sets out the duration for which temporary or permanent disability benefits may be payable to an injured worker. Even if the worker continues to be temporarily or permanently disabled, the *Act* imposes a limit for how long WorkSafeBC can make disability benefit payments.

The *Act* provides an established (also referred to as “standard”) retirement date: for workers under age 63 on the date of injury, benefits may be paid until the date the worker reaches age 65, and for workers age 63 or older on the date of injury, benefits may be paid until two years after the date of the injury. If WorkSafeBC is satisfied the worker would retire beyond the standard retirement date, benefits may be paid until the date WorkSafeBC determines that the worker would retire.

In other words, the standard retirement date that may apply to the payment of a worker's benefits depends on the worker's age at the time of injury. For workers under age 63 at the time of injury, the standard retirement date is when the worker turns age 65, and for workers age 63 or older at the time of injury, the standard retirement date is two years after the date of injury.

Effective January 1, 2021, for workers under the age of 63 at the date of injury, WorkSafeBC has the discretion to defer the retirement date determination until after the worker has reached age 63, and WorkSafeBC may consider the worker's circumstances at the time of that determination.

## Defining Retirement

Retirement is not defined in the *Act*, however policy provides that 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.<sup>1</sup>

A worker with a consistent, active attachment to employment is not considered to be retired. A worker does not have to be employed on a full time basis in order to be considered working. However, an individual who has substantially withdrawn from the workforce and no longer has a consistent attachment to employment, but picks up work on a sporadic or casual basis, or generates some income from a hobby is considered to be retired.

Consider the example of a worker who previously ran an auto body shop, sold their business and retired. As a hobby, they occasionally purchase lawn mowers, fix and sell them. Although they receive a small amount of payment for their hobby, this individual would still be considered retired.

## When to make the retirement date determination

A retirement date determination is a finding of fact that forms the basis for a decision regarding the conclusion of benefits. When not tied to a decision on the duration of benefits, a retirement age determination has no immediate consequences to a worker and does not need to be made.<sup>2</sup>

After January 1, 2021, a decision on the duration of a worker's benefits, based on the determination of the worker's retirement date, is final and binding on that claim, except if it is reconsidered under section 123 of the *Act*, or changed by a review or appellate body decision. What this means is that WorkSafeBC cannot pay further temporary or permanent disability benefits on that particular claim, once the worker has reached the determined retirement date. The decision on the duration of the worker's benefits on the claim cannot be changed, even if the claim is reopened at a later date.

## Temporary disability benefits

Where a worker is temporarily disabled and is approaching the standard retirement age, WorkSafeBC considers whether the duration of temporary disability benefits may be impacted by their retirement date,

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<sup>1</sup> See *RSCM* policy item #35.30, *Duration of Wage-Loss Benefits for Temporary Partial Disability Compensation*

<sup>2</sup> Refer to Practice Directive #C14-4, *Finding of Fact*, for more information about distinguishing findings of facts from decisions

as determined by WorksafeBC. The officer gathers evidence on when the worker would retire and issues a decision letter, explaining how the retirement date impacts the duration of the worker's temporary benefits. As the investigation process may take some time, and depending on the particular circumstances of the claim, the officer begins inquiries as soon as it becomes apparent that a determination on a worker's retirement date will be required on the claim.

## Permanent disability benefits

Where the worker is entitled to payment of permanent disability benefits, officers will be required to make a decision on the duration of those benefits if the worker's retirement date has not already been determined on the claim.

Policy provides that if the worker is under age 63 on the date of injury, the decision on the duration of permanent disability benefits is generally deferred until after the worker reaches age 63, but before they reach age 65.<sup>3</sup>

## Making the determination before age 63

Policy provides that in some circumstances, the officer may make a decision on the duration of permanent disability benefits before the worker reaches age 63.<sup>4</sup> To determine if the retirement date determination should be made prior to the worker reaching age 63, the officer considers the merits and justice of the case, and ensures that the worker is aware of the implications of making a determination earlier, including the fact that the retirement date determination impacting the duration of benefits and can only be made once on the claim.

The following non-exhaustive list provides examples of circumstances where the officer may decide to make a determination on a worker's retirement date before they reach age 63:

- where WorkSafeBC has concluded that the worker is competitively unemployable, and the circumstances are such that the evidence about when the worker would retire is not likely to be substantially different at a later point in time, or
- the worker has requested that a determination be made earlier, and the circumstances are such that a determination of the worker's retirement date can reasonably be made. For example, if the worker is age 62 at the time they are provided permanent disability benefits and there is persuasive evidence the worker would retire at age 65, then WorkSafeBC may exercise its discretion to make a determination on the worker's retirement date at that time, rather than defer that determination until after the worker reaches age 63.

## Transitional Provision

As set out above, the retirement date determination can only be made once on a claim. However, for claims where the retirement date determination was made prior to January 1, 2021, section 36 of the

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<sup>3</sup> See RSCM Item C6-41.00, *Duration of Permanent Disability Periodic Payments*

<sup>4</sup> See RSCM Item C6-41.00, *Duration of Permanent Disability Periodic Payments*

*Workers Compensation Amendment Act, 2020*, provides WorkSafeBC the discretion to make a new determination on the worker's retirement date, after the worker has reached age 63.<sup>5</sup>

All of the following conditions must be met in order for the transitional provision to apply:

- the worker was under the age of 63 at the time of injury,
- a determination on the worker's retirement date for that claim was made under section 201(1) of the *Act* before January 1, 2021, and
- the worker has not reached the date of retirement as previously determined on that claim.

A WorkSafeBC officer can make a new retirement date determination on a claim where the previous determination was made by a review or appellate body<sup>6</sup>, provided that all the criteria above have been met.

A determination made under this provision results in a new decision on the duration of benefits to be paid, and this new decision can only be made once on a claim. This decision is subject to reconsideration, review and appeal.

## Evidence

For WorkSafeBC to continue to pay benefits beyond the standard retirement date, the evidence must support a finding that the worker would retire past the standard retirement date. WorkSafeBC also considers the evidence to establish the worker's retirement date for the purpose of concluding benefits.

WorkSafeBC may consider the worker's circumstances at the time of the determination. This means WorkSafeBC may consider pre-injury and post-injury evidence to establish the date the worker would retire. Policy item #35.30, *Duration of Wage-Loss Benefits for Temporary Partial Disability Compensation*, and Item C6-41.00, *Duration of Permanent Disability Periodic Payments*, of the *Rehabilitation Services and Claims Manual*, Volume II (the "RSCM") provide examples of the type of evidence that may be considered when determining a worker's retirement date.

Evidence that is relevant and specific to the worker and their employment situation is considered by the officer when determining the worker's retirement date. For example, media stories, general articles and studies about retirement, and data regarding average life expectancy are not relevant to the determination of a worker's retirement date. The worker's particular employment circumstances and personal life situation have to demonstrate that it is as least as likely as not that the worker would retire after the standard retirement date.<sup>7</sup>

The officer considers whether the evidence supports a conclusion the worker would work past the standard retirement date. Motive alone is not sufficient evidence for the exception to the standard retirement date to apply. In other words, exceptions to the standard retirement date are only appropriate where the

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<sup>5</sup> Bill 23, section 36 of the *Workers Compensation Amendment Act, 2020*

<sup>6</sup> Section 36 of the *Workers Compensation Amendment Act, 2020* refers to prior determinations made under the *Workers Compensation Act*, which would include determinations made by review and appellate bodies.

<sup>7</sup> See RSCM policy item #97.00, *Evidence*

evidence establishes that the worker would retire after the standard retirement date, not that the worker could retire after the standard retirement date.

During the administration of a claim, the worker may share information or provide evidence about their retirement plans with the WorkSafeBC officer. This should be documented in the claim file as evidence that may be considered later when a retirement date determination needs to be made. Examples of circumstances where this type of information may be gathered include discussions with the worker about returning to work after their injury, or when a vocational rehabilitation consultant discusses plans for returning to suitable employment with the worker.

In each case, the officer determines the worker's retirement date based on all of the available evidence, including the worker's statement. In making a determination on when the worker would retire, the officer weighs the evidence according to the circumstances of the claim, and explains how the evidence informs their decision on when to conclude benefits.

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### Cross references

RSCM Policy                      *#35.30, Duration of Wage-Loss Benefits for Temporary Partial Disability Compensation*  
  
   *C6-41.00, Duration of Permanent Disability Periodic Payments*

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**History:**                      This Practice Directive replaced Practice Directive #41, dated June 30, 2002 and was effective on October 21, 2002. It was amended on May 14, 2003. Significant amendments were made to this Practice Directive in May 2012 to provide additional guidance, particularly with respect to the general adjudicative principle, the established retirement age of 65, and the investigation process and evidence to consider in deciding on a worker's retirement age. Sections D, E & F were also added in June 2012. On April 4, 2013, minor clarifications were made to Section B to clearly differentiate the role of the Case Manager and the Disability Awards department in retirement age decision-making. In January 2015 the policy definition of "retirement" was added. On February 28, 2020, this Practice Directive was amended to align with policy changes that came into effect on February 1, 2020. The policy amendments provide guidance on legal issues of standard of proof, evidence and causation. This Practice Directive was amended to reflect changes made to the *Workers Compensation Act* made effective on April 6, 2020 as part of a standard statute revision process. On July 1, 2020, an interim update was made to clarify that a decision to terminate benefits under section 201(1) of the *Act* is final and binding on that claim. This means that WorkSafeBC cannot pay further temporary or permanent disability benefits on that particular claim, once the worker has reached the previously decided age of retirement, even if the claim is reopened at a later date. See Section E. On January 1, 2021, this Practice Directive was amended in response to amendments made to section 201 of the *Act* made effective January 1, 2021 (*Workers Compensation Amendment Act, 2020* ("Bill 23")).

**Application:** This item is intended to provide guidance on the authority to determine the duration of the payment of temporary or permanent disability benefits. It applies to decisions made on or after January 1, 2021.