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**Adjusting Benefits Due to Post-accident, Non-work-related
Change in Circumstances**

Policy

If a worker's loss of earnings (LOE) is not solely the result of the work-related injury/disease, benefits may be adjusted to reflect the degree of work-related impairment.

Purpose

The purpose of this policy is to outline when and how ~~the circumstances under which~~ benefits are adjusted due to ~~a~~ post-accident, non-work-related changes in circumstances.

Guidelines

Post-accident, non-work-related change in circumstances

A worker's status may change in ways that may not be related to the work-related injury/disease. A post-accident, non-work-related change in circumstance may affect whether a worker's loss of earnings results solely from the work-related injury/disease.

Examples of post-accident, non-work-related change in circumstances may include, but are not limited to:

- injuries sustained as a result of a non-work-related accident
- deterioration of a pre-existing condition
- permanent relocation for reasons unrelated to the work-related injury
- physical conditions (e.g., pregnancy, cardiac [event](#), hernia)
- an urgent family matter requiring the worker to leave the province/country for an extended period of time, or
- incarceration.

Material change in circumstances

Any post-accident, non-work-related change in circumstance that prevents a worker from being available for health care [or return-to-work \(RTW\) activities, including being available, work reintegration \(WR\) or that affects a worker's availability](#) for suitable work, e.g., ~~re-employment obligation breach~~, is considered a material change and must be reported, see 22-01-02, Material Change in Circumstances - Workers.

Temporary impact

In cases where a worker is temporarily unable to participate in health care or ~~WR~~[RTW](#) activities for a brief period of time (e.g., up to 4 weeks while undergoing minor surgery for a non-work-related condition, severe flu/illness, jury duty, etc.), full benefits should be maintained.

Full benefits

For the purpose of this policy, full benefits mean:

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- 85% of the worker's net average earnings before the injury for post-1998 accidents
- 90% of the worker's net average earnings before the injury for pre-1998 accidents, or
- 75% of the worker's gross earnings before the injury for pre-1985 accidents.

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Treatment with no return to work

Non-work-related change in circumstance preventing treatment for the work-related injury/disease

If the non-work-related, post-accident change in circumstance is preventing a worker from undergoing treatment for the work-related injury/disease, benefits may be reduced or suspended until the worker is available for treatment of the work-related injury/disease.

Worker's inability to work due to the work-related injury/disease

If the nature or seriousness of the work-related injury/disease completely prevents a worker from returning to any type of work, and the worker suffers a post-accident, non-work-related change in circumstance, and the post-accident change is not affecting or impeding the treatment of the work-related injury/disease, it has no bearing on the level of benefits payable to the worker. Full benefits should be maintained.

Worker's inability to work due to the work-related injury/disease and non-work-related change in circumstance

Where the worker is temporarily totally disabled/fully impaired because of **both** the work-related injury/disease and the non-work-related change in circumstance, the ~~decision-maker~~ [WSIB](#) pays full benefits until the level of the work-related impairment is clinically determined. At that time, ongoing benefits are paid commensurate with the degree of remaining work-related impairment. If the work-related impairment is clinically determined to be partial, but the worker is still not able to work, then a suitable occupation (SO) would be identified and LOE benefits paid based on the earnings of the SO.

No work-related impairment

LOE benefits are only paid while there is a work-related impairment. If at any point the clinical evidence shows that the sole cause of the worker's loss of earnings is the post-accident, non-work-related change in circumstance, and no work-related permanent impairment exists, benefits cease.

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Change in Circumstances****Return to work with the injury employer****No suitable work available**

If an ongoing work-related impairment exists and the injury employer has no suitable and available work that is consistent with the worker's functional abilities for the work-related injury/disease and pre-existing condition(s)/pre-accident disability(ies), full benefits are payable and the claim may be referred for a [work transition \(WT\)-RTW](#) assessment and/or plan [\(with training\)](#). See [19-03-03, Determining Suitable Occupation](#) [19-02-10, RTW Assessments and Plans](#) for more information.

Suitable work available at a wage loss

If an ongoing work-related impairment exists that prevents a worker from returning to pre-injury employment, but the worker is either unable or unavailable, due to a post-accident, non-work-related change in circumstance, to accept an offer of suitable work at a wage loss, a partial benefit is payable.

**Example #1 - unable to participate in [WRRTW activities](#) with the injury employer
(due to a non-work-related physical condition)**

Sandra sustained a work-related low back injury in September 2006. She notifies ~~her decision maker~~ [the WSIB](#) in December 2006 that she is pregnant, and that her doctor advised her to avoid treatment and investigations for her lower back.

Her employer is able to offer Sandra a job that is suitable for her low back injury but, according to the medical reports, the job is not suitable because Sandra is experiencing complications with her pregnancy. The job pays less than Sandra's pre-accident earnings.

Even though Sandra is not able to work at all, her benefits are reduced to reflect the difference between her pre-accident earnings and what she could be earning from the employer's job offer.

The [WSIB decision maker](#) monitors Sandra's medical progress to find out when she is fit to continue [WRRTW](#) activities, or when she fully recovers from her work-related injury.

The [WSIB decision maker](#) adjusts Sandra's benefits when she is ready to continue [WRRTW](#) activities, sometime after the delivery of ~~her~~ [the](#) child; or if she fully recovers from her work-related impairment/disability.

**Example #2 - unable to participate in [WRRTW activities](#) with the injury employer
(due to relocation for reasons unrelated to the work-related injury)**

Sam sustained a right shoulder injury in February 2010. He was unable to return to his pre-injury job due to clinical restrictions related to the right shoulder injury. In April

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2010, Sam notifies [the WSIB](#) ~~his decision-maker~~ that he ~~has~~ decided to move to the Maritimes in order to be closer to his family. At the same time, it was confirmed that Sam's injury employer is able to provide him with a SO. The SO pays less than Sam's pre-accident earnings. Even though Sam is not available to accept the SO due to his decision to relocate, because the SO pays less than the pre-injury job, Sam's benefits are reduced to reflect the difference between his pre-injury earnings and what he could be earning in the SO.

The [WSIB decision-maker](#) reviews and monitors Sam's case to find out when he will fully recover from his work-related injury at which time benefits cease. (At this point, further payments can be made based on an estimate of the period benefits would likely be payable.)

If it is established that a permanent impairment is evident and Sam is unable to return to his pre-injury employment, the WSIB may use the relevant information in the claim file to conduct a [WTRTW](#) assessment in order to identify a SO. LOE benefits would then be recalculated using the wage associated with the SO that was identified for Sam. Because Sam was injured while working in Toronto, the wages associated with the SO would reflect wage information for the Greater Toronto Area, not those associated with Sam's new place of residence.

If Sam's unavailability prevents the WSIB from conducting a [WTRTW](#) assessment in order to identify a SO, benefits would be discontinued.

NOTE

The LOE benefit compensates workers for ~~his or her~~ [their](#) loss of earnings due to the work-related injury. The LOE benefit should not be increased if reduced earnings are related to the economic conditions of the worker's new region.

Example #3 - unable to participate in [WRRTW activities](#) with the injury employer due to deterioration of pre-existing condition

Joan sustained a fractured right wrist in December 2009 that required surgery in February 2010. Joan has a pre-existing left hip condition that the employer has been accommodating for many years. Joan is unable to return to her pre-injury job and her employer is unable to provide a SO to accommodate her permanent right wrist restrictions. After discussions with both Joan and her employer, the case manager was able to identify a SO with the injury employer. However, the identified SO pays less than the pre-injury job and requires ~~ds~~ some reskilling.

One month after starting a ~~three~~ [\[CFI\]](#)-month [WTRTW](#) plan [\(with training\)](#), Joan notifies ~~her decision-maker~~ [the WSIB](#) that she is scheduled to undergo elective left hip

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replacement due to pre-existing osteoarthritis and that she would be unable to participate in the ~~WTRTW~~ plan for approximately three months.

On the date Joan is no longer able to participate in the ~~WTRTW~~ plan, her benefits are adjusted based on the difference between the pre-injury earnings and the wages associated with the alternate job.

A few months after Joan's surgery, it ~~was~~ is confirmed that the original SO is no longer suitable due to additional restrictions related to the pre-existing left hip condition. Because Joan is a valued, long-term employee, the employer ~~agrees~~ ed to offer her another accommodated job. While the accommodated job would fully restore the pre-injury earnings, it would require some basic skills training. The ~~decision-maker~~ WSIB establishes a second (revised) SO taking into consideration the functional abilities for the right wrist and the post-accident, permanent worsening of the non-work-related left hip condition.

Shortly afterwards, Joan notifies ~~the WSIB~~ her decision-maker ~~to state~~ that she is no longer interested in any further ~~WTRTW~~ services because she has decided to take early retirement. As the earnings associated with the revised (second) SO would fully restore Joan's pre-injury earnings, LOE benefits are discontinued.

Suitable work available at no loss of earnings

If an ongoing work-related impairment exists that prevents a worker from returning to pre-injury employment but the worker is either unable or unavailable to accept an offer of suitable and available employment at no loss of earnings due to a post-accident, non-work-related change in circumstance, no benefits are payable.

Short-term interruption in ~~Work reintegration~~ RTW activities**Short-term temporary interruption**

In cases where a worker is temporarily unable to participate in ~~WRRTW~~ activities for a somewhat longer period of time (e.g., up to 12 weeks), but it is evident that the worker can resume and complete ~~WRRTW~~ activities at a later date, benefits are paid based on a SO that the worker can perform *without training*.

SO without training

A SO without training is a SO based on the worker's current skills and abilities ~~without a WT plan~~. This SO would only consider the worker's work-related restrictions and any pre-existing, non-work-related disability/impairment or conditions (e.g., including non-physical disabilities such as a learning disability). Once the worker is again able to participate in ~~WRRTW~~ activities, full benefits should be restored.

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This reflects that the work-related injury/disease continues to affect the worker's loss of earnings, but the inability to participate in [WRRTW activities](#) is not work-related.

If it becomes evident that the worker will be permanently unable to resume [WRRTW activities](#), then the benefit is adjusted further to the *original* SO earnings.

Original SO and earnings

The original SO is ~~the SO~~ determined at the time of the initial [WTRTW](#) assessment. The original SO earnings are the post-injury earnings determined for that SO, see ~~19-03-03, Determining Suitable Occupation~~ [19-02-10, RTW Assessments and Plans](#).

In cases where a post-accident non-work-related change in circumstance occurs before the [WTRTW](#) assessment is conducted, the WSIB uses the relevant information on file to identify a SO.

Example - unable to continue participating in [WTRTW activities](#)

While at home, Robert suffers a heart attack and must take 8 weeks off for rest and treatment before continuing his [WTRTW](#) plan ([with training](#)). Robert's [WT](#) plan is designed to improve his transferable skills.

[The WSIB adjusts](#) Robert's ~~decision-maker adjusts~~ benefits as of the date that he is unable to participate in the [WT](#) plan. Partial benefits are based on the difference between Robert's pre-injury earnings and the earnings associated with the identified SO without training.

The [WSIB](#)~~decision-maker~~ monitors Robert's medical progress to find out when he is fit to return to his [WT](#) plan. Robert will receive full benefits as of the date he resumes the plan.

When the [WT](#) plan is completed, LOE benefits will be recalculated based on the original SO earnings.

NOTE

In cases where a post-accident non-work-related change in circumstance occurs before the [WT](#) assessment is conducted, the WSIB uses the relevant information on file to identify a SO.

Permanent interruption in [WRRTW activities](#)

Where a worker is permanently unable to return to the original SO (e.g., [a](#) non-work-related accident results in permanent inability to work), and the worker is unable to participate in

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any further [WRRTW activities](#), the benefit should be adjusted to the original SO earnings. See original SO earnings above.

Revised SO and [WRRTW plan \(with training\)](#)

In cases where the original SO is no longer achievable due to a post-accident, non-work-related change in circumstances, but the worker is able to participate in further [WRRTW activities](#), the WSIB may revise the original SO and [WRRTW plan \(with training\)](#) to identify a second (revised) SO. The second SO would take into consideration the functional abilities for the work-related impairment and the post-accident, non-work-related conditions (e.g., including non-physical disabilities such as a learning disability). However, after the [WT-plan](#) is completed, LOE benefits will be recalculated based on the original SO earnings.

Example

John sustains a work-related neck injury in June 2006 that requires surgery in November 2006. John has a non-work-related, pre-existing right knee condition that his employer is accommodating with a sit-stand stool. The employer learns that John has a permanent neck impairment. At about the same time, the employer tells John that he can no longer provide John with a SO as his business is closing.

The ~~decision-maker~~[WSIB](#) uses the information gathered during the [WRRTW](#) assessment (e.g., functional abilities for the pre-existing right knee and work-related neck impairment) and determines that John needs a [WRRTW plan \(with training\)](#) to re-enter the labour market. A [WT-plan](#) is prepared that provides John with new skills.

Two months after starting the [WT-plan](#), John contacts the ~~decision-maker~~[WSIB](#) to ~~tell him~~[advise](#) that he was in a motor vehicle accident (MVA), and sustained a rotator cuff tear to his left shoulder. On the date John is no longer able to participate in the [WT-plan](#) because of the injuries sustained in the MVA, his benefits are adjusted and based on the difference between his pre-injury earnings and earnings associated with the identified SO without training.

A few months after the MVA, it is determined that, based on John's medical reports, he will be able to continue the [WT-plan](#), although he now has a permanent left shoulder impairment. The ~~decision-maker~~[WSIB](#) reviews the file and determines that the original SO is no longer within John's functional abilities due to the non-work-related left shoulder injury.

The ~~decision-maker~~[WSIB](#) establishes a second (revised) SO taking into consideration the functional abilities for the work-related neck, pre-existing right knee, and non-work related, post-accident left shoulder injury. [WRRTW](#) services are extended to include the work-related neck, right knee, and non-work-related left shoulder conditions. However,

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after the ~~WT~~ plan is completed LOE benefits will be recalculated based on the original SO earnings.

Permanent relocation

Unable to continue participation in ~~RTW plan~~ ~~WT~~ in Ontario

If a worker, while participating in a ~~WT~~ ~~RTW~~ plan (with training) in Ontario permanently relocates to another Canadian province or territory or outside the country before the ~~WT~~ plan is completed, the ~~WT~~ plan is closed. The worker's LOE benefit is adjusted based on the identified SO and the wages of an experienced worker based on Ontario wage information.

Example

At the time of the accident and when the ~~WT~~ plan was being developed, Roy was residing in Hamilton. Halfway through the plan, Roy notifies ~~his decision maker~~ the WSIB that he is moving to northern Saskatchewan where his spouse has accepted a teaching job. Roy's ~~WT~~ plan was designed to fully restore his pre-injury earnings.

The ~~WSIB decision maker~~ closes LOE benefits on the date Roy is no longer available to participate in the ~~WT~~ plan for reasons unrelated to his work-related injury.

Had the ~~WT~~ plan not been designed to fully restore Roy's pre-injury earnings, the LOE benefit would be adjusted and partial benefits would be paid based on the difference between Roy's pre-injury earnings and the wages associated with the SO based on updated wage information for the Hamilton region.

Prior to ~~WR~~ ~~RTW~~ activities

If a worker permanently relocates to another Canadian province or territory or outside the country before ~~WR~~ ~~RTW~~ activities begins, and it is identified that the injury employer would have been unable to provide suitable work even if the worker had not relocated, where it is possible and practical, the worker may be provided with ~~WR~~ ~~RTW~~ services in the province of residence.

For the purpose of determining LOE benefit entitlement, post ~~WT~~ ~~RTW~~ assessment and/or ~~WT~~ ~~RTW~~ plan (with training), the identified SO is based on availability in Ontario's labour market and earnings based on Ontario wage information.

Post-accident change occurs just prior to the final review

In cases where the post-accident, non-work-related change in circumstance occurs just prior to the final review, the WSIB will ensure that every reasonable effort is made to revise the

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~~W~~FRTW plan (with training) in order that the final review can be deferred and the worker can continue in the plan.

When this is not possible, the final benefit is calculated based on the amount an experienced worker would be able to earn in the original SO. See 18-03-06, Final LOE Benefit Review or 18-04-20, Final FEL Benefit Review, for a definition of “experienced worker earnings”.

Post-accident change occurs after deferral of the final review but prior to completion of WRRTW activities

In cases where a post-accident, non-work related change in circumstances occurs after a deferral of the final review but prior to completion of WRRTW activities, the ~~decision-maker~~WSIB will determine when the worker will resume those activities.

In cases where a worker is only temporarily unable to participate in WRRTW activities (e.g., up to 4 weeks, please refer to “Temporary Impact” section earlier in the policy), full benefits should be maintained. The final review will be conducted after ~~W~~RRTW activities are completed.

If the worker’s ability to resume participation in WRRTW activities is not known, or is likely to be permanent, the ~~decision-maker~~WSIB will conduct the final review. The final benefit is calculated based on either:

- the earnings of the SO offered to the worker, or
- what the worker would be able to earn in the original SO.

However, when it is reasonable to do so, WRRTW services may be revised to enable the worker to complete those activities ~~once he/she is~~when able to do so. Should this occur, benefits cannot be adjusted to full benefits.

After the final review is completed, benefits cannot be reviewed or adjusted unless a significant deterioration in the work-related impairment occurs. See 18-03-06, Final LOE Benefit Review or 18-04-20, Final FEL Benefit Review for details.

Application date

This policy applies to all decisions made on or after ~~December 1, 2012~~March 1, 2021.

Policy review schedule

This policy will be reviewed in 2023~~within five years of the application date~~.

Document history

This document replaces 15-06-08 dated ~~July 15, 2011~~December 3, 2012.

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[15-06-08 dated July 15, 2011](#)

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References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended

Sections 23, 34, 40, 42, 43, 44, 102

Workers' Compensation Act, R.S.O. 1990, as amended

Section 22.1, 37(2)(b), 43

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~~#1, October 23, 2012, Page 495~~