

Policy

The WSIB generally maintains the loss of earnings (LOE) benefits the worker was receiving at the start of a temporary work disruption.

Workers are entitled to additional LOE benefits when evidence indicates

- the worker would seek new employment in the general labour market to attempt to restore his/her loss of earnings during the temporary work disruption (i.e., if he/she was not injured), and
- the work-related injury/disease impacts the worker's ability to earn income through new employment.

NOTE

Reference to LOE benefits should be read to include wage loss benefits for accidents prior to 1998, including temporary total disability benefits, future economic loss (FEL) supplements, and 147(2) permanent disability supplements.

Principles

The WSIB may provide additional LOE benefits during a temporary work disruption if the worker experiences an additional loss of earnings during this period due to his/her work-related injury/disease.

Purpose

The purpose of this policy is to outline the circumstances under which the WSIB may provide additional LOE benefits to a worker during a temporary work disruption.

Guidelines

Scope

This policy applies to workers who are partially impaired and fit for suitable and available work at, or subsequent to the start of a temporary work disruption. To determine what constitutes "suitable work" see 19-02-01, Work Reintegration Principles, Concepts and Definitions.

Definitions

Temporary work disruptions are generally expected to last less than 3 months and include

- layoffs resulting from temporary changes in the availability of work due to economic factors (e.g., plant retooling, holiday shutdown)
- partial reduction in hours or wages due to business circumstances that affects all employees in company, plant, department, or shift (i.e., all employees continue to work)
- strikes or lockouts, and
- seasonal layoffs (regardless of the length of the off-season).

Layoffs with specific or expected recall dates beyond three months continue to be treated as temporary work disruptions if there is a strong degree of certainty that the recall will occur (e.g., written notice of recall date, employer's past practices, relationship between employer and employees, unique circumstances).

For more information about work disruptions that go beyond three months, see 15-06-03, Entitlement Following Permanent Work Disruptions.

Re-employment and co-operation obligations

Re-employment and co-operation obligations are generally not an issue when the work disruption involves an entire company.

When the work disruption affects only part of the company, the decision-maker considers whether the employer has met its re-employment and co-operation obligations under 19-02-02, Responsibilities of the Workplace Parties in Work Reintegration. If there is no evidence of an employer breach and the worker has met his/her co-operation obligations, the decision-maker must then determine if the worker's loss of earnings during the work disruption is due to the work-related impairment.

Maintain current level of LOE benefits

The WSIB generally maintains the LOE benefits the worker was receiving at the start of a temporary work disruption. LOE benefits may be adjusted if the worker's level of impairment significantly improves or deteriorates during the work disruption.

Pay additional LOE benefits

The WSIB may pay additional LOE benefits when **both** of the following criteria are met.

- 1. There is evidence indicating the worker would seek new employment in the general labour market to attempt to restore his/her loss of earnings during a temporary work disruption. (i.e., if he/she was not injured). To make this determination, the decision-maker may consider factors such as the following**
 - Does the worker have a job offer?
 - Has the worker obtained alternate employment in past work disruptions?
 - What is the expected employment pattern among other workers of the company affected by the work disruption?
 - If no prior layoffs, what is the expected or standard pattern of work within the broader industry/business during work disruptions? (i.e., employees generally don't seek new employment during short holiday shutdowns).

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2. **The work-related injury/disease impacts the worker's ability to earn income through new employment. To make this determination, the decision-maker may consider factors such as the following**
- Is the worker involved in WSIB approved active health care, which requires frequent absences for treatment of the work-related injury/disease?
 - Was the worker on a graduated return to work plan?
 - Was the worker performing suitable work that does not exist in the general labour market (i.e., similar work not performed at other companies)?

Tasks	Were tasks and work processes specifically accommodated for the worker's impairment to the extent they are not likely to exist with or be provided by another employer?
Equipment	Has significant expense and/or effort gone into modifying the work or workplace for the worker?
Productivity	Was the worker performing tasks at lower productivity rate than non-injured workers?
Work schedule	Had the worker returned to work at reduced hours or on a modified shift schedule?
Rate of pay	Was the employer paying a wage for the suitable work that is not representative of actual earning capacity (e.g. full time wages for less than full time or full productivity work)?

Exceptions

Additional LOE benefits may be paid if the worker was performing temporary suitable work at the time of the work disruption and would not have been laid off if he/she had been fit for the essential duties of the pre-injury job (e.g., worker is laid off while employees performing the worker's pre-injury job continue to work during a plant re-tooling).

Final benefit review

Even if the conditions set out in this policy are met, the WSIB generally cannot provide additional benefits during a work disruption that starts after the final LOE or FEL benefit review, see 18-03-06, Final LOE Benefit Review, and 18-04-20, Final FEL Benefit Review.

Application date

This policy applies to all decisions made on or after November 1, 2014, for all accidents.

Policy review schedule

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

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Document history

This document replaces 15-06-01 dated August 1, 2007, 15-06-02 dated August 1, 2007, 15-06-04 dated August 1, 2007, and 15-06-05 dated August 1, 2007.

This document was previously published as:

15-06-02 dated October 12, 2004

18-01-08 dated April 11, 2003.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 40, 41, 42, 43, 107, 108, 110

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 37, 43, 54, 147(2)

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