

**Operational
Policy**

Section
Special Circumstances

Subject
Incarcerated Workers

Policy

Injured workers who are incarcerated or otherwise sentenced for offences retain their rights to benefits under the *Workplace Safety and Insurance Act, 1997* (WSIA). The terms of their sentences, however, may affect the amount of some compensation benefits to the extent that the terms of sentences affect workers' earning abilities. Sentences for an offence may also affect entitlement to those benefits/services that hinge upon workers' participation in work reintegration (WR) activities.

Purpose

The purpose of this policy is to outline the effect a prison sentence has on a worker's entitlement to benefits and services.

Guidelines

No effect

The entitlement requirements of the WSIA listed below are such that incarceration or sentences for an offence do not affect injured workers' entitlement

- temporary total disability/full loss of earning*
- non-economic loss
- health care
- obligation to re-employ** , and
- loss of retirement income.

* Nature or seriousness of the work injury prevents a return to any type of work.

** An injured worker's sentence for an offence does not remove the employer's obligation to offer to re-employ the worker if the worker otherwise qualifies for re-instatement. The terms of the sentence, however, may prevent the worker from accepting an offer of re-employment.

Affects amount of benefits

The benefit types noted below compensate injured workers for wage loss that results from work-related injuries/diseases alone. Therefore, incarceration or a sentence for an offence may affect the amount of benefits to which workers are entitled. Incarceration or a sentence for an offence affects the amount of benefits to the degree that it affects a worker's ability to earn. For information about incarceration and a worker's obligation to report a material change in circumstances, see 22-01-02, Material Change in Circumstances - Worker.

Temporary partial disability/partial loss of earnings benefits

A worker who works while incarcerated full-time, e.g., in the prison workshop, is not considered to have returned to employment under the WSIA. A worker who is incarcerated part-time, e.g., evenings and weekends, but who works while not imprisoned, may be considered to have returned to employment under the WSIA if the reduced earnings result

from the work-related injury/disease rather than from the conditions of release or other reasons.

Future economic loss benefits (accidents 1990-1997)

A sentence for an offence does not affect a worker's right to future economic loss (FEL) benefits, but the WSIA compensates only for future loss of earnings arising from the work-related injury/disease. Therefore, the WSIB must factor out any effect a worker's sentence may have on the worker's earning capacity.

If the worker is incarcerated and, therefore, is not working, FEL benefits will be calculated using the wages associated with the suitable occupation (SO) that has been identified for the worker in the work transition (WT) assessment, see 19-02-01, Work Reintegration Principles, Concepts, and Definitions.

The identification of a SO in the WT assessment does not necessarily mean, however, that the WSIB will offer a WT plan to the incarcerated worker. If the terms of the sentence prevent the worker from effectively participating in the WT plan or from returning to work immediately upon completion of the program, the WSIB will not offer the program.

If the worker is sentenced for an offence but is still working, FEL benefits are calculated in the usual manner using the worker's actual wages.

Affects WR activities (all accidents)

The terms of a worker's sentence for an offence may affect the ability of the worker to benefit from or to participate in WR activities. This can have an effect on the following benefits/services:

WT services

The WSIA requires the WSIB to consider the provision of WT services to all qualified workers. In other words, a determination must be made whether the worker can benefit from WT and, if so, a program is developed in accordance with 19-03-05, Work Transition Plans.

Temporary partial disability/FEL supplements/partial loss of earnings

Incarceration or a sentence for an offence does not usually affect a worker's ability to participate in health care treatment but it may affect the worker's ability to participate in WR activities.

If the terms of the sentence are not expected to interfere with the worker's participation in WR activities or the worker's immediate return to work upon program completion, the WSIB may pay benefits under the WSIA.

On the other hand, if the terms of the sentence prevent the worker from participating in WR activities or from returning to work immediately thereafter, the worker does not qualify for benefits under the WSIA for the duration of the sentence.

For workers who are involved in WR activities up to the final review and post-final review, see 18-03-02, Payment and Reviewing LOE Benefits (Prior to Final Review), 18-03-06, Final LOE Benefit Review, 18-04-14 Reviewing FEL Benefits (Prior to Final Review), 18-04-20 Final FEL Benefit Review.

Older workers supplements (accidents 1990-1997)

Workers who are 55 years old when the WSIB determines or reviews their FEL benefits, have not returned to work, and are unlikely to benefit from WT plans that could help them return to work, may choose to receive either a FEL benefit or an amount equal to the full monthly old age security pension.

Incarceration or sentence for an offence can affect the determination of whether workers are likely to benefit from WR activities that can help them return to work. As a result, it is a factor in whether the worker will have this option or not.

Partial disability supplements (accidents before 1990)

Some workers may receive a permanent disability benefit and a supplement. The duration of entitlement to a partial disability (s. 147(2)) supplement, for instance, is governed by the worker's ability to benefit from a WT plan in the manner prescribed by the WSIA. If the terms of the sentence do not prevent the worker from benefiting from and participating in a WT plan, the worker may qualify for a supplement under the WSIA, see 18-07-10, Sections 147(2) and 147(4) Supplements (Permanent Disability).

If the terms of the sentence prevent the worker from benefiting from WR and from participating in the WT plan, the worker generally will not be entitled to a supplement. However, if the worker was receiving a s. 147(4) supplement prior to being sentenced for an offence, the worker will continue to be entitled to a s. 147(4) supplement.

Non-economic loss benefits

Workers who have a work-related permanent impairment are eligible for non-economic loss (NEL) benefits.

In cases where a worker is incarcerated before reaching maximum medical recovery (MMR), the WSIB monitors the worker's recovery. When the worker reaches MMR, the WSIB attempts to use the relevant health care information in the claim file to determine the degree of the worker's permanent impairment.

If the health care information in the claim file is not sufficient to determine the degree of the worker's permanent impairment, the WSIB requests additional health care information from

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the worker or the worker's physician. If the information is not adequate, the WSIB may require the worker to attend a NEL medical assessment by a roster physician, see 18-05-03, Determining the Degree of Permanent Impairment.

Payment of benefits (all accidents)

Compensation benefits to which an injured worker is entitled must not be withheld. Depending upon the terms of the sentence, benefits may be paid

- directly to the worker at the penal institution
- directly to the worker at the worker's mailing address, or
- to a person of the worker's choice once the worker has provided written authorization, see 18-01-06, Redirected Benefit Payments.

Application date

This policy applies to all decisions made on or after January 1, 2018, for all accidents.

Document history

This document replaces 15-06-06 dated February 15, 2013.

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15-06-06 dated July 18, 2008
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15-06-06 dated February 20, 2006
15-06-06 dated October 12, 2004
05-04-02 dated July 23, 1992.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 13(1), 32, 33, 40, 41, 42, 43, 44, 45, 46, 102, 107, 108, 110

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 4(1), 37, 42, 43, 44, 50, 53, 54, 144, 147

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