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Policy**

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Section  
Average Earnings

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Subject  
**Determining Long-term Average Earnings: Workers in Non-permanent Employment**

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## Policy

Earnings for a worker in non-permanent employment typically fluctuate as the worker moves from job to job, has periods of unemployment, or experiences periods of higher or lower earnings. Therefore, it is likely that a worker's long-term average earnings will be different than the short-term average earnings. Since it would be unfair to continue paying a worker's loss of earnings (LOE) benefits based on the short-term average earnings, the decision-maker automatically recalculates the average earnings to long-term average earnings.

LOE benefits are paid based on the worker's long-term average earnings from the beginning of the 13th week of LOE benefits.

## Purpose

The purpose of this policy is to outline when and how a recalculation to long-term average earnings is conducted for worker's in non-permanent employment.

## Guidelines

### Definitions

**Non-permanent employment** is employment where a worker is hired

- for a specific period of time, or
- for a temporary period through a union hall.

Workers in non-permanent employment include

- contract workers
- seasonal or cyclical workers, or
- temporary agency workers.

### NOTE

In some industries, such as construction, employers may hire workers for either permanent or non-permanent employment. (For a definition of permanent employment, see 18-02-03, Determining Long-term Average Earnings: Workers in Permanent Employment.) Therefore, the type of industry may not always be indicative of the employment relationship.

The decision-maker's determination to consider a worker to be in permanent or non-permanent employment is generally based on the earnings information provided by the employer, see 15-01-02, Employers' Initial Accident-Reporting Obligations.

A **recalculation** involves redetermining a worker's average earnings to take into account the worker's long-term employment pattern. The recalculated long-term average earnings become effective from the beginning of the 13th week of LOE benefits.

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A **break in the employment** pattern is a change in the worker's employment significant enough to make the period before the break irrelevant to the determination of the worker's long-term earnings. This may include a change

- from permanent employment to non-permanent employment, or vice-versa
- in status from dependent contractor to worker in non-permanent employment, see 18-02-08, Determining Average Earnings: Exceptional Cases, or
- in status from worker with optional insurance to worker in non-permanent employment.

A break in the employment pattern shortens the recalculation period for long-term average earnings.

A **non-earning period** is a period during which the worker was not earning due to reasons such as, layoff, contract termination, illness, or leave of absence.

Non-earning periods that **are** part of the employment pattern (e.g., layoffs, contract terminations) are factored into the recalculation (see "Non-earning periods included in recalculation" in this document). Non-earning periods that **are not** part of the employment pattern (e.g., maternity/parental leave) are factored out (see "Non-earning periods excluded from recalculation" in this document).

### When to conduct a recalculation

The decision-maker conducts the recalculation of the worker's average earnings after the worker has received 12 weeks of LOE benefits.

### Recalculation method

To determine a worker's long-term average earnings, the decision-maker

- establishes the recalculation period
- adds up the total earnings from all employment during the recalculation period (including Employment Insurance (EI) benefits)
- subtracts non-earning periods which should be excluded from the recalculation period
- divides the earnings by the resulting weeks (or days) in the recalculation period to produce a weekly long-term average earnings amount.

**Periods of non-covered self-employment** are considered part of the worker's employment pattern and do not shorten the recalculation period. As a result, neither the earnings from the non-covered self-employment nor the time worked in the non-covered self-employment may be included in the recalculation.

### Recalculation period

Long-term average earnings for these workers are generally based on employment in the 24 months before the injury.

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To simplify the process of gathering the worker's past earnings information, the 24-month period may be either

- extended to include the two full calendar years before the injury, plus the current year up to the date of injury, or
- shortened to the full calendar year before the injury, plus the current year up to the date of injury, provided that the worker's employment pattern is accurately reflected.

If the decision-maker extends/shortens the recalculation period, the decision-maker may have regard to the worker's seasonal or cyclical work pattern.

**Example**

Dave works as a seasonal worker for the same employer each year from April 1st to October 31st. On May 15, 2002, Dave suffers a work-related injury. In this case, the decision-maker first attempts to gather earnings information for the 24-month period before the injury (i.e., May 15, 2000 to May 14, 2002).

Dave cannot easily provide this information. As a result, Dave submits T4 slips for the 2000 and 2001 taxation years, as well as EI documentation and earnings information from the employer for the period of January 1, 2002 to May 14, 2002. Because the period of January 1st to March 31st represents a non-earning period each year for Dave, the decision-maker uses the period of April 1, 2000 to May 14, 2002 (25.5 months) as the recalculation period.

**Break in the employment pattern**

In all cases, the recalculation period is shortened by a break in the employment pattern. If a shorter recalculation period is to be used, the start of the period is the date when the actual change occurred (i.e., the movement from one pattern of employment to another).

**Example - Break in the employment pattern**

Patti was a permanent employee with ABC Ltd. from January 12, 1998 until September 15, 1998 when she was laid-off because of a work shortage. Patti received EI benefits until April 1, 1999 when she found a permanent job with XYZ Inc. Due to a lay-off on April 20, 2000, Patti again received EI benefits until May 10, 2000. Patti joined the roster of JKL Temporary Services on May 25, 2000 and was referred on assignment with RS Employer on June 5, 2000. Patti suffered a work-related injury on August 30, 2000.

In this case, Patti is considered a worker in non-permanent employment at the time of injury. She is subject to an automatic recalculation based on her earnings from the 24 months before the injury (i.e. August 30, 1998 to August 29, 2000). In determining the recalculation period, however, the decision-maker notes that Patti's prior employment is considered "permanent". Therefore, the earnings prior to the start of Patti's employment with RS Employer are not considered in determining her long-term average earnings. The date on which Patti started work with RS Employer represents the "break in the employment pattern" and would be the date from which the recalculation for the long-term average earnings starts. Therefore, the recalculation period is from June 5, 2000 until August 29, 2000.

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**Non-earning periods included in recalculation**

The decision-maker considers periods of unemployment to be part of the employment pattern for workers in non-permanent employment. The decision-maker, therefore, does not factor out periods of unemployment due to lay-offs, terminations, seasonal employment, or unavailability of work. However, because these periods are included, gross EI benefits received for these periods are included as earnings.

**Example**

After Kajol, an administrative assistant, receives 12 weeks of LOE benefits the decision-maker recalculates Kajol's long-term average earnings. During the 730 day (24-month) recalculation period, Kajol had two periods during which EI benefits were received totalling \$6,000. Receipt of EI benefits does not affect the recalculation period, but the EI earnings are added to Kajol's employment earnings in the 730 day (24 month) period.

**Non-earning periods excluded from recalculation**

Non-earning periods that are not part of the employment pattern are factored out of the recalculation period. These periods may include

- parental/maternal leaves
- unpaid periods of injury or illness
- periods of injury or illness for which the worker receives long-term disability benefits
- periods of injury or illness for which the worker receives workplace insurance benefits\* or benefits from another insurance plan
- periods of full-time schooling
- periods of incarceration
- periods on social assistance benefits \*\*
- unpaid leaves of absence
- strikes/lockouts
- unpaid periods of absence due to jury duty, spouse's or children's illnesses, funerals, dentist or doctor appointments.

\* This only includes periods during which the worker was

- unable to work and receiving full benefits (i.e., full LOE benefits under the WSIA, s.37(1) temporary total disability, or s.147(2) supplementary benefits under the Workers' Compensation Act), and
- participating in work reintegration (WR) activities, see 19-02-02, Responsibilities of the Workplace Parties in Work Reintegration, or
- active in a work transition (WT) assessment or plan, see 19-02-01, Work Reintegration Principles, Concepts, and Definitions, and 19-03-05, Work Transition Plans, and/or involved in appropriate WR services resulting from a breach of the re-employment obligation, see 19-02-02, Responsibilities of the Workplace Parties in Work Reintegration.

\*\* This may include periods during which the worker was

- not working and receiving social assistance benefits, or

- working and receiving social assistance benefits.

**Example**

Sarah, a clerk, has a work related injury. After 12 weeks of LOE benefits the decision-maker recalculates Sarah's long-term average earnings. The usual recalculation period is 730 days (24 months). During this period Sarah was on a 182 day (six month) maternity leave and had no earnings. This six month non-earning period is deducted from the recalculation period reducing it from 730 days to 548 days. The 548 days are then divided into the total earnings from all employers to produce the long-term average earnings.

The decision-maker may require workers to provide supporting documentation with respect to non-earning periods. The following are accepted documents

- EI notices confirming periods of entitlement to benefits received, or
- notices from Social Services confirming periods of entitlement and benefits.

If a worker has periodic employment earnings supplemented by social assistance benefits and this is reflective of their employment pattern, the decision-maker may accept only the earnings and time worked from employment.

**Table of earnings**

For a list of items that are included or excluded from the recalculation of long-term average earnings, see 18-02-02, Determining Short-term Average Earnings.

**Temporary long-term average earnings**

If the decision-maker does not have the complete earnings information necessary to determine long-term average earnings, temporary long-term average earnings may be established based on a best estimate of the worker's long-term earnings. LOE benefits may be paid based on this amount until the necessary information is obtained.

**Workers with no prior employment history**

A worker may not be in the accident job long enough for an employment pattern to be established. As well, the worker may not have a prior earnings history (e.g., it is the worker's first job, or the worker has returned to the workforce after an absence of more than two years).

If the accident job is seasonal or cyclical, and the duration of the lay-off period is established through past practice, the decision-maker can determine the long-term average earnings by using the long-term average earnings of another worker similarly employed by the accident employer.

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If this information is not available, the decision-maker can use the worker's short-term average earnings multiplied by the number of weeks in the season or cycle and add the probable EI benefits payable. The calculation of probable EI benefits is derived from the basic benefit rate and maximum amount payable set out in the Employment Insurance Act, and as a result, is subject to change.

If the accident job is not seasonal or cyclical, and no clear recurring lay-off can be established, the decision-maker can determine the long-term average earnings by using the long-term average earnings of another worker similarly employed by the accident employer.

If this information is not available, the decision-maker can use the period of time the worker was employed with the accident employer and the worker's total earnings for that period.

**Severely impaired workers**

The long-term average earnings of a severely impaired worker (a worker with a non-economic loss rating of 60% or more and receiving full LOE benefits) may not be less than 75% of the worker's short-term average earnings. Once the decision-maker determines the permanent impairment rating of such a worker, any adjustment to the long-term average earnings is made retroactively to the beginning of the 13th week of LOE benefits.

**Effective date of long-term average earnings**

If a recalculation of the worker's average earnings is conducted, LOE benefits are paid based on the long-term average earnings effective from the beginning of the 13th week of benefits. Long-term average earnings may be adjusted if the information used for the recalculation is found to be incorrect or incomplete. For example, following the recalculation the worker could receive an irregular bonus that was earned prior to the injury.

An adjustment is made when the decision-maker receives the new information. The adjusted long-term average earnings are retroactive to the beginning of the 13th week of benefits.

If the adjustment results in a lower rate, a benefit-related debt is created and may be recoverable, see 18-01-04, Recovery of Benefit-related Debts.

**Obligation to provide information**

To determine long-term average earnings, the decision-maker requires the worker and/or employer to supply relevant earnings information. The following documents are accepted as "proof of earnings"

- Income and Deduction Statement from Canada Revenue Agency (CRA)
- T4 statements issued by the employer
- pay cheque stubs
- Record of Employment submitted for EI purposes, or

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- letters from prior employers.

The decision-maker has the sole discretion to determine what constitutes acceptable “proof of earnings”. Where documents not listed above are submitted as “proof of earnings,” the decision-maker may exercise his or her discretion.

The decision-maker may reduce or suspend benefits if the worker fails to provide the requested information within the specified time period. If the worker must obtain information from a third party (e.g., CRA) and does not obtain this information, the decision-maker must be satisfied that the worker failed to take all reasonable steps to acquire the information before reducing or suspending the worker's benefits. If the worker subsequently supplies the required information, full benefits are reinstated; however, this payment is not retroactive.

If the employer fails to provide the requested information, the employer may be found guilty of an offence and subject to a penalty, see 22-01-08, Offences and Penalties - Employer.

**Application date**

This policy applies to all decisions made on or after February 15, 2013, for all accidents occurring on or after December 1, 2002.

**Document History**

This document replaces 18-02-04 dated March 3, 2008.

This document was previously published as:

18-02-04 dated October 12, 2004  
18-02-04 dated December 1, 2002  
18-02-04 dated September 14, 1999  
4.1 dated January 1, 1998.

**References****Legislative Authority**

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 21, 23, 53, 66, 152

**Minute**

Administrative  
#21, January 28, 2013, Page 505