
Policy

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

The WSIB reviews entitlement to additional LOE benefits and return-to-work (RTW) services if a worker is partially impaired and fit for suitable and available work at, or subsequent to, the start of a permanent work disruption. For information about what constitutes “suitable work”, see 19-02-07, RTW Overview and Key Concepts.

To determine if the worker’s additional loss of earnings results from their work-related injury/disease, the WSIB identifies a suitable occupation (SO) for the worker and determines if the worker requires WSIB assistance to re-enter the labour market in that SO.

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 benefits following a permanent work disruption if the worker experiences an additional loss of earnings during this period due to their work-related injury/disease.

Purpose

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

Guidelines

Definitions

Permanent work disruptions include:

- layoffs resulting from changes in the availability of work that are due to economic factors and are permanent or expected to last three months or longer (e.g., plant closure, employer has ceased business, corporate reorganization), and
- temporary work disruptions that extend beyond three months or beyond the start of the next season for seasonal layoffs.

Any LOE benefits that become payable when a temporary work disruption becomes permanent are paid prospectively from the date the WSIB determines the work disruption has become permanent.

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

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(e.g., written notice of recall date, employer's past practices, relationship between employer and employees, unique circumstances).

For more information about temporary work disruptions, see 15-06-02, Entitlement Following Temporary 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 a company, the WSIB considers whether the employer has met their re-employment and co-operation obligations under 19-02-09, Re-employment Obligations and 19-02-08, RTW Co-operation Obligations. If there is no evidence of an employer breach and the worker has met their co-operation obligations, the WSIB must then determine if the worker's loss of earnings during the work disruption is due to the work-related impairment.

Temporary suitable work

The work-related injury/disease is expected to have a temporary impact on a worker's ability to restore their loss of earnings if the worker only requires temporary suitable work at, or subsequent to, the time of the permanent work disruption (i.e., the worker is expected to recover fully, or has a permanent impairment that would not be an obstacle to restoring their loss of earnings). As a result, the worker's pre-injury job is considered to be their SO.

The WSIB monitors the worker's clinical condition and pays full LOE benefits until the worker becomes fit for the essential duties of their pre-injury job. If recovery from the work-related injury/disease does not progress as expected, and the worker has permanent restrictions that prevents them from performing the essential duties of the pre-injury job, the WSIB follows the steps under "Permanent suitable work".

Permanent suitable work

If a worker requires permanent suitable work due to the work-related injury/disease at, or subsequent to, the start of the permanent work disruption, the WSIB identifies the worker's SO in order to determine entitlement to additional LOE benefits and/or return-to-work (RTW) services.

1. Suitable occupation (SO) previously identified

If a worker previously received or was receiving RTW services at the time of the permanent work disruption, a SO would already have been identified for the worker.

If the worker had completed RTW services prior to the permanent work disruption, no additional LOE benefits would be payable as the worker would be considered to be fit to re-enter the labour market in the identified SO.

If the worker was still active with RTW services at the time of the permanent work disruption, full LOE benefits would continue to be paid until the RTW services are completed. If the worker was already active in a RTW plan (with training) designed to facilitate a return to work with the injury employer, the WSIB may have to conduct a review to determine if the plan should be modified.

2. Suitable occupation (SO) is the suitable work performed prior to the work disruption

If the worker's SO has not previously been identified, the WSIB determines whether the suitable work (if any) the worker was doing at the time of the work disruption is the worker's SO.

A worker's SO represents a category of jobs suited to their transferable skills that are safe, consistent with the worker's functional abilities, and restores the worker's pre-injury earnings to the extent possible.

To determine if the suitable work performed prior to the work disruption is the worker's SO, the WSIB considers the following factors (as guided by 19-02-10, RTW Assessments and Plans).

a) Does such work exist in the general labour market?

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)?

The suitable work performed prior to the work disruption is considered to exist in the general labour market if employees at other companies perform similar work, even if there currently are no job vacancies for that type of work in the labour market (i.e., not in demand).

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- b) **Does the worker have the transferable skills/qualifications that would allow them to obtain such work in the general labour market?**
(e.g., worker performed suitable office work for the injury employer but may not have the qualifications required by a new employer for such office work.)
- c) **Do the earnings paid for such work in the general labour market restore the worker's pre-injury earnings to the extent possible?**

If the answer to a, b, and c is yes, the suitable work performed prior to the work disruption is the worker's SO. The worker has already demonstrated the work-related injury/disease does not prevent them from working in the SO, and therefore any additional loss of earnings would be due to the economic circumstances of the work disruption rather than the work-related injury/disease.

However, additional LOE benefits may be payable if the employer has been paying wages significantly higher than the industry based estimate for that work in the general labour market. LOE benefits would be calculated based on the difference between the industry-based estimate of the SO earnings and the pre-injury earnings. When considering adjusting benefits, the 'significance test' should be applied and no adjustment to the benefit should occur unless the difference is greater than 10%, see 18-03-02, Payment and Reviewing LOE Benefits (Prior to Final Review).

3. Suitable occupation (SO) to be determined

If the worker's SO is not identified under 1 or 2, the WSIB determines an appropriate SO for the worker that exists and is in demand in the general labour market following the steps set out in 19-02-10, RTW Assessments and Plans. The worker would be entitled to full LOE benefits while participating in the RTW services identified as being required to assist their return to the general labour market in the identified SO.

Before considering RTW services for workers involved in extended strikes/lockouts or layoffs with specific or expected recall dates that extend beyond three months, the following steps should be completed:

- ensure there has been an evaluation of the likelihood of the work disruption being permanent (e.g., employer's past practices, relationship between employer and employees, unique circumstances), and
- assess the likelihood the worker would choose to continue with RTW services even if the work disruption happens to end (e.g., low probability of return to work with the accident employer as the worker now has permanent restrictions that likely cannot be accommodated, or the worker has low seniority).

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WSIB identifies a SO under 1, 2, or 3 even if the worker receives a severance/retirement package due to a work disruption as long as they don't have a choice to continue working with the employer.

The WSIB does not provide RTW services if the worker voluntarily chooses to accept a severance/retirement package instead of continuing employment with the employer.

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 March 1, 2021, for all accidents.

Policy review schedule

This policy will be reviewed in 2026.

Document history

This document replaces 15-06-03 dated November 3, 2014.

This document was previously published as:

15-06-01* dated August 1, 2007

15-06-03* dated August 1, 2007

15-06-04* dated August 1, 2007

15-06-05* dated August 1, 2007

*documents were replaced by 15-06-03 dated November 3, 2014

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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