

Policy

Short-term average earnings are the worker's earnings from the accident employer and all other employment at the time of the injury. Loss of earnings (LOE) benefits are paid for the first 12 weeks following the injury based on the short-term average earnings.

Purpose

The purpose of this policy is to outline how the WSIB determines short-term average earnings.

Guidelines

First 12 weeks

In the majority of cases, workers will receive LOE benefits over a **consecutive** period of time. The WSIB uses the short-term average earnings to pay LOE benefits for the first 12 weeks following the work-related injury.

In some cases, the worker may

- receive LOE benefits for less than 12 weeks,
- return to work at no wage loss, and then
- experience a recurrence of the work-related injury.

In these cases, the WSIB restarts LOE benefits using the relevant short-term average earnings. The short-term average earnings are used to pay LOE benefits over 12 cumulative weeks. For more information on recurrences, see 18-02-06, Determining Average Earnings - Recurrences.

NOTE

For counting purposes, the WSIB does not include LOE benefits that are paid for lost time due to health care appointments and/or health care treatments.

Regular short-term average earnings

Earnings included in short-term average earnings are items paid, such as

- the base (hourly, daily, or weekly) rate of pay with the accident employer at the time of injury
- gratuities and tips included in gross earnings for taxation. If the reported gratuities and tips represent 25% or less of the worker's gross earnings, proof is not required. If the reported gratuities and tips represent 25% or more of the worker's gross earnings, proof is required
- shift differentials, expressed as a weekly average (differential paid at least once in the four weeks prior to the injury) or where the shift rotation is longer than four weeks, one full shift cycle

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- vacation pay, if paid as a percentage of the base rate with each paycheque
- mandatory (contractual) overtime
- voluntary overtime, if worked regularly (see below)
- regular production bonuses and commissions (see below)
- room and board, if these are part of the worker's pay, rather than occasional, special expenses, and/or
- the hourly, daily, or weekly pay with other employers, if the worker was concurrently employed at the time of injury (see "Concurrent employment" in this document).

For a list of items that are included or excluded from the determination of average earnings, see the table at the end of this document.

NOTE

Most employers operating in Ontario are subject to the *Employment Standards Act*. As a result, the WSIB recognizes a worker's base rate of pay as the number of hours the worker actually worked, regardless of whether payment was received for these hours. The decision-maker considers these hours as "paid" and includes the hours in the earnings basis.

Mandatory (contractual) overtime

Overtime is considered mandatory if it is part of

- the employment contract or collective bargaining agreement
- regularly scheduled work hours, or
- the worker does not have the option of whether to work this overtime.

The amount of mandatory overtime that is included in the short-term average earnings is

- the average amount of overtime worked in the four consecutive weeks before the injury or some lesser period, or
- one complete shift rotation (if the shift rotation is shorter, or longer than four weeks).

Voluntary overtime

Overtime is considered voluntary if

- it is not part of the employment contract or collective bargaining agreement
- it is not normally part of regularly scheduled work hours, or
- the worker has the option of working the overtime.

If voluntary overtime is worked

- in each of the four weeks before the injury, or
- in each week of one complete shift rotation (if the shift rotation is shorter, or longer than four weeks),

the overtime is included in the short-term average earnings. The amount of overtime included is the average amount of overtime worked in those four weeks or in each week of one complete shift rotation.

If voluntary overtime is not worked in each of the four weeks or in each week of one complete shift rotation before the injury, the overtime is considered irregular overtime and is not included in the short-term average earnings. However, irregular overtime is included in the long-term average earnings recalculation (see 18-02-03, Determining Long-term Average Earnings - Workers in Permanent Employment and 18-02-04, Determining Long-term Average Earnings - Workers in Non-permanent Employment).

Mandatory/voluntary overtime missed due to illness or vacation

If a worker is off work for all or part of a week due to illness or vacation during the four-week period or relevant shift rotation, the days/weeks lost are factored out. The remaining workdays are used to calculate the average amount of overtime.

Regular production bonuses and commissions

Bonuses and commissions are considered regular, if they are paid

- in each of the four weeks before the injury, if paid weekly, or
- in each of the three months before the injury, if paid monthly.

The amount of regular bonuses and commissions included is the average of the four weeks, or three months, respectively.*

* This applies to workers being paid commissions in addition to a regular or base wage. If a worker is paid solely on commissions, the worker's short-term average earnings are calculated using the guidelines for "Irregular short-term average earnings" in this document.

Bonuses and commissions that are irregular or sporadic are not included in the short-term average earnings calculation. However, irregular bonuses and commissions are included in the long-term average earnings recalculation (see 18-02-03 and 18-02-04).

Concurrent employment

If a worker is concurrently employed at the time of the injury and the accident employer is covered under the *Workplace Safety and Insurance Act* (the Act) (either compulsory, or by application including self-employment with optional insurance), the worker's short-term average earnings are the total earnings from all employment regardless of whether the concurrent employer(s) is covered under the Act.

Exceptions

The following earnings are not included in the determination of average earnings

- earnings from employment for which the individual has an executive officer/partner exemption from coverage, see 12-01-06, Expanded Compulsory Coverage in Construction

- earnings from self-employment when no optional insurance is in effect on the date of the accident. Earnings from non-covered self-employment and the time worked in non-covered self-employment are not included in the calculation of average earnings.

To determine if a worker is concurrently employed, see 18-02-05, Determining Average Earnings - Concurrent Employment.

Irregular short-term average earnings

Four weeks of earnings information available

If a worker's earnings vary from day to day or from week to week due to irregular hours (e.g., casual, part-time and on-call workers) or method of payment (e.g., salary based solely on commissions, drivers paid by mileage driven, or temporary agency workers), the average of the worker's total earnings in the four weeks before the injury is used as the short-term average earnings.

To determine the average, decision-makers can use the total number of pay hours over the four-week period and calculate the average.

Where an employer reports the hours worked as a range, the decision-maker should use the midpoint. For example, if the employer indicates a 30 to 40 hour work week, the decision-maker should use 35 hours per week.

Exceptions

As part of their normal employment pattern, workers such as temporary agency workers or construction tradespersons hired through union halls, may work for more than one employer during the four weeks prior to the injury. Earnings from these other employers may be included only if the nature of the employment is similar to the employment the worker was performing at the time of injury.

The short-term average earnings are the average of the total earnings in the four weeks before the injury. Work that is performed for an employer other than the accident employer and dissimilar in nature is not included and shortens the period used for the calculation.

Four weeks of earnings information not available

In some cases a worker may not have four weeks of earnings prior to the accident. These cases may include

- an injury sustained within the first four weeks on the job
- a shortening of the period (e.g., temporary shutdown, change in job grade, or job classification), or
- no prior employment history.

In these situations, the calculation of short-term average earnings is limited to the employment earnings with the accident employer divided by the period worked.

Example

Felicity was placed on the active roster list of Temp Services Inc. on May 25, 2001. On September 10, 2001, Felicity received her first job placement with QRS Employer as a Monday to Friday worker and suffered an injury on September 21, 2001.

In establishing the short-term average earnings, the decision-maker notes that Felicity has less than four weeks of earnings as Felicity only worked nine days. Felicity's total gross earnings were \$504.00

\$504.00 = \$56.00 per day (Monday to Friday worker)

9 days

Felicity's gross weekly earnings are \$280.00, resulting in net average earnings of \$237.48 per week.

Example

Rod joined the active roster list of Temp. Services Inc. on October 12, 2001. On November 21, 2001, Rod received his first job placement and was assigned to work at QRS Employer and suffered a work-related injury on the same day.

In calculating the short-term average earnings, the decision-maker finds that Rod has less than four weeks of earnings as he only worked for one day. The decision-maker must confirm the expected duration of the assignment with the workplace parties.

If the evidence supports that Rod was only placed with QRS Employer for a one-day assignment, the average earnings are calculated to reflect the earnings of a one-day a week worker based on the earnings for the day that Rod worked. If the evidence supports that Rod was placed with QRS Employer for an indefinite assignment, the average earnings are calculated to reflect the expected pattern of employment. That is, if Rod's assignment was a Monday to Friday workweek, his average earnings are calculated on that basis.

Unable to determine short-term average earnings

If it is not possible to determine a worker's short-term average earnings (e.g., the worker is paid on commission but has not worked long enough to establish earnings), the decision-maker may use the short-term average earnings of another worker

- similarly employed by the accident employer, or
- employed by another similar employer in the same business as the accident employer.

Non-earning periods

Non-earning periods that are part of the employment pattern may also include periods when the worker is employed and in receipt of partial benefits from social assistance. In these specific circumstances, 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.

Earnings adjustment

The short-term average earnings are adjusted if the information used in the calculation is not correct or complete. For example, following the injury the worker could receive a regular commission that was earned prior to the injury.

An adjustment is made when the decision-maker receives the new information and is retroactive to the beginning of LOE 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).

Temporary average earnings

If a decision-maker does not have the worker's earnings information and cannot calculate the short-term average earnings, the decision-maker may establish temporary average earnings. LOE benefits may be paid based on this amount until the necessary information is obtained.

Occupational disease claims

Average earnings for occupational disease claims are determined as of the date of the injury in accordance with this policy. In cases where the worker is no longer in the accident/exposure job on the date of injury, average earnings are determined based on the worker's earnings from his/her employment (if any) on the date of the injury. For more information about determining date of injury in occupational disease claims, see 11-01-04, Determining the Date of Injury.

Generally, a worker who experiences an actual loss of earnings is entitled to LOE benefits. Generally, a worker who has permanently exited the workforce (e.g., retired) would not be entitled to LOE benefits.

Survivor benefits

For guidelines about determining average earnings for the purpose of calculating periodic payments for the survivors of workers who have died as a result of work-related injuries or diseases that occurred on or after January 1, 1998, see 18-02-09, Determining Average Earnings - Periodic Payments for Survivors.

Application date

This policy applies to all decisions, for all accidents occurring on or after April 1, 2016.

Document history

This document replaces 18-02-02 dated October 12, 2004.

This document was previously published as:
18-02-02 dated December 1, 2002

18-02-02 dated September 14, 1999

4.1.* dated January 1, 1998

*Document was replaced by 18-02-02 dated September 14, 1999

References

Legislative authority

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

Minute

Administrative
#14, March 22, 2016, Page 533

Appendix

Types of earnings and earnings' basis

Types of earnings	Included in short-term earnings basis?	Included in long-term earnings basis?
Award payments, e.g., for an idea or suggestion	No	Yes
Base pay	Yes	Yes
Benefits under the insurance plan, long-term disability (LTD) benefits	No	No
Car allowance which is part of earnings, but is not reimbursement for special expenses	Yes	Yes
Christmas presents, e.g., turkey/ham in lieu of cash	No	No
Commissions paid in addition to, or in lieu of regular salary or wage	Yes	Yes
Cost of living allowance (COLA)	Yes	Yes
Dividends (e.g., resulting from employer stock option/purchase plan)	No	Yes
Employer contributions to employment benefits included under s.25	No	No
Employer top-ups to Employment Insurance benefits during maternity/paternity/parental leaves	No	No
Employer-supplied accommodation, e.g., to apartment superintendent	Yes	Yes
Employment Insurance benefits for federal job creation/job sharing programs	Yes	Yes

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Employment Insurance benefits for lay-offs, shortage of work etc.	No	Yes
Employment Insurance benefits for maternity/paternity and sickness leaves	No	No
Employment Insurance benefits where the worker receives wages which are offset against EI entitlement	Yes	Yes
Gratuities and tips included in gross earnings for taxation. For the long-term average earnings calculation, proof is required.	Yes	Yes
Holiday pay (contractual or statutory)	Yes	Yes
Isolation/hardship/subsistence pay	Yes	Yes
Lump sum vacation pay		
a) up to annual statutory or contractual entitlement	No	Yes
b) above annual statutory or contractual entitlement	No	No
Meal allowance which is part of earnings, but not reimbursement for special expenses	Yes	Yes
Overtime		
1. Mandatory	Yes	Yes
2. Voluntary overtime that is irregular or sporadic	No	Yes
3. Voluntary overtime that is regular	Yes	Yes
Payments in the form of merchandise	No	Yes
Percentage of base pay added to base pay in lieu of benefits	Yes	Yes
Power saw rental, if rental is part of the daily pay of a worker's total remuneration	Yes	Yes
Premium or discount on foreign funds if the worker is paid in foreign currency	Yes	Yes
Production bonuses for achieving production quotas as a quarterly, yearly, or irregular cash payment	No	Yes
Production bonuses for achieving production quotas as a daily, weekly or monthly cash payment	Yes	Yes
Profit sharing, e.g., employer's business profits shared with workers	No	Yes
Room and board which are part of earnings, but not reimbursement for special expenses	Yes	Yes
Royalties	No	Yes
Severance pay (contractual or statutory) for past service	No	No

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Shift differentials, or regular "incumbencies" for railway workers (expressed as a weekly average for short-term earnings)	Yes	Yes
Sick pay at worker's regular rate of pay while the worker is sick	Yes	Yes
Sick pay credits (unused) paid annually in a lump sum	No	Yes
Sick pay credits as a lump sum on termination	No	No
Social assistance benefits (except for learners)	No	No
Stocks (value at date received)	No	Yes
Strike pay	No	No
Termination pay in lieu of notice (contractual or statutory notice)	No	Yes
Travel time pay which are part of earnings, but not reimbursement for special expenses	Yes	Yes
Tuition reimbursements, e.g., employer reimburses workers for courses taken	No	No
Uniforms	No	No
Vacation pay as a percentage of base pay with each paycheque	Yes	Yes
Value assigned for personal use of company car which is a taxable benefit for the worker	Yes	Yes