

LOSS OF RETIREMENT INCOME BENEFITS

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1. INTRODUCTION

Loss of retirement income (LRI) benefits are available only to workers who were injured after January 1, 1990. This type of benefit was introduced to the workers' compensation system when Bill 162 brought in the "dual award" system in 1990. Prior to that, the permanent disability pension was paid to injured workers for life. Under the dual award system, economic loss benefits are paid until a worker turns 65. LRI benefits are an attempt to provide some economic compensation for a worker's loss of retirement savings as a result of a work injury.

In 1998, the *Workplace Safety and Insurance Act* introduced some changes to LRI benefits. These are highlighted below. The LRI benefit scheme is governed by the legislation, detailed regulations, and Board policies.¹ Be sure to review these when researching in this area. At the time of writing, there were no WSIAT decisions on any aspect of the LRI benefit.

A worker who has an LRI account should receive an annual financial statement (s.45(11) of the WSIA). The arrival of this statement presents a good opportunity for representatives to review the LRI contributions. Since errors are bound to occur in some claims, it is useful to review the adequacy of the LRI contributions based on a worker's future economic loss (FEL) or loss of earnings (LOE) benefit history. This is particularly important when a worker's FEL or LOE level has been increased retroactively.

2. HOW ARE LRI BENEFITS CALCULATED?

The Board makes contributions to an LRI account based on a percentage of a worker's FEL or LOE benefits. These monies are invested, and any investment income earned by the time the worker turns 65 is also part of the worker's LRI account.

If a worker receives delayed LRI contributions, for example, because of a retroactive increase in FEL or LOE benefits, the Board's practice is to pay interest on the delayed contribution. The interest is deposited in the worker's LRI account.²

2.1 Accident Date Between 1990 and 1997

For a worker injured from January 2, 1990 to December 31, 1997, i.e., under the FEL scheme, the Board makes a contribution based on 10% of every FEL payment into that worker's LRI account (s.44(1) of the WCA). Note that no contributions are made for the period during which a worker is receiving temporary benefits.

2.2 Accident Date On or After January 1, 1998

Bill 99 cut the Board's contributions to the LRI benefit in half. If a worker has an accident on or after January 1, 1998, the Board makes a contribution based on 5% of LOE benefits to the worker's LRI account (s.45(2) of the WSIA). A worker can choose to contribute an additional 5% to his or her LRI account. However, this contribution is deducted from a worker's regular LOE benefit payment and paid into the LRI account (ss.45(3) and (4)). Note that if a worker chooses to make the additional contribution, it is an irrevocable decision. The great majority of workers choose not to contribute the additional 5% to the LRI account.

Contributions to the LRI account will begin only after an injured worker has received 12 months of continuous LOE benefits (s.45(2)). Twelve continuous months is defined in the policy as "12 months in which there are no single interruptions of one month or more".³ Note that an interruption is a period of "full restoration of earnings". If a worker has fully restored his or her earnings by working for a month or more, the Board does not consider the 12 months to be "continuous" and stops counting for the purpose of the LRI benefit eligibility. If the worker subsequently experiences loss of earnings, the "continuous" period starts again at zero. The worker must have 12 months of loss of earnings dating from the most recent loss of earnings. For workers whose LOE benefits are cut off, for example, for non-cooperation, but who continue to experience loss of earnings, the policy provides room to argue that these periods should be counted in calculating the 12 months.

3. HOW IS THE LRI BENEFIT PAID TO WORKERS?

On the worker's 65th birthday, the LRI benefit becomes payable. The account includes all LRI contributions and any investment income accrued as of that date. If a worker dies before turning 65, different rules apply to the paying out of the benefit. See Section 4.1 below for details.

3.1 Lump Sum Payment

If the value of a worker's LRI account does not produce an annual payment of \$1,152.50 or more, the worker is automatically paid the full account balance in a lump sum upon turning 65.

Workers cannot request a lump sum for LRI accounts of a higher value; the Board will only pay these as monthly payments.

3.2 Monthly Payments

Workers who do not qualify for a lump sum are automatically paid monthly payments upon turning 65. A few months before this, the worker will be sent a Benefit Election Form. On this form, the worker must choose a payment scheme (also called an "annuity") and an indexing factor. These choices are used to calculate a monthly payment from the worker's LRI account. It is recommended that workers seek financial advice before making their benefit elections.

If the Board does not receive a completed Benefit Election Form before the worker's 65th birthday, default options for each choice are applied to the worker's LRI benefit.⁴

3.2.1 Payment Schemes

Workers must choose among several different payment schemes. There are two distinct types. The first is a joint and survivor annuity which applies to workers who have a spouse when they reach age 65. The other annuity choices vary in relation to whether and when there will be a return of the balance of the LRI account at the time of the worker's death.

The joint and survivor annuity scheme provides a worker with monthly payments from age 65 until death. If a worker is survived by a spouse, the spouse receives monthly payments that are a portion of the worker's monthly payments. The size of that portion is set by the worker on the Benefit Election Form.

If a worker has a spouse and is entitled to receive monthly payments, the Board automatically pays a joint and survivor annuity, unless the spouse waives the right to these benefits. A standard waiver form is sent out with the Benefit Election Form. A spouse who is considering waiving rights should get independent legal advice before signing this form.

If a worker does not have a spouse, or if a worker's spouse has waived their spousal annuity rights, the worker is free to choose among the other payment schemes.

3.2.2 Indexing Factors

Workers must choose between 1%, 2%, 3%, or no indexing of their monthly payments. Indexing increases the amount of later payments by decreasing the amount of earlier payments, and gives workers some protection from the effects of inflation on their monthly payments. If a worker does not make an election regarding indexing, the Board will not index the payments.

4. LRI BENEFIT PAYMENTS WHEN THE WORKER DIES

4.1 Worker Dies Before 65th Birthday

4.1.1 Death is Work-related

If a worker dies before reaching age 65 and the death results from a work injury or disease, the worker's survivors are not entitled to the LRI account.⁵ Instead, the survivors are entitled to receive survivor benefits in accordance with the relevant Act. See Chapter 22: Survivors' Benefits, for details.

There is one exception: If a worker was injured on or after January 1, 1998 and chose to make the voluntary 5% contributions, these contributions and the accrued investment income will be paid to the survivors. The Board calls this worker-contributed portion of the LRI benefit the "supplementary pre-retirement death benefit".⁶ If a worker has no survivors within the statutory definitions, then the supplementary pre-retirement death benefit will be paid to a designated beneficiary or, if none, to the worker's estate.⁷

4.1.2 Death is Not Work-related

When a worker dies before age 65 due to causes that are not work-related, the worker's survivors will receive the full LRI benefit account. This includes the Board contribution portion with its accrued investment income, called the "pre-retirement death benefit", and the "supplementary pre-retirement death benefit" if any.⁸

A worker's survivor will receive the LRI death benefit as a lump sum. However, a surviving spouse may choose a monthly payment scheme in accordance with the rules for workers as set out in Section 3.2 above.⁹

4.2 Worker Dies On or After 65th Birthday

If a worker dies after beginning to receive LRI benefit payments, the distribution of any LRI account balance will depend on the annuity scheme chosen by the worker, and the worker's age at death.

If a worker has a joint and survivor annuity, then a surviving spouse will be paid the LRI benefit in accordance with that annuity plan. For all other types of payment plans, whether there are survivors or not, any remaining LRI account balance is paid to the worker's estate.¹⁰

5. LRI ADMINISTRATION

Unlike all other benefits, LRI benefits are not administered by the Board. TD Canada Trust administers the benefit using information provided by the Board. This rarely poses any practical problems. Occasionally, a retroactive allowance of FEL or LOE benefits will cause a technical difficulty, particularly if the worker is over 65 years of age at the time of the allowance. In these cases, it is wise for representatives to verify that the LRI contributions have been processed. If they have not been processed, the Board's LRI Administrator¹¹ can rectify the problem quickly.

NOTES

1. For accidents between 1990 and 1997, see *Workers' Compensation Act*, s.44, O. Reg. 715/94 (as amended), and Operational Policy Manual, Document 05-07-02. For accidents on or after January 1, 1998, see *Workplace Safety and Insurance Act*, s.45, O. Reg. 562/99, and Operational Policy Manual, Document 18-03-06.
2. Operational Policy Manual, Document 18-01-08; and conversation with Jorgina Gaspar, LRI Co-ordinator, WSIB Finance Division, on Sept. 9, 2002.
3. Operational Policy Manual, Document 18-03-06.
4. O. Reg. 715/94, s.4(3)(b) and s.6(4); O. Reg. 562/99, s.4(4)(b) and s.5(4)(b).
5. WCA, s.44(5); WSIA, s.45(7).
6. O. Reg. 562/99, ss.7(1) and (2).
7. *Ibid*, s.7(7).
8. WCA, s.44(4) and O. Reg. 715/94, s.7; WSIA ss.45(7)-(10).
9. O. Reg. 715/94, s.7(6); O. Reg. 562/99, s.6(7) and (8).
10. Operational Policy Manual, Documents 18-04-17 and 18-03-06.
11. At the time of writing, the LRI Administrator is Brad Weiner at the Board's Treasury Branch. He can be reached by telephone at 416-203-4927.