

Workers' Compensation:

**Benefits if you were
injured between
January 2, 1990 and
December 31, 1997**

This booklet is about workers' compensation benefits you might get if you were injured **on or after** January 2, 1990 **up to and including** December 31, 1997, under what are commonly known as the "Bill 162" amendments.

Accidents that happened before or after this time period have different rules and different benefits.

Note: On January 1, 1998, workers' compensation law changed, including the official name of the Board. The Workers' Compensation Board (WCB) is now the Workplace Safety and Insurance Board. In this booklet we call it "the Board".

Also, there are no vocational rehabilitation plans any more. Now there are "labour market re-entry assessments and plans".



When can I get workers' compensation benefits?

You can get benefits if:

- you are hurt in an accident at work or disabled by a disease or other health problem that is work-related, and
- your type of employment is covered by workers' compensation.

Many types of employment are covered by workers' compensation. There is another booklet in this series called, *Workers' Compensation: When to make a claim*. It explains how to find out if your employment is covered.



How much will I be paid?

How much you are paid by the Board depends on when you were hurt. If your injury happened between January 2, 1990 and December 31, 1997 you will receive benefits based on 90% of your net pre-accident earnings. These pre-accident earnings are subject to minimums and maximums that change every year. The levels of inflation protection vary depending on your circumstances.



What benefits am I entitled to?

There are many things the Board can pay for in relation to an injury. It can pay for lost time from work, health care and treatment costs, travel, and the cost of rehabilitation, among other things.

The benefits discussed in this booklet are:

- 1** Temporary Disability benefits
 - a) Temporary Total Disability benefits, and
 - b) Temporary Partial Disability benefits
 - Full benefits
 - Difference benefits
 - 50% benefits
- 2** Future Economic Loss benefits
- 3** Future Economic Loss supplementary benefits
- 4** Retirement Pension
- 5** Non-Economic Loss benefits

1 Temporary Disability benefits

When you lose time from work because of an injury, you are usually considered to be temporarily disabled.

While you are temporarily disabled, 2 types of benefits can be paid. Usually, you will receive temporary *total* disability benefits at first, then later on, you may receive temporary *partial* disability benefits.

a) Temporary Total Disability benefits

Temporary total disability benefits are paid when the Board accepts that, because of the injury, you are unable to work at **any** job. They are paid every 2 weeks, and are paid at the full benefit rate based upon your earnings at the time of your injury.

b) Temporary Partial Disability benefits

The Board's expectations are much different when you are considered "temporarily partially disabled". As you recover from your injury and become able to work at some type of job, the Board expects you to look for work or return to modified work that fits your medical restrictions.

Sometimes, workers are considered temporarily partially disabled right from the start of a claim. Or often, workers are not aware that they have moved from temporary total disability benefits to temporary partial disability benefits because the amount of their benefits might not have changed.

Temporary partial disability benefits are also paid every 2 weeks. The amount depends on what type they are. There are 3 types of temporary partial disability benefits (you can only get 1 type at a time).

- **Full benefits**

These benefits are paid at the full temporary total disability benefit rate. They are paid only if you are co-operating with a program aimed at getting you back to work, but you are not yet working. An example of co-operation is looking for work that is within your medical restrictions and capabilities, and keeping a record of your search efforts. Another example is being in a medical rehabilitation program (such as daily physiotherapy) that makes you unavailable for or unable to work.

- **Difference benefits**

These benefits are paid if you have returned to modified work and are earning less than you were before the injury. The amount of these benefits will be 90% of the difference between your net pre-accident earnings and the net average amount you earn at your modified work (up to the maximum rate). Of course, if you return to modified work at no wage loss, you will get no temporary benefits (but you might still be entitled to a NEL award — see Section 5 on page 11 of this booklet).

- **50% benefits**

If the Board thinks you are not co-operating in a program that would help you return to work, the benefits paid will usually be 50% of the temporary total disability benefit rate.

However, if you refuse a medically suitable modified job, which would have resulted in no wage loss, the benefits will be reduced to zero.

The Board can also look at Canada Pension Plan disability benefits you received for the injury in determining the amount of benefits to be paid.

As soon as you are able to work at some job (within your medical restrictions), you should first contact your employer to see if they have a job that you can do. If your employer does not have suitable work and will not have any in the near future, contact the Board for assistance. In the meantime, you should start to look for suitable work elsewhere. Make sure you keep a record of your efforts. If you are not able to prove that you are looking for work, you may not get retroactive full benefits if you appeal.

Also, the law says that when there has been a material change in your circumstances, you **must** tell the Board within 10 days. This includes any changes in your wages and hours worked, or in your medical condition.

2 Future Economic Loss (FEL)

If you are not fully recovered 1 year after your injury, you move out of the temporary benefits category and into the **future economic loss** category. This decision is usually made by the Board 12 months after your accident, but can sometimes take longer depending on your medical condition.

If your injury results in a **permanent impairment** or in **12 continuous months of temporary disability**, you are entitled to a FEL award. The FEL is equal to 90% of the difference between your net average pre-accident earnings and what the Board says are your **expected** net average post-accident earnings.

For example, suppose you were earning \$1000 a month (net) before the injury, and the Board believes that you can earn \$600 a month (net) in suitable employment after the injury. The difference between the 2 amounts is \$400, so your FEL award would be 90% of that, or \$360 a month — whether or not you ever actually get back to work.

When the Board is estimating post-accident earnings, it can decide what employment is suitable for you. The Board can also look at any Canada Pension Plan disability benefits you may be receiving when they set the FEL amount.

FEL benefits are usually paid monthly. They end when you turn 65 years of age. In some situations, you can ask that the FEL be paid as a lump sum.

As with temporary benefits, you must tell the Board about any material change, such as a change in your income or in your condition. If there is a material change, the Board can review the FEL and increase or decrease it. Even when there is no material change, the Board will review your FEL occasionally. On these reviews, the Board might decide that your earning ability has increased, and so your FEL could be decreased.

Usually the FEL cannot be reviewed more than 5 years after it was first set. But a review could happen later than that if the 5 years runs out while the case is under appeal. And the 5-year limit does not apply at all if you misled the Board, for example, if you did not tell the Board about a material change, or if you gave false information.

The FEL can also be reviewed later than 5 years after it was set, if the Board increases your Non-Economic Loss (NEL) award on or after November 26, 2002. But this review can only happen within 2 years after the NEL increase. See pages 11 and 12 for more information about NEL awards.

If you are appealing a FEL decision made before January 1, 1998, different laws and rules apply.

3 FEL Supplement

If you are getting a FEL award and are co-operating in a Board-approved rehabilitation program, you can receive a supplement to the FEL award. The total amount payable for the combination of FEL award and FEL supplement is 90% of your pre-injury net average earnings (subject to the maximums). If you do not co-operate, the FEL supplement can be discontinued.

After January 1, 1998, you must co-operate in an “early and safe return to work” program or a “labour market re-entry” program to be eligible for the supplementary benefits. These programs are explained more fully in other pamphlets in this series.

Once your program ends or is cancelled, your supplement stops. If the program is cancelled, you might get the supplement restored through an appeal, but only if you take your own rehabilitation action, such as searching for a job.

4 Retirement Pension

In addition, if you receive a FEL, the Board sets aside additional funds to be used as a retirement pension, equal to 10% of each FEL payment. Every worker who has this money set aside will receive a small retirement pension or lump sum from the Board when they reach 65 years of age.

5

Non-Economic Loss (NEL)

You are granted the NEL award if you suffer a permanent impairment as a result of your injury. While the FEL pays for loss of earning power, the NEL is for losses that do not relate to the ability to earn a wage. It is supposed to be compensation for pain and suffering.

The NEL process starts when you have reached your “maximum medical recovery” (MMR) and will not get any better. The Board will send you a list of doctors, and you must choose one to examine you and write an assessment.

The doctor sends a copy of their assessment to the Board. The Board will then send a copy of the assessment to both you and your accident employer. Before January 1, 1998, it was possible for either you or your employer to get a second assessment. Now, only the Board can ask for a second assessment if the first assessment was not accurate.

Once the assessment process is over, the Board will then use a rating chart to find out what percentage of permanent impairment remains. The chart has nothing to do with how much your injury affects your ability to do your job. For example, a teacher who loses a hand would get the same percentage as a seamstress who loses her hand.

That percentage figure will be multiplied by a base amount which is adjusted up or down depending on your age at the time of the injury. The age adjustment amount will increase the base amount for each year you were under 45 years of age, and decrease it for each year you were over 45 years of age (to a maximum of 20 years in either direction).

For example, the base amount for 1990 was \$45,000 and the age adjustment amount was \$1,000. A worker who was injured at age 30 in 1990, and who was determined by the Board to have a 20% NEL, would have received 20% of \$60,000 (\$45,000 base amount, plus 15 age adjustment amounts of \$1,000 for each year under 45 years of age).

For injuries in 1997, the base amount was \$51,535.37, and the age adjustment amount was \$1,145.63.

The NEL award will be paid as a lump sum if it is less than a certain amount (\$11,520.87 is the amount for 2001). Otherwise it will be paid monthly, unless you ask for a lump sum within 30 days of being notified of the NEL. The entire NEL process takes about 6 to 10 months from start to finish.

If your condition gets worse in the future, you can ask that the NEL be reassessed. If the Board agrees that your impairment is worse, you can also ask the Board to review your FEL award (see page 9).

If your NEL rating is 60% or more, the Board pays you an extra amount each year, called the Independent Living Allowance (ILA). The ILA is to help you pay for things you can no longer do for yourself because of your injury, or for services or equipment to help you live more independently.

The ILA amount is about \$3,000. It is adjusted each year.



Can I appeal the Board's decision about my benefits?

Yes, you can appeal most Board decisions. If you want to appeal, you may want to get legal help first. There is another booklet in this series called, *Workers' Compensation: Your right to appeal*, that explains how to appeal and the time limits to appeal. See the back cover for more information about how to order one.



Where can I get legal help?

- **Community legal clinic:** Clinic lawyers and community legal workers give free legal help to people with low incomes. Some clinics take workers' compensation cases. The community legal clinic nearest you is listed under "Legal Aid" in the white or yellow pages of your phone book. You can also visit Legal Aid Ontario's Web site at <www.legalaid.on.ca>.
- **Office of the Worker Adviser (OWA):** The OWA gives free legal help with workers' compensation cases to non-unionized workers. If there is an office in your area, it will be listed in the Government blue pages of your phone book under the Labour section. If there is no listing for your area, call toll-free **1-800-435-8980** or **416-325-8570** in Toronto, or visit their Web site at <www.gov.on.ca/lab/owa>.
- **Member of Provincial Parliament (MPP):** Staff at your MPP's office may be able to help you. To find out who your MPP is, call Elections Ontario toll-free at **1-888-668-8683**, or visit their Web site at <www.electionsontario.on.ca>.
- **Union:** Call your staff representative. If he or she cannot help you, ask for the staff person who knows about workers' compensation law.

- **Injured workers' group:** Your local injured workers' group may be able to help you. To find out if there is a group near you, call the Ontario Network of Injured Workers' Groups (ONIWG) at **905-387-1894** or visit their Web site at www.oniwg.on.ca.
- **Legal Aid certificate:** This certificate pays all or part of your lawyer's fees. Contact your nearest legal aid office to learn whether you qualify. The phone number is listed under "Legal Aid" in the white or yellow pages of your phone book. You can also visit Legal Aid Ontario's Web site at www.legalaid.on.ca or call toll-free **1-800-668-8258**.
- **Lawyer Referral Service:** If there is no community legal clinic near you and you want help finding a lawyer who practices workers' compensation law, you can call the Lawyer Referral Service at **1-900-565-4577**. The call costs \$6.00. They should give you the name of a lawyer who will talk with you for free for 30 minutes. For more information you can visit their Web site at www.lsuc.on.ca.

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It is not a substitute for getting legal advice
for your particular situation.

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