

# Workers' Compensation:

**Benefits if you were  
injured on or after  
January 1, 1998**

**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.

This booklet is about the types of workers' compensation benefits you are eligible for if you have an injury or a disease that is related to your work. The benefits you can get depend on when you were injured. The law has changed many times over the last several years. An important change happened on January 1, 1998.

This booklet explains the types of benefits you might get if you were injured **on or after** January 1, 1998. It has general information only. If you have a problem, talk to someone who knows about workers' compensation law. There is a list of places to go for legal help at the end of this booklet.



## **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. See the back cover for more information about how to order one.



## **What benefits am I entitled to?**

There are several types of workers' compensation benefits that workers may be able to receive if they are injured. Even if a worker does not miss any time from work, he or she can get health care benefits for expenses such as medical treatments and prescriptions. Family members may also be able to get survivors' benefits if a worker dies because of his or her work injury or disease.

Workers' compensation benefits are not taxable.

The following is a list of the different types of benefits that are discussed in this booklet:

- 1** Loss of Earnings (LOE) benefits
- 2** Retirement pension
- 3** Non-Economic Loss (NEL) benefits
- 4** Health Care benefits
- 5** Recurrences
- 6** Employer contribution to benefit plan
- 7** Survivors' benefits

# 1

## **Loss of Earnings (LOE) benefits**

LOE benefits are compensation for the wages you have lost because of your work injury. These benefits normally begin the first day you miss work after your injury. Your employer must pay you your full day's wages for the day of your accident.

There is often a delay in getting your first LOE benefits cheques because the Board is investigating your claim. This will not affect the amount of your cheques, but you may not get your first cheques for several weeks.

LOE benefits are paid every 2 weeks. If your LOE benefits continue for more than 2 years after your injury, then the Board will start paying your benefits once a month.

If you are still receiving LOE benefits more than 6 years after your accident, and the amount of your LOE benefits is 10% or less of full LOE benefits, you can choose to get all your future LOE benefits paid at once in a lump sum.

## How is the LOE benefit calculated?

Full LOE benefits are 85% of your “net average earnings”. Net average earnings is roughly equal to your take-home pay in the last 4 weeks before the accident (up to a maximum that changes every year). However, if the Board thinks that your work was not regular or not permanent, it could decide to recalculate this after you have received 12 weeks of LOE benefits. If this happens, get legal help, because it usually means a reduction in your benefits.

When your employer reports your injury to the Board, they are supposed to report your earnings. Check to see that the Board has the correct information about your earnings from **all** of the jobs you had at the time of your accident. Your employer will not report your earnings from your other jobs, so you have to report this yourself. In addition to your regular rate of pay or salary, your earnings can include overtime pay, bonuses, and some benefits. You should report everything you received, although the Board might not count all of it as earnings.

The Board may ask you for more information about your earnings, such as copies of your income tax returns. If you do not provide the information, your LOE benefits may be reduced or stopped until you do. If you do not have the information and you cannot get it from your employer or anyone else, then tell the Board this.

## **How long will I get LOE benefits?**

You should continue to get full LOE benefits as long as you are medically unable to go back to any work. You should be seeing your doctor regularly while you are off work. The Board expects you and your doctor to send regular reports with updates on your injury. The Board has special forms for this. Fill out the forms and send them back to the Board as soon as possible. If you do not, it might take longer to get your benefits.

While you are receiving LOE benefits, the law says that you must co-operate with any health care recommendations from your doctor that the Board agrees with. Also, you must co-operate with your employer and the Board in discussing your return to work, even if you are not yet medically fit to go back to work. If the Board decides that you are not co-operating, your benefits can be reduced or stopped. The Board is supposed to warn you before doing this.

Usually, LOE benefits stop when you turn 65 years of age. But, if you are 63 years of age or older on the date of your accident, then you could get LOE benefits for up to 2 years after the date of your accident.

## **What if my employer offers me a job?**

If you are medically able to return to your regular job, and your employer offers you your job back, the Board expects you to return to work. If you do not return, your LOE benefits will be stopped.

If you are medically able to go to work, but not to your regular job, and your employer offers you suitable work that you can do safely, the Board expects you to take this job. If you do not accept your employer's job offer, your LOE benefits will be reduced by the amount of pay you would have received from this job.

Ask the Board for help if you are not sure whether the job being offered is suitable to your medical condition. For example, you can ask for a copy of the job description, or for a worksite analyst to review the job. You can also ask for a mediator to help resolve any disagreements about the suitability of a job.

If you return to work and your earnings are the same as or more than you earned at the time of the accident, your LOE benefits will stop.

### **What if my employer does not offer me a job?**

If your employer does not offer you a job that you are medically able to do, or if your employer is not co-operating in returning you to work, then the Board can arrange for you to have a "labour market re-entry assessment". This assessment is supposed to tell the Board if you need help to return to suitable work, considering your injury and your job skills. If the Board believes that you need help, then you will get a "labour market re-entry plan". This plan can include training and other assistance in returning you to suitable work.

While you are participating in a labour market re-entry assessment or plan, you will get full LOE benefits.

When your labour market re-entry assessment or plan is finished, the Board will decide what your wage would be in a suitable job (one that you are medically able to do and that you have the skills for). Whether or not you are actually working in this type of job, this wage is used to calculate your LOE benefits amount. This is called “deeming”.

### **Will my LOE benefits amount stay the same?**

It depends. While you are receiving benefits, the law says you must report any changes in your medical condition, earnings, or employment situation to the Board. These changes are called “material change in circumstances”.

For example, if you start to get Canada Pension Plan disability benefits, you must immediately report this. If you change from part-time to full-time work, or from full-time to part-time, you must report this. Or, if your injury gets better or worse, you must report this change. The law says you must report any changes to the Board **within 10 days** of the change happening.

The information the Board gets about any changes in your medical condition, earnings, or employment situation, may change the amount of your LOE benefits. If you do not report a material change when



it happens, this can have serious effects on your benefits. Also, the Board can prosecute you for failing to report a material change on time. If you are convicted, you can be fined or imprisoned, or both.

If you do not have any material changes to report to the Board, then the Board can review your LOE benefits once a year until 6 years after your injury. Usually, the Board does a review 2 years after your injury and a final review about 5 to 5½ years after your injury.

The Board will contact you for these reviews. They will request up-to-date information about your earnings, medical condition, and employment situation. If you do not respond to the Board's request, your benefits may be stopped.

After the final review of your LOE benefits, there are 2 situations when your LOE benefits could be reviewed again. If you are still participating in a labour market re-entry plan after the final review, the Board can review your LOE benefits within 30 days of the completion of that plan. Or, if your NEL benefits are increased because your work injury gets worse, the Board can review your LOE benefits within 2 years after the increase.

## **Do my LOE benefits get reviewed if I am 55 years or older when I get hurt?**

In some cases, workers who are 55 years or older when they are injured will be given a choice not to have their LOE benefits reviewed at all. If this happens, the Board will give you 30 days to decide if you want to have the normal reviews of your LOE benefits, or if you want to have your benefits locked in at the amount set by the Board at that time. This is a very important decision because once you decide, you cannot change your decision later. You should get legal help before you make your decision.

## **2 Retirement pension**

If you are on LOE benefits for more than 1 year, the Board will start contributing an additional amount, equal to 5% of each of your cheques, into a retirement pension.

Also, the Board will give you the choice of having an extra 5% of your own money taken out of your LOE cheques and put into this retirement pension. Once you make your choice, you cannot change your decision. You should get financial advice before you make this decision.

When you turn 65 years old, you become entitled to a retirement pension made up of all the money that was paid in, plus investment income on that money. The

Board will give you some choices about how to be paid your retirement pension. Your choices will depend on how much money is in your pension.

If you die of non-work related causes before you turn 65 years old, your surviving family gets all the money in your retirement pension plus the investment income. If you die of a work related injury or disease before you turn 65, and your family receives survivors' benefits (see page 15), they will not get the part of your pension that was contributed by the Board.

### **3 Non-Economic Loss (NEL) benefits**

This benefit is supposed to compensate workers for the pain, suffering, and “loss of enjoyment of life” caused by a permanent disability. The NEL benefit is in addition to your LOE benefits. The average NEL benefit is worth approximately \$7,000.

Your NEL benefit is based on a doctor's examination and on a standard rating schedule set out in the law. When the Board thinks your disability will not improve any more, then they arrange the doctor's examination. You choose the doctor from a list of doctors sent to you by the Board. The Board can ask that you be examined by a second doctor if the first doctor's report is incomplete or inaccurate. You and your employer must

agree on the second doctor for your examination. If you cannot agree, then the Board will choose the second doctor.

The NEL benefit is normally paid out in one lump sum. But, if the amount of your NEL benefit is more than the lump sum cut-off amount, then it will be paid as a monthly benefit unless you agree to have it paid in a lump sum instead. The lump sum cut-off amount depends on the year in which you qualify for a NEL. For the year 2003, it is \$11,590.

## **4 Health Care benefits**

You can get health care benefits even if you have not missed any time from work. The Board should pay for any medical aid or medical treatment for your work injury.

This can include:

- drugs,
- physiotherapy,
- chiropractic treatments,
- dental work,
- artificial limbs or eyes,
- braces,
- wheelchairs,

- eye glasses,
- hearing aids, and
- clothing allowances to replace clothes damaged by braces or wheelchairs.

For some expenses, such as chiropractic treatments and clothing allowances, the Board will only pay up to a maximum amount. The Board also pays for the reasonable costs of transportation to and from your medical appointments for your injury.

## **5** Recurrences

If your work injury improves, but then sometime later it gets worse, whether or not you are at work, this is called a “recurrence”. You may be entitled to additional benefits if the Board has medical evidence that your recurrence is connected to your original work injury.

The types of benefits you may receive depend on when the recurrence happens. If your recurrence happens less than 6 years after your original injury, then you may be able to get LOE benefits, or an increase in your LOE benefits if you are still receiving them. You may also get health care benefits and a reassessment of your NEL benefits.

If your recurrence happens more than 6 years after your original injury, then you are eligible for health care benefits and a NEL reassessment. You are eligible for an increase in your LOE benefits only if your NEL benefits are increased after a NEL reassessment.

## **6 Employer contribution to benefit plan**

Your employer is responsible to continue making contributions to any benefit plan you had at work at the time of your injury, for 1 year after your accident. A benefit plan can include a dental plan, health care insurance, life insurance, and a pension plan.

If your benefit plan is the type that both you and your employer pay into, your employer can stop their payments if you stop yours. If you want your benefit plan to continue while you are off work, keep paying your part of the payments.

If your employer does not keep up their payments, they may have to pay for any benefits you lost and they can be fined by the Board.

## **7** **Survivors' benefits**

The family of a worker may be eligible for survivors' benefits if the worker dies because of a work-related injury or disease. The amount of these benefits depends on who the surviving family members are, the age of a spouse when the worker dies, and the number of dependent children.

The Board pays for the worker's burial expenses up to a maximum amount. The Board may pay for bereavement counselling for the surviving spouse or children if it is requested within 1 year of the worker's death.

A surviving spouse is also entitled to his or her own labour market re-entry assessment and possibly a labour market re-entry plan (depending on the results of the assessment). But the spouse must request a labour market re-entry assessment within 1 year of the worker's death.



### **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](http://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](http://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](http://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](http://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](http://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](http://www.lsuc.on.ca).

This publication contains general information.  
It is not a substitute for getting legal advice for  
your particular situation.

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