

Client Services Policy Manual

Policy Number: **EL-06**
Subject: **Conversion of Pre-1984 Claims**
Chapter: **Earnings Loss**

Background

On January 1, 1984, The Workers' Compensation Act, 1983 changed the model of earnings loss benefits from a pension benefit payable for life to an earnings replacement system based on net wages payable at age 65.

The following outlines chronological changes to earnings loss benefits based on legislative amendments:

- On January 1, 1984, all claims were recalculated and continued on the basis of 90 per cent of net earnings.
- Between January 1, 1993, and December 31, 1997, the rate used to calculate earnings loss benefits was 75 per cent of net earnings for the first 39 weeks of disability. The rate increased to 80 per cent for the portion of the 39 weeks that extended beyond December 31, 1997.
- Between January 1, 1998, and March 31, 2018, the rate used to calculate earnings loss benefits was 80 per cent of net earnings.
- Since March 31, 2018, the rate used to calculate earnings loss benefits is 85 per cent of net earnings.

Policy Statement

Recurrences

If a claim for an injury which occurred prior to January 1, 1984, is accepted as a recurrence and there is entitlement to earnings loss benefits, the rate used to calculate earnings loss benefits is in accordance with the legislation in effect at the time of the recurrence.

Life Pension awards on pre-1984 claims for Permanent Partial Disability and Permanent Total Disability may be reopened and converted based on the following:

1. A worker who has no loss of earning capacity resulting from the compensable permanent disability may be offered either:
 - a lump sum based on the capitalized reserve of their pension award; or
 - to continue receiving the monthly permanent partial disability allowance with no annual or other periodic increases added to the monthly allowance.
2. A worker under age 65 who has a loss of earning capacity resulting from the compensable injury may be offered earnings loss benefits subject to the following conditions:
 - Where the earnings loss is equal to or less than the monthly pension, the pension will continue.

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- Where the earnings loss is more than the monthly pension, the pension will be integrated with the earnings loss benefit and the monthly difference will be paid as a "top up" of the pension.
3. Where a worker has taken a lump sum as in option #1, and there is a subsequent claim for loss of earning capacity resulting from a worsening of the compensable injury, the current value of the monthly allowance if the lump sum award had not been taken will be deducted from the earnings loss benefits payable.
 4. In all cases, WorkplaceNL will provide the worker with details related to their options and the worker must sign an agreement of understanding and acceptance of their option.
 5. A worker injured prior to January 1, 1984, is not eligible for an annuity or a permanent functional impairment lump-sum award.

Merits and Justice

Where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would cause an unfair or unintended result, WorkplaceNL will decide the case based on its individual merits and justice as outlined by Policy EN-22 Merits and Justice. Such a decision will be considered for that specific case only and will not be precedent setting.

Reference:

The Workers' Compensation Act, 1983, Sections 74 and 115 (Repealed)
Workplace Health, Safety and Compensation Act, 2022, Section 83
The Workers' Compensation Regulations, 1984 as amended by Newfoundland Regulation 106/86 (Repealed)
Newfoundland Regulation 144/93, Section 25 (Repealed)
Workplace Health, Safety and Compensation Administrative Regulations NLR 66/23, Section 28
Policy EN-22 Merits and Justice

Amendment History

Original Effective Date	1986 11 01
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