

**Operational
Policy**

Section

Future Economic Loss (FEL) (Accidents from 1990-1997)

Subject

Effect of a 0% NEL Rating on FEL Benefits

Policy

Every year or if a material change in circumstances occurs, the WSIB may review a worker's future economic loss (FEL) benefits and may confirm, vary, or discontinue the benefits.

A worker receiving benefits under the insurance plan or who may be entitled to do so shall notify the WSIB of a material change in circumstances in connection with the entitlement within 10 days after the material change occurs.

Purpose

The purpose of this policy is to outline how FEL benefits are reviewed prior to the final review.

Guidelines

Material change reviews

A worker who is eligible to receive benefits must report any material change in circumstances to the WSIB. Types of material changes to be reported include, but are not limited to, changes in

- health (clinical) status
- earnings/income (including Canada Pension Plan/Quebec Pension Plan (CPP/QPP) disability benefits paid because of the work-related injury/disease)
- employment status
- availability for, or co-operation in, health care, work reintegration (WR) activity, and optional insurance coverage.

A FEL benefit may be adjusted at any time prior to the final review for any material change or failure to report a material change which occurs on or after January 1, 1998. The adjustment to the FEL benefit is effective from the date the material change occurred.

For more information on what may be considered a material change, see 22-01-02, Material Change in Circumstances - Worker.

Material change in earnings

Significance test - 10% or greater

To determine if a change in earnings is "material", the decision-maker compares the recently reported net average earnings (NAE) with the NAE being used to pay the FEL benefit. If there is a significant change (increase or decrease) in the post-injury NAE, usually 10% or greater, it is considered "material", and the WSIB adjusts the FEL benefit accordingly.

Each time new post-injury earnings are reported, decision-makers compare these to the earnings last used to actually adjust the benefit.

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The Workplace Safety and Insurance Act, 1997 requires that the WSIB have regard for any portion of the CPP or QPP disability benefits paid because of the work-related injury. As a result, the WSIB does not use the “significance test” in these cases, but offsets the FEL benefit by considering CPP or QPP as post-injury earnings. The WSIB offsets the amount of CPP/QPP disability benefits which exceed the amount the worker is determined to be able to earn after the injury, see 18-01-13, Calculating CPP/QPP Offsets from FEL/LOE Benefits.

NOTE

- CPP/QPP disability benefits are not offset from a FEL supplement.

Decrease in post-injury earnings that occur prior to the 60-month period

The WSIB may increase a worker’s FEL benefit only if the worker suffers a significant reduction in earnings, or is not able to earn, due to

- a recurrence, see 15-03-01, Recurrences
- a deterioration in the impairment, see 18-05-09, Redeterminations
- a job change related to the injury, or
- another situation directly related to the injury.

If the earnings decrease because of the work-related injury, the worker may also be entitled to WR services, see 19-02-01, Work Reintegration Principles, Concepts and Definitions.

NOTE

If a worker requires a new work transition (WT) plan, the WSIB calculates the FEL benefit using the earnings of the suitable occupation (SO) at the completion of the plan, see 19-03-03, Determining Suitable Occupation.

Increase in post-injury earnings that occur prior to the 60-month period

The WSIB reduces a worker’s FEL benefit only if the worker

- experiences a significant increase in earnings
- receives income that could be considered earnings from employment, or
- receives CPP/QPP disability benefits paid as the result of the work-related injury/illness. The WSIB offsets the amount of CPP/QPP disability benefits which exceed the amount the worker is determined to be able to earn after the injury, see 18-01-13, Calculating CPP/QPP Offsets from FEL/LOE Benefits.

Completion of WR with the injury employer

If a worker has a wage loss upon completion of WR with the injury employer, the FEL benefit is based on the worker’s actual earnings, regardless of the job being performed, see 18-04-05, Initial Determination - Workers Who are Earning at Time of Determination.

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Actual post-injury earnings are the worker's total salary remuneration from all employment (e.g., base salary from one or more jobs including production bonuses, shift premiums, overtime). A worker's post-injury annual earnings may include additional sporadic earnings and a review of the annual post-injury earnings should be considered to ensure that the appropriate benefit is paid.

Completion/Closure of WT plan

The FEL benefit compensates workers for his or her future loss of earnings resulting from the work-related injury. The FEL benefit should be paid at the established SO earnings. The FEL benefit should not be increased if reduced earnings are related to economic conditions or the worker's choice to be under-employed.

Employed in SO

If a worker is employed in the identified SO with the injury employer or a new employer, the WSIB uses the worker's actual earnings to pay FEL benefits, even if the earnings are not consistent with updated labour market wage information.

Not employed in SO but instead comparable job

In some cases, a worker may return to work in a comparable job. FEL benefits may be paid based on the worker's actual earnings provided this job is comparable to the SO-identified job with similar earnings expectations.

Unemployed

If the worker remains unemployed at the completion/closure of the WT plan, the FEL benefits are paid using the earnings the worker would earn if employed in the SO that was specified in the WT plan.

Under-employed

A worker is considered to be under-employed when he or she is employed in such a way that does not permit the use of his or her full abilities, skills and training in mitigating the wage loss resulting from the work-related injury.

In some cases, a worker may return to the identified SO but at reduced hours or lower wages than what was projected. There is a need to examine why the earnings and/or hours have been reduced. This may be due to unforeseen aspects arising from the type of employment, or reflective of a probationary period, or changing work requirements/demands. If the decision-maker is satisfied that the worker is not voluntarily under-employing him/herself, the FEL benefits can be paid on actual earnings.

If the decision-maker is satisfied that the worker chose to work fewer hours or at a lower earnings, FEL benefits will be paid at the SO earnings established as part of the WT plan, rather than at actual earnings.

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If FEL benefits are paid for an extended period without a material change review, the decision-maker may review the benefit to determine if it is being paid correctly. The extent and frequency of these periodic reviews depends on

- the degree of the impairment
- whether the worker has returned to the workforce
- whether the worker is working within the identified SO, and
- the amount of the loss of earnings.

If, after the usual follow-up, a worker fails to respond to inquiries or to otherwise co-operate in a periodic review, a decision-maker can withhold the FEL benefit until the worker contacts the decision-maker or co-operates in the review, see 22-01-03, Workers' Co-operation Obligations.

Any change in entitlement resulting from the material change is effective from the date the material change occurred. If a debt results from the changed entitlement, the amount is calculated and considered due and owing retroactive to the date of the material change, see 18-01-04, Recovery of Benefit-Related Debts.

Earnings restored

During a review, if the decision-maker finds that a worker's earnings are restored but the worker continues to have an impairment, the worker is entitled to a sustainability benefit, see 18-04-13, FEL Sustainability Benefit. This ensures that the worker can receive a FEL supplement if necessary. For information on the payment and review of FEL supplements, see 18-04-11, Supplements for Programs and Work Reintegration Activities Before and After 24 Months.

Wage guide information used at reviews

In cases where a worker is either not working or working in the SO but has voluntarily under-employed him/herself, if the WSIB originally used

- entry-level wages to determine the post-injury earnings, updated entry-level wages are used
- mid-range wages to determine the post-injury earnings, updated mid-range wages are used.

FEL benefit duration**Electing the Old Age Security equivalent**

A worker who

- is at least 55 years of age when the WSIB determines or reviews the FEL benefit
- has not returned to work, and

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- is unlikely, in the opinion of the WSIB to benefit from a WT plan which could help the worker return to work

may elect to receive an amount equal to the full monthly pension for Old Age Security (OAS), instead of a FEL benefit, if the worker meets the eligibility criteria set out in 18-04-09, Electing the OAS Equivalent.

0% non-economic loss

In some cases, a non-economic loss (NEL) review may result in a 0% rating which indicates there is no evidence of an assessable permanent impairment. FEL benefits continue until the worker is notified in writing and are paid to the end of the month in which the 0% NEL decision is rendered.

Age 65

Workers are only entitled to FEL benefits until they reach age 65. By virtue of the monthly payment scheme, the benefit is payable to the end of the month in which the worker turns 65.

Application date

This policy applies to all FEL decisions made with respect to wage loss entitlement periods on or after February 15, 2013, for accidents from January 2, 1990 to December 31, 1997.

Policy review schedule

This policy will be reviewed within five years of the application date.

Document history

This document replaces 18-04-14 dated July 15, 2011.

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18-04-14 dated July 3, 2007

18-04-14 dated June 1, 2005

18-04-14 dated October 12, 2004

18-04-14 dated December 24, 2003

18-04-14 dated June 15, 1999

7.13 dated January 1, 1998.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 102, 106, 107, 108

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Workers' Compensation Act, 1990, as amended
Sections 22(1), 42, 43

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