

Client Services Policy Manual

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

Background

On 1984 01 01, The Workers' Compensation Act, 1983 (the Act) came into force. The Act provides a significant change to a new system of earnings-loss compensation. As well, it provides for calculation of earnings-loss benefits based on net instead of gross earnings.

Initially, the 1983 Act applied only to claims for injuries which occurred on or after 1984 01 01. In April, 1986, Newfoundland Regulation 106/86 (now repealed) came into effect. This regulation allows for the conversion of all pre-1984 claims to the earnings-loss system.

In compliance with Newfoundland Regulation 106/86, all temporary total disability and rehabilitation benefits were recalculated and continued on the basis of 90% of net earnings, effective November 1, 1986. All pre-1984 claims converted as of that date continue on the basis of earnings-loss compensation.

Amendments to the 1983 Act, effective January 1, 1993, reduce the rate used to calculate compensation for injuries after December 31, 1992 from 90 per cent to 75 per cent of net earnings for the first 39 weeks of benefits and 80 per cent of net earnings for benefits paid beyond 39 weeks.

For all periods of wage loss after March 31, 2018, the rate used for calculating compensation benefits shall be 85 per cent of net earnings. For all periods of wage loss between January 1, 1998 and March 31, 2018, the rate used for calculating compensation benefits shall be 80 per cent of net earnings. For all periods of wage loss between January 1, 1993 and December 31, 1997, the rate used for calculating compensation remains 75 per cent of net earnings for the first 39 weeks of disability except where the first 39 weeks of disability extends beyond December 31, 1997, in which case the rate shall be increased to 80 per cent as of January 1, 1998.

Policy Statement

Reopening's

If a claim for an injury which occurred prior to 1984 01 01 is reopened for earning loss/rehabilitation benefits, the rate of benefits is to be calculated as if the injury occurred on or after January 1, 1993.

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The worker's most recent annual earnings, either pre-injury or pre-reopening earnings (actual or estimated), shall be upgraded proportional to the annual increases in the Consumer Price Index (CPI) for Newfoundland and Labrador.¹

Pension Awards on Pre-1984 Claims: (Permanent Partial Disability and Permanent Total Disability)

Life pensions for permanent disability may be converted subject to the following provisions:

1. An injured worker who has no loss of earning capacity resulting from the compensable disability may be offered either:
 - a lump sum based on the capitalized reserve of his or her pension; or,
 - may continue to receive the monthly permanent partial disability allowance but no annual or other periodic increases shall be added to the monthly allowance.
2. An injured 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.
 - 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 "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.

¹The Industrial Aggregate Index (IAI) is used to adjust earnings from periods prior to January 1, 1993.

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4. In all cases, the pensioner will be given full details regarding any options and must sign an agreement of understanding and acceptance.
5. A worker who was injured prior to January 1, 1984, is not eligible for an annuity nor a permanent functional impairment award.

Exceptional Circumstances

In cases where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or unintended result, WorkplaceNL will decide the case based on its individual 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, Section 74 and Section 115 (Repealed)
Workplace Health, Safety and Compensation Act (the Act), Section 74.
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 Regulations CNR 1025/96, Section 22.

Amendment History

Original Effective Date	1986 11 01
Revision #2	1998 02 26
Revision #3	2005 08 16
Revision #4	2018 12 13

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