

Estimating Earning Capacity: Making Reasonable Efforts to Support a Job Search

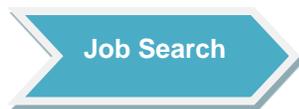
Background

Vocational rehabilitation planning consists of three steps:



These three steps are necessary to arrive at an appropriate wage loss benefit (economic loss payment) in cases where there is a gap in earnings between pre-injury levels and post-return-to-work estimated earning capacity levels.

Effective September 1, 2018, legislation will require WCB to ensure it has demonstrated it has made every reasonable effort to support the worker in his or her search for employment. As a result, we request your input on step 3 of the vocational rehabilitation process: *supported job search*.



What is WCB's current practice?

Policy 04-05 Part II, Application 3 – Job Search defines the job search support available to injured workers.

In practice, upon completion of a vocational plan, injured workers are eligible to receive up to three months (12 weeks) of supported job search assistance. When the provincial unemployment rate climbs to 6% or higher, this period is extended to four months (16 weeks).

All workers who participate in vocational planning are offered the same supported job search benefits. Supported job search benefits may consist of:

- Full compensation for the duration of the job search up to 12 or 16 weeks, and
- Resume writing
- Job leads
- Job search skills
- Interview skills
- One-on-one coaching

Once job searches are complete, **Policy 04-04, Part II, Application 1 – Permanent Disability** confirms under which circumstances WCB determines there is an impairment of earning capacity, leading to a drop in post-injury earnings.

In some cases, the job search leads to employment and the wage loss benefits (economic loss payments) reflect the actual loss between pre- and post-injury actual earnings.

Where no employment is found or very limited employment is secured (underemployment), the wage loss benefit reflects the expected loss between pre-injury earnings and what the vocational plan option(s) estimate(s) a worker's new earning potential to be. This is often referred to as "deeming."

What are the issues?

Policy 04-04, Part II, Application 1 allows WCB to pay a wage loss benefit regardless of the job search outcome. This proposed policy has been updated to confirm wage loss benefits may be estimated (or "deemed") **only when WCB has made every reasonable effort to support the worker in searching for suitable employment** (See Q4 and Q5). This change reflects new legislation that will come into effect September 1, 2018.

This change necessitates a review of the job search support available to injured workers and presents an opportunity for change.

There are many personal factors that influence the success of a job search. As a result, having the same window of job search support for all workers may not be effective in all cases.

What is WCB proposing?

WCB has considered the job search process and has developed alternatives for enhancing job search support to better fit the client accessing the service.

WCB proposes job search benefits align (and adjust) with each client's disability and employability factors as follows:

- 1. Active participation in the job search**
 - Is the worker actively seeking re-employment?
- 2. Job search support – evidence of availability**
 - Has the worker received at least 2 job leads reflective of the vocational goal?
- 3. Disability duration – how long has the worker been out of the workforce?**
 - Has the worker been off work more than 6 months?

4. Age

- Is the worker 55 years old or older?

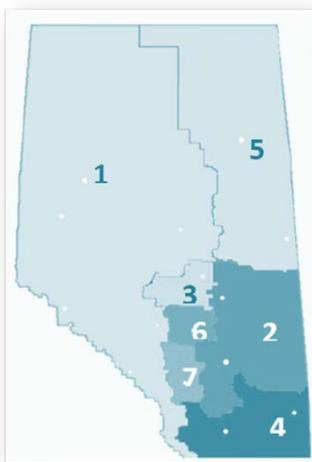
5. New industry/occupation unemployment rate

- Is the industry or occupation unemployment rate >6%?

6. Regional unemployment rate

- **Location** (AB 7 economic regions): Is the worker's regional unemployment rate >6%?

Economic regions are defined as follows:



1. Athabasca – Grande Prairie – Peace River and Banff – Jasper – Rocky Mountain House
2. Camrose – Drumheller
3. Edmonton
4. Lethbridge – Medicine Hat
5. Wood Buffalo – Cold Lake
6. Red Deer
7. Calgary

7. Salary targeted

- Is the target vocational option estimated to pay more than \$35,000/yr?

These considerations could lead to increases to the job search window in recognition of the challenges they may present to a worker searching for new employment.

WCB invites your input

WCB wants to ensure it considers the correct re-employment factors when making reasonable efforts to assist an injured worker in his job search and requests your input on these employability factors and the draft policy.

The posting will be open for comment until **March 6, 2018**.

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BoD Resolution ~~2017/08/32~~ **December 22, 2017**

APPLICATION 1: DETERMINING IMPAIRMENT OF EARNING CAPACITY

1. *Why does WCB need to determine the impairment of earning capacity resulting from the injury?*

WCB’s estimate of the impairment of earning capacity resulting from the injury is used to determine the benefits for which the worker is eligible. The economic loss payment (for injuries on or after January 1, 1995) and Earnings Loss Supplements (for injuries before January 1, 1995) are both based on impairment of earning capacity.

2. *When does WCB determine impairment of earning capacity?*

WCB determines impairment of earning capacity when the worker has reached both a medical and a vocational plateau. WCB will periodically review the extent of the impairment.

An exception is made when the worker is permanently totally disabled, in which case it is not necessary to reach a vocational plateau before determining impairment of earning capacity.

Medical plateau

The medical plateau is normally reached when the worker’s medical condition has stabilized, further significant medical improvement is unlikely, and permanent work restrictions can be confirmed.

In cases of permanent clinical impairment, the medical plateau and the medical assessment for permanent clinical impairment need not occur at the same time. Depending on the nature of the injury, WCB may recommend an additional period of time for minor changes to occur before assessing the permanent clinical impairment.

If the worker has a deteriorating condition a series of reviews may be required as the condition deteriorates.

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Vocational plateau

Generally, a vocational plateau is reached when the worker has completed the vocational rehabilitation plan and is considered employable.

If the worker is entering an apprenticeship program or other occupation with expected significant changes in earnings in the first few years, the vocational plateau is the point when the worker is employable in the occupation or ready to start the apprenticeship program.

3. *How does WCB determine whether there is a compensable impairment of earning capacity?*

Once the worker has reached medical and vocational plateaus, WCB compares the worker's annual net earnings at the time of the accident (calculated in accordance with the WCA and the WC Regulation), with the worker's actual or estimated post-accident net earnings. WCB then evaluates whether any reduction in earnings is attributable to the permanent disability.

4. *When does WCB estimate earning capacity instead of using actual post-accident earnings?*

WCB estimates the worker's earning capacity in suitable employment **only** when **it has made every reasonable effort to support the worker in searching for suitable employment, and**

- a) despite ability, a worker does not engage in employment, or
- b) a worker is unable to secure suitable employment, or
- c) a worker engages in employment which fails to maximize earning capacity.

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5. *What is meant by “every reasonable effort to support the worker in searching for suitable employment”?*

WCB has made every reasonable effort to support the worker’s search for suitable employment when:

- a) vocational services have been offered and completed, and
- b) a vocational plan has been developed with the worker, and
- c) a supported job search that takes individual factors such as age and target industry unemployment into account, has been completed, or
- d) the worker declines to participate in any aspect of the vocational planning and/or job search.

56. *What is suitable employment?*

For the purposes of estimating earning capacity, suitable means employment which is consistent with the worker's ability and which is within the worker's locale or may be obtainable where relocation is reasonable. WCB’s assessment of ability will be based on physical, vocational, social, and psychological circumstances and such other factors as WCB may consider relevant.

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67. *What is the estimate of earning capacity based on?*

The estimate of earning capacity is usually based on information related to the vocational plan. The plan identifies suitable employment and the worker's earning capacity in that employment. If the worker is self-employed, the estimate will normally be based on the approved business case.

WCB may base the estimate on other information under some circumstances (for example, if the worker unexpectedly increases earning capacity with other employment, the worker's compensable work restrictions change, etc.). Each case will be judged on its own merits.

See Policy 04-05 for details on return-to-work services and the return-to-work plan.

78. *What earnings are used if the worker had personal coverage at the time of the accident?*

If the worker had personal coverage at the time of the accident, WCB uses the net earnings that were used to determine the date-of-accident compensation rate, plus any applicable cost-of-living adjustments (see Policy 04-01, Part II, Application 2, Question 2).

89. *What if the impairment of earning capacity results from a non-compensable condition?*

WCB will not pay an economic loss payment or Earnings Loss Supplement if the remaining earnings loss is caused solely by a non-compensable condition (for example, if the worker's earnings loss is caused by a non-compensable, unrelated heart condition). WCB does, however, consider impairment of earning capacity to be compensable when the following conditions are met:

- a) despite the pre-existing condition, the worker was able to perform the job duties prior to the compensable accident, and
- b) the worker is no longer able to do so because of the permanent effects of the compensable injury.

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91 *Under what conditions will*
0. *WCB reduce or suspend*
compensation?

This policy question is effective December 1, 2005 and applies to claims occurring on or after this date.

WCB may suspend the payment of periodic compensation payments when a worker:

- a) adversely affects the conduct of a third-party action or an appeal arising from a third-party action, or
- b) does not cooperate with WCB in bringing a third-party action, or advancing an appeal arising from a third-party action. [s.22(9)(10)].

NOTE: Medical aid benefits are not affected.

10 *When is this policy*
11. *application effective?*

This policy application (Application 1 – Determining Impairment of Earning Capacity) is effective **January 1, 2018**, except when noted otherwise in a specific policy section(s).

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