WORKERS' SAFETY AND COMPENSATION COMMISSION
NORTHWEST TERRITORIES AND NUNAVUT

NEW PENSION SYSTEM PROPOSAL

AUGUST 2020

DISCUSSION PAPER

WSCC Workers' Safety & Compensation Commission | ᐃᖷᑲᓇᐃᓯᖅᑎᓄᑦ ᐊᑦᑕᓇᖅᑐᓂᒃ ᐊᒻᒪ ᓇᓪᓕᐅᒃᑯᒪᓂᒃ ᖃᐅᔨᓴᖅᑏᑦ
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Inuktitut

Hapkua titiqqat pijumagupkit Inuinnaqtun, uvaptinnut hivajarlutit.
Inuinnaqtun

Kīspin ki nitawihtīn ē nīhīyawihk ōma ācimōwin, tipwāsinān.
Cree

Tłı̨chǫ yatı k'ę̀ę̀. Dı wegodı newǫ dè, gots'o gonede.
Tłı̨chǫ

ʔerıhtł'ís Dëne Sųłıné yatı t'a huts'elkër xa beyáyatı theɂą ɂat'e, nuwe ts'ën yółtı.
Chipewyan

Edı gondı dehgáh got'ı̨e zhatıé k'ę́ę́ edatł'éh enahddhę nıde naxets'ę́ edahłí.
South Slavey

K'áhshó got'ı̨ne xədə k'é hederı ɂedı̨htł'é yerınıwę nídé dúle.
North Slavey

Jii gwandak izhii ginjìk vat'atr'ijąhch'uu zhit yinohthan jì', diits'àt ginohkhìi.
Gwich'in

Uvanittuaq ilitchurisukupku Inuvialuktun, ququaqluta.
Inuvialuktun

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Executive Summary

Delivering quality services and outcomes for our stakeholders is a key strategic priority of the Workers' Safety and Compensation Commission (WSCC). We are committed to ensuring claimants not only receive the benefits they are entitled to under the *Workers' Compensation Acts* of the Northwest Territories and Nunavut, but that those benefits are fair and reflect modern best practice. To deliver on this commitment we are undertaking a review of the pension compensation system framed by the *Acts*, and if supported by our stakeholders, are prepared to recommend significant legislative amendments to the Government of the Northwest Territories and the Government of Nunavut.

The intent of our proposal is to move from a pension for life system, based solely on percentage of permanent medical impairment and earnings at the time of injury, to a dual system that provides non-economic loss and long-term earning loss benefits.

Under this dual system, the first consideration would be a Non-Economic Loss Payment. This payment is not intended to compensate claimants for lost earnings, but rather to compensate for permanent medical impairments stemming from workplace injuries or illnesses. A one-time lump sum payment would be provided when a permanent medical impairment remains after a claimant reaches maximum medical recovery. The payment would be calculated by multiplying the claimant's percentage of permanent medical impairment, as defined in the *American Medical Association Guide to the Evaluation of Permanent Impairment*, by the maximum insurable remuneration established for the year the compensable injury occurred or the year their occupational disease was diagnosed.

The second consideration would be a Long-Term Earning Loss Benefit. This benefit would be paid to claimants who have a permanent medical impairment after reaching maximum medical recovery, and continue to have actual or estimated loss of earning capacity after all reasonable vocational rehabilitation efforts have been exhausted. These payments would be in addition to the Non-Economic Loss Payment and would be calculated based on 90% of the difference between the claimant's pre-injury net average earnings and post-injury actual or net estimated capable earnings, whichever is greater. This benefit would continue until the claimant no longer had a loss of earnings, or until the claimant reaches the eligibility age for a Government of Canada Old Age Security pension (currently age 65). Claimants who receive Long-Term Earning Loss Benefits would also be entitled to a retirement benefit (when they become eligible for Old Age Security) to help mitigate loss of retirement income.

Our New Pension System Proposal, as outlined in this discussion paper, was reviewed by an external actuary with respect to potential cost impacts. The preliminary review concluded the proposed structure did not represent a significant departure from the existing system in terms of cost, assuming similar claim outcomes as other jurisdictions in Canada. Under our current system the injury cost component for Pension and Survivor Benefits is $0.36 per $100 of assessable payroll. The injury cost component under the new proposed system would be between $0.31 and $0.41, for an incremental impact of -$0.05 to +$0.05 per $100 of assessable payroll.

Pension System Review Background

In 2008, the *Workers' Compensation Acts* of the Northwest Territories and Nunavut were enacted as a new statute entirely replacing the previous statute of the same name. Since that time, single and minor amendments have occurred. The WSCC pension system, as administered according to the *Acts*, was relatively unchanged in the 2008 statute, and has been operating with little change since the Commission was first established in 1974.

In 2014, under the direction of its Governance Council, the WSCC was tasked to review its current pension system in comparison to other jurisdictions. It was found that the WSCC was the only board/commission that still provided pensions for life founded on evaluating permanent compensation according to permanent impairment. There are two primary criticisms of this system and these reasons are generally why boards have adopted different compensation schemes over the past 30 to 35 years. These criticisms are noted in the 1987 *Report of Workers Compensation Review Committee* from Manitoba.

Criticisms of the permanent impairment-only permanent compensation system:

- Permanent impairment measures evaluate compensation according to how much of a body is damaged by a workplace injury. This system does not account for the type of job performed by a worker or the potential future wage-loss of the worker.
- Two workers with the same injury, but earning different amounts, will receive different compensation.

By combining permanent impairment ratings with a financial reward system the permanent compensation scheme is not equitable to all workers. By combining the two criticisms above it is possible to imagine the following scenario:

> *Two workers with different jobs, each earning the same income and sustaining the same percentage of permanent impairment, receive equal permanent lifetime pensions. One worker is a heavy-duty mechanic while the other is a high school teacher. The teacher is able to return to work, therefore earning an income as well as receiving the permanent lifetime pension. The heavy-duty mechanic is unable to return to work, ceases to earn an income, and only receives the permanent lifetime pension.*

Inequities of this kind were a significant factor for all boards when changing to their current systems. It must be noted that while all other Canadian workers' compensation boards have migrated from a system solely based on awards for permanent impairment, each has a unique system whereby permanent impairment awards have been intertwined with wage-loss benefits.

One thread knits all Canadian workers' permanent compensation (pension) schemes together: this thread is that permanent compensation is paid to a worker when the worker meets their maximum medical recovery from a work-related injury or occupational disease but is left with a residual impairment. Within this common principle, there are a number of other significant similarities. Most jurisdictions differentiate between economic loss benefits and non-economic loss benefits; most cease pension payments at the age of retirement; and most continue to provide some form of assistance thereafter in the form of an annuity.

Based on the review presented in 2015, the Governance Council initiated research of a New Pension System Proposal (Pension Project). The intent of the project was confirmed as follows:

> *Move the WSCC from a pensions for life system based solely on percentage of permanent medical impairment and earnings at the time of injury, to a dual pension system (similar to the rest of boards in Canada) that provides for: a) non-economic loss (one-time payout for permanent impairment) and b) ongoing earnings loss benefits (wage replacement/supplement) based on loss of earnings capacity caused by disability that would end at retirement (or some other yet to be determined point in time).*

WSCC Current Pension System

The WSCC currently provides pensions for life to claimants with permanent medical impairments whose injury or occupational disease arose out of and during the course of employment; or to a claimant's spouse or dependents in the case of a workplace death. Application of pensions is described in policies *06.01 Pension Entitlement, 06.02 Pension Conversions and Advances,* and *06.03 Calculation of Permanent Compensation*, which are summarized below.

There are on average 1,100 active pension compensation claims in the WSCC system, with an average cost of $15 million per year, accounting for 48% of all claims costs.

Claimants

When the claimant reaches maximum medical recovery and a medical impairment remains, the impairment is considered permanent. A claimant with a Permanent Medical Impairment (PMI) receives a monthly pension payment calculated by multiplying the PMI, determined in accordance with the most recent version of the *American Medical Association Guide to the Evaluation of Permanent Impairment*, by 90% of the claimant's net monthly remuneration. The claimant's pension cannot exceed 90% of the Year's Maximum Insurable Remuneration (YMIR) in the year of injury or diagnosis.

If a claimant's monthly pension is less than 2.75% of the YMIR for the year of their injury, the WSCC increases their payment to the lower of either 100% of the claimant's net monthly remuneration, or 2.75% of YMIR.

The WSCC may adjust a pension to reflect a change in the claimant's condition. This may increase or decrease the payment amount. The WSCC may also pay additional pension compensation (not exceeding 90% of the claimant's net monthly remuneration) if the WSCC determines the pension compensation is inadequate because: the percentage of the claimant's earning capacity lost, due to the PMI, is greater than the percentage of their PMI; or the claimant's Net Annual Remuneration before their injury did not fairly represent the claimant's probable earning capacity. On average, this adjustment is applied to 3% of active pension compensation claims.

A Supplementary Pension Increase (SPI) is an adjustment the WSCC makes to an existing pension to maintain the purchasing power of that pension. In the event of an increase in the cost of living, the WSCC increases pension payments by a calculated percentage on January 1 of each year.

The WSCC automatically approves a claimant's request for a full pension conversion (lump sum payment) when the claimant's PMI is 10% or less and the claimant is not receiving additional pension compensation. Requests for conversions when the claimant's PMI is greater than 10% are considered under policy *06.02 Pension Conversions and Advances*.

Spouse and Dependents

A dependent surviving spouse receives a monthly pension for life. The pension is equal to 3.08% of YMIR in the year of the worker's death. The WSCC pays an additional lump sum payment equal to 30% of YMIR in the year of the worker's death, to assist a spouse immediately following a worker's death. Any other surviving spouse, as defined in the *Acts*, is entitled to a pension for a maximum of five years after the date of the worker's death or until that surviving spouse dies, whichever is earlier.

Where there is no surviving spouse receiving benefits, natural parents are entitled to receive compensation if they assume full or shared responsibility for a child of the deceased worker. If two or more persons assume full or shared responsibility for a child of the deceased worker, compensation is divided equally among them.

A healthy child who is dependent on the worker, and under 19 years of age, receives a monthly pension equal to 0.625% of the YMIR in the year of the worker's death. The monthly pension continues until: the child turns 19; or as long as the child is enrolled in an academic institution until granted a university degree or college diploma for the first time or completes a course in technical or vocational training (whichever occurs first); or if the child is physically or mentally incapable of earning their own living (in this case the child receives a monthly pension for life).

Other dependent family members may be entitled to compensation when a deceased worker does not have a surviving spouse or children. In these circumstances, dependency is not limited to persons with a blood relationship to the worker. The WSCC determines dependency-based entitlement on a case-by-case basis.

The WSCC also considers special circumstances that may create a need for additional compensation including but not limited to: a surviving spouse who requires hospitalization and whose children require care in their absence; a surviving spouse with a deteriorating medical condition; or a dependent child with a congenital disorder, who requires the services of an attendant of placement in an institution.

For comparison, an interjurisdictional review of other boards/commissions is provided in Appendix A.

New Pension System Proposal

A) Non-Economic Loss Payment (NELP)

WSCC Current Practice: *NELP is not considered under the current pension system.*

Non-Economic Loss Payments (NELP) are not paid to compensate a claimant for lost wages, but rather to compensate for a permanent medical impairment stemming from a workplace injury or illness (e.g. loss of a finger). The NELP benefit is for the degree of permanent medical impairment; it is not for pain and suffering. Permanent medical impairment is defined as a physical or functional abnormality or loss (including disfigurement) resulting from an injury and any psychological damage arising from the abnormality, or loss that continues to exist after the claimant reaches maximum medical recovery.

Recommendation

Provide for a Non-Economic Loss Payment (NELP) once the claimant has reached maximum medical recovery and a Permanent Medical Impairment (PMI) is determined. The payment would be a one-time lump sum payment based on their PMI, as currently defined in the *American Medical Association Guide to the Evaluation of Permanent Impairment*, and would allow for reassessment if the impairment deteriorates.

The recommended NELP calculation would be straightforward, transparent, and easy to calculate. In line with four other Canadian boards, we are recommending that NELP be calculated by multiplying the claimant's PMI by the YMIR for the year of their injury or diagnosis.

Example:

> *The average PMI applied to WSCC claimants in 2020 was 4%. Based on the 2020 YMIR of $94,500, the average NELP payment would have been $3,780. For clarity, a claimant with a left thumb amputation in 2020 received an 11% PMI which would have resulted in a NELP payment of $10,395.*

NELP payments under this recommendation would be consistent for all claimants. It eliminates the disparity in our current system that compensates claimants differently for a PMI depending on their earnings. The flawed thinking in our current calculation is that a claimant's earning loss is directly proportional to their PMI. In theory it follows that an 11% PMI should result in 11% earning loss, which is incorrect if one claimant is dependent on their thumb to perform their job and the other is not. Currently, they would each receive 11% of their net monthly remuneration up to YMIR for life even though one was able to return to work, with no earning loss, and the other was unable to return to their pre-injury occupation.

Under a new pension system proposal long-term economic loss (earning loss), or deterioration in a claimant's earning capacity, resulting from the workplace injury or disease would be considered separately. In cases where there is no earning loss, NELP would be the only pension benefit payment; in cases of earning loss the claimant would receive NELP as well as an ongoing Long-Term Earning Loss Benefit.

B) Long-Term Earning Loss Benefits (ELB)

WSCC Current Practice

Claimants with a PMI are awarded a monthly pension for life calculated by multiplying the claimant's PMI by 90% of their net monthly remuneration to a maximum of YMIR and indexed annually.

Long-Term Earning Loss Benefits (ELB) are paid to a claimant that has a permanent medical impairment after reaching maximum medical recovery, and continues to have an actual or estimated loss of earning capacity after all reasonable vocational rehabilitation efforts have been exhausted. Some jurisdictions pay ongoing earning loss benefits and do not make a distinction between earning loss before (short-term) and after (long-term) maximum medical recovery.

Recommendation

Provide for a Long-Term Earning Loss Benefit (ELB) that is considered when NELP is first authorized. Prior to a NELP award, loss of earnings would be covered under the current application of Temporary Total or Temporary Partial Disability benefits.

The ELB would be calculated based on 90% of the difference between the claimant's pre-injury net average earnings and post-injury actual or net estimated capable earnings, whichever is greater, offset by 50% of any net Canadian Pension Plan Disability benefits received related to the compensable injury, up to YMIR. ELB would be adjusted annually in line with the current practice for Supplementary Pension Increases.

Earnings used to calculate ELB would automatically be reviewed for applicable adjustment 24 months after the initiation date, and then again 36 months after the 24-month review. Benefits would also be reviewed as deemed necessary by the WSCC, or at the request of the claimant if there has been a material change in their circumstances.

ELB would continue until the claimant no longer has loss of earnings, or until the claimant is eligible for a Government of Canada Old Age Security (OAS) pension (currently 65). However, if the worker is two years below the age eligible for OAS (currently 63) or older at the time of injury or diagnosis the worker would be entitled to ELB for up to 24 months.

Workers who receive ELB would also be entitled to a retirement benefit to help mitigate loss of retirement income when their ELB ends. This benefit would be equal to 10% of the total ELB paid over the life of their claim, plus accrued interest. If the accumulated amount is less than YMIR in the year the payout is made, the payment would be made in a lump sum to the claimant. If the accumulated amount exceeds this amount, the claimant must purchase an annuity from an external investment organization of their choice. There is no restriction on the term of the annuity purchased. If the claimant should pass away prior to receiving their retirement benefit, and the cause of death is unrelated to their compensable injury, the amount set aside would be paid to the designated beneficiary at the time of death. If the cause of death is related to their compensable injury, the retirement benefit would be transferred as part of the dependent benefits.

Example:[1]

*A claimant, age 45, is awarded an 11% PMI and received a NELP payment of $10,395. Prior to injury, the claimant's net average annual earnings were $80,000. After completing vocational rehabilitation and returning to suitable employment, the claimant's net earnings were $60,000. Monthly long-term earning loss benefits were calculated for this worker as (($80,000 - $60,000)*90%)/12 = $1,500 per month. This worker was entitled to ELB until age 65, and was paid a total amount of $360,000. When the worker turned 65 ELB ended and the worker was entitled to a retirement benefit. The accumulated retirement benefit was calculated as $43,422. Total pension cost for this claim would be $413,817.*

*Under our current system, had this claimant died at age 80, the monthly pension payment would have been (($80,000*90%)*11%)/12 = $660 per month. The total pension cost for this claim over 35 years would have been $277,200.*

Under the current system the assumption is that all workers with a PMI have earnings loss, which is not the case. Based on an analysis of recent pensions it was found that over 85% of pension claimants actually returned to work with no long-term earning loss. To demonstrate the impact assume we have 100 pensionable claimants with the same circumstances as the example above, and use a more conservative estimate of 60% having no earning loss. The total pension cost under the new system for the 100 workers would be $17,176,380. Under the current system the total pension cost would be $27,720,000. This results in a $10.5 million cost savings under the new system while directing increased benefits to workers who have actual earning loss.

C) Determination of Estimated Capable Earnings

WSCC Current Practice

As the calculation of permanent compensation is not currently based on loss of earnings or earning capacity, there is no defined method for determining estimated capable earnings.

In the majority of cases, earning loss is determined by comparing a claimant's net average earnings before their injury to their actual net earnings after their injury. In some cases, where a claimant is unable to return to their pre-injury employer or occupation, a determination must be made on what the claimant is estimated to be capable of earning, at a suitable occupation after the injury. As noted by subject matter experts in other jurisdictions, deeming earnings is one of the most challenging aspects of an earning loss system. As such, an in-depth review was completed and a specific recommendation for this component of section B (Long-Term Earning Loss Benefits) has been provided.

Recommendation

Provide for a process where the WSCC may determine a claimant's capable earnings if the claimant has a PMI, and a vocational rehabilitation program, or reasonable re-employment efforts, are unable to return the claimant back to suitable employment that eliminates earning loss.

[1] For simplicity this example does not include annual adjustments for CPI or WSCC equivalent of a supplementary pension increase (SPI), CPPD deductions, or other changes in earnings.

As a last resort, after all reasonable vocational rehabilitation or re-employment options have been exhausted, the WSCC may estimate the claimant's capable earnings in suitable employment and/or occupation. This estimation would be considered when: despite ability, a claimant does not engage in employment; or a claimant is not able to secure suitable employment; or a claimant engages in employment which fails to maximize earning capacity.

In determining a suitable occupation the WSCC must consider: a claimant's functional abilities; a claimant's employment-related aptitudes, abilities, and interests; labour market trends and the likelihood of the claimant being able to secure and maintain employment; and in accordance with applicable human rights legislation, any pre-existing non-work related conditions a claimant may have, as well as any other human rights-related accommodation requirements.

The WSCC would use regional, national, and/or specific employer resources to identify suitable employment that may reasonably exist in the current labour market. Wage scales applied to suitable employment would be based on identified specific employment opportunities, union rates, or the wage scale in the Canadian Province or Territory where the claimant resides. Where the claimant resides outside of Canada, or a wage scale is unavailable, a Canadian national wage scale would be used.

When a claimant has a physical functional ability to work at least three hours a day, that claimant would be considered capable of earning minimum wage. If entering a new occupation in which the claimant has no previous experience the wage would be based on the average of the base entry wage. For claimants whose vocational rehabilitation plan is designed to improve or augment existing or transferable skills, estimated capable earnings would be the mid-point of the scale.

Young, New, and Workers Re-entering the Workforce

WSCC would recognize the unique situation for young workers under age 25, and/or workers entering or re-entering the workforce, and review loss of earning benefits on a case-by-case basis. In some cases earning loss benefits would need to be calculated based on the difference between capable earnings and pre-injury net earnings or post-injury net actual earnings, whichever is greater. Benefits may be adjusted accordingly when: the claimant is under 25 at the time of injury; and/or it is established that under normal conditions the claimant's earnings would have increased. Evidence that indicates that the average earnings would probably have increased include: acceptance into an educational program at the time of injury; approaching completion of an educational program at the time of injury; and/or a job offer. In cases where capable earnings would be used the earnings would be calculated in one of two ways:

1) If there was a specific career plan in place at the time of injury the claimant's capable earnings would be estimated at the average entry-level wage for that occupation. When the entry-level wage for a specific career plan is less than 50% of YMIR capable earnings would be estimated at 50% of YMIR.
2) If there was no specific career plan in place at the time of injury the claimant's capable earnings would be estimated at 50% of YMIR.

Example:[2]

In 2020 a claimant, age 21 and residing in the NWT, was working a summer job in the NWT while enrolled in law school at the time of injury. The summer student average net annual earnings were $20,000, a 50% PMI was assessed, a vocational rehabilitation program was completed, and the claimant is engaged in suitable employment with actual post-injury net earnings of $50,000. The entry-level average annual net earnings for a lawyer in the NWT are $80,000.

*Under our current system the claimant's pension for life would be calculated as (($20,000*90%)*50%)/12 = $750 per month. Should the claimant live to age 80, the total pension cost would be $531,000.*

*Under the recommended new system, without the specific consideration for young, new, and/or workers re-entering the workforce, there would be a one-time Non-Economic Loss Payment (NELP) of ($94,500*50%) = $47,250. As the post-injury actual net earnings are greater than the pre-injury net earnings there would be no Long-Term Earning Loss Benefit (ELB).*

*Under the recommended new system, with specific consideration for young, new, and/or workers re-entering the workforce, there would be a one-time NELP benefit of $47,250, plus ELB as the net capable earnings are greater than the pre-injury net earnings (($80,000 - $50,000)*90%)/12 = $2,250 per month. Retirement benefits would also apply. The ELB would continue until the claimant no longer had a loss of earnings, meaning they were able to continue with their career path after a delay, or until the claimant reached age 65, whichever came first.*

Calculation with a 5-year delay in the claimant's career path:

- *NELP = $47,250*
- *ELB = 60 months at $2,250/month = $135,000*
- *Retirement benefit = $15,795*
- *Total Pension Cost = $198,045*

Calculation with a 10-year delay in the claimant's career path:

- *NELP = $47,250*
- *ELB = 120 months at $2,250/month = $270,000*
- *Retirement benefit = $31,590*
- *Total Pension Cost = $348,840*

Calculation if claimant was not able to resume career path, ELB paid until age 65:

- *NELP = $47,250*
- *ELB = 528 months (44 years) at $2,250/month = $1,188,000*
- *Retirement benefit = $138,996*
- *Total Pension Cost = $1,374,246*

[2] For simplicity this example does not include annual adjustments for CPI or WSCC equivalent of a supplementary pension increase (SPI), CPPD deductions, or other changes in earnings, and the 2020 YMIR of $94,500 is used.

D) Dependent Benefits

WSCC Current Practice

Spouse – The spouse is entitled to a one-time lump sum payment equal to 30% of YMIR ($28,350 based on 2020 YMIR), and a monthly pension for life equal to 3.08% of YMIR in the year of the worker's death ($2,910 based on 2020 YMIR).

Dependent Children – A child who is dependent on the worker, and under 19 years of age, receives a monthly pension equal to 0.625% of YMIR in the year of the worker's death ($590 based on 2020 YMIR). Benefits will extend beyond age 19 if the child is enrolled in an academic institution and end when they have been granted a degree or diploma for the first time or completed a course in technical or vocational training.

Recommendation

In keeping with the intent of this proposal, changes are recommended to spousal and dependent payments. The definitions of spouse and dependent would remain unchanged; who would be entitled to compensation does not change.

To shift dependent benefits to a system based on earning loss the total amount paid should not exceed 90% of the deceased worker's net average earnings. Under the current system dependent payments are based on YMIR with no cap to the total amount paid. With multiple dependents, and diverse family structures, the amount currently paid can be greater than the deceased worker's net average earnings. This exceeds the intent of earning loss coverage, which is to make whole the financial responsibility for dependents.

It is recommended that dependents be considered as a whole, and benefits adjusted to ensure fair allocation up to 90% of the deceased worker's net average earnings including long-term earning loss benefits when applicable. The allocations, after identifying all impacted dependents would be monthly payments equal to:

- Dependent Children: 10% of net average earnings until age 19.
- Guardian(s) (not including Primary Spouse): 10% of net average earnings until youngest dependent child in their care turns 19.
- Other Spouse (based on proven financial dependency): up to 20% of net average earnings until the worker would have turned 65 (if the Other Spouse had no proven financial dependency, but was the guardian of dependent children, they would be considered as a Guardian only).
- Other Dependents (e.g. Dependent Parent) (based on proven financial dependency): up to 10% of net average earnings until the worker would have turned 65.
- Primary Spouse: 90% of net average earnings less total percentage allocated to all other identified dependents until the worker would have turned 65.

The minimum allocated to a Primary Spouse would be 50% of the deceased worker's net average earnings. Should allocations to identified dependents result in the Primary Spouse falling below this minimum, then the Primary Spouse receives 50%, and all others are prorated based on their percentage allocation. The result would be a total monthly payment, covering all dependents, to a maximum of 90% of the deceased worker's net average earnings.

The Primary Spouse would also receive a lump sum payment of 30% of YMIR to assist with transition, as they would under the current system. Their monthly payment, as determined above, would be reduced by 50% of any net CPP survivor benefits payable to them as a result of the death, and would end on the date the deceased worker would have turned 65. The Primary Spouse would also be entitled to the same retirement benefit as a worker: 10% of total Long-Term Earning Loss Benefits paid to them, plus accumulated interest, paid on the date the worker would have turned 65 for the purchase on an annuity. If the worker was receiving retirement benefits at the time of death, and the Primary Spouse was designated as the beneficiary, the spouse's retirement benefit contributions would be combined with the funds previously set aside for the worker.

Monthly payments to dependent children may extend beyond age 19, up to age 25, if the child is enrolled in an academic institution until they receive their first certificate, diploma, or degree, or complete a course in technical or vocational training.

Example 1:[3]

A worker died in 2020 due to a workplace injury at age 50; their net average earnings at the time were $80,000. The worker's spouse was age 48, and their one dependent child was age 15 on the date of the fatality. This death did not result from a pre-existing compensable claim. The 2020 YMIR was $94,500, and the child graduated from university at age 23.

*Under our current system the spouse would have received a lump sum payment of ($94,500*30%) = $28,350, and a pension of ($94,500*3.08%) = $2,910 per month for life. The dependent child would have received a pension of ($94,500*0.625%) = $590 per month for 8 years. The total pension cost for this claim, had the spouse lived to age 80, would have been $1,202,430.*

*Under the recommended new system, the spouse would still receive the $28,350 lump sum, the spousal earning loss benefit would be ($80,000*80%)/12 = $5,333 per month for 15 years (when the worker would have turned 65), and the retirement benefit would be $98,280. The dependent child would have received a pension of ($80,000*10%)/12 = $666 per month for 8 years. The total pension cost for this claim would have been $1,150,506.*

Example 2:

Same as above, except the death is the result of a pre-existing compensable claim. The claimant had a 50% PMI established in 2015. The claimant's pre-injury net earnings were $80,000, and post-injury actual net earnings in suitable employment were $30,000.

[3] For simplicity these examples do not include annual adjustments for CPI or WSCC equivalent of a supplementary pension increase (SPI), CPPD deductions, or other changes in earnings.

*Under our current system, the claimant would have received a monthly pension of (($80,000*90%)*50%)/12 = $3,000 for the five years prior to death. After the claimant's death the spouse would have received a lump sum payment of $28,350, and a pension of $2,910 per month for life. The dependent child would have received a pension of $590 per month for 8 years. The total pension cost for this claim, had the spouse lived to age 80, would have been $1,382,430.*

*Under the recommended new system, the claimant would have received a monthly Long-Term Earning Loss Benefit (ELB) of (($80,000-$30,000)*90%)/12 = $3,750 for the five years prior to death and contributions would have been made toward a retirement benefit. After the claimant's death the spouse would have received a lump sum payment of $28,350, and a spousal earning loss benefit of (($45,000+$30,000)*80%)/12 = $5,000 per month for 15 years (when the worker would have turned 65), and a total combined retirement benefit of $116,662. The dependent child would have received a pension of (($45,000+$30,000)*10%)/12 = $625 per month for 8 years. The total pension cost for this claim would have been $1,330,012.*

In Example 2 the overall cost difference between the two systems is 4% ($52,418). From the family's perspective, the significant difference is the change in income prior to retirement. Under the old system, prior to death they realized a $14,000 per year income reduction; after death the income reduction was $45,080 (56% of the worker's pre-injury income). Under the new system the income reduction was $5,000 per year prior to death, and $20,000 after (25% of the worker's pre-injury income).

Appendix A: Interjurisdictional Review

Non-Economic Loss Payment (NELP)

WSCC Current Practice
NELP is not considered under the current system.

British Columbia and **Nova Scotia** are the only other boards that have not currently instituted a form of the NELP payment.

Alberta, New Brunswick, and **Newfoundland** multiply the percentage of permanent medical impairment (PMI) by the Year's Maximum Insurable Remuneration (YMIR).

Yukon
Multiplies the PMI by 125% of YMIR. The worker can choose a lump sum or an annuity.

Saskatchewan
Has set $45,200 as their maximum. PMI's of 0.5% to 4.87% receive the minimum payment amount of $2,200. All other impairment ratings are PMI multiplied by YMIR.

Manitoba
Pays $1,030 for each percentage of PMI below 30%. 30% or greater receives $30,900 plus $1,240 for each full 1% of impairment in excess of 30%.

Ontario
Has a base amount of $51,535.37. $1,145.63 is added for each year that the worker's age is less than 45 at time of injury. The maximum amount considered is $74,439.52. The worker's PMI is multiplied by this amount. $1,145.63 is deducted for each year the worker is over 45 at time of injury. The minimum amount is $28,631.22. The worker's percentage of impairment is multiplied by this amount.

Prince Edward Island (PEI)
Provides a lump sum payment equal to 1/100 of the maximum annual earnings in effect on the day of the accident for each one percent of total body impairment. Example: if YMIR is $35,900 and the PMI is 4.5%, award would be $35,900*.045 = $1,615.50. No award is less than $500 or more than the YMIR in effect on the day of accident.

Long-Term Earning Loss Benefits (ELB)

WSCC Current Practice
Workers with a PMI are awarded a pension for life calculated by multiplying the worker's PMI by 90% of their net monthly remuneration to a maximum of YMIR and indexed annually.

Yukon

Long-term loss of earnings are calculated based on 75% of the gross average weekly earnings, offset by 50% of the gross CPP disability benefits paid by the federal government, up to YMIR and are indexed annually. Long-term loss of earning benefits consider earnings from all employment over the two calendar years immediately prior to the date of the injury, and selects earnings over the calendar year in the worker's favour. The amount used should fairly represent the worker's long-term annual loss of earnings. In exceptional circumstances where the rate may not provide reasonable representation of loss of earnings, the benefit may be calculated on comparable earnings of other workers in the same or similar occupations in the Yukon (or a similar occupation in Canada if a Yukon comparison cannot be made).

Loss of earning benefits (LOE) end when a worker is eligible for Old Age Security Benefits. However, a worker may still be entitled to loss of earning benefits if they are, on the day of injury, at least the age, less two years, that at which a worker becomes entitled to apply for Old Age Security Benefits. In this case, the worker is entitled to loss of earning benefits for up to 24 months.

If the worker receives LOE for at least 24 months, an amount equal to 10% of the total compensation for loss of the earnings paid during the period of disability, together with the accrued interest, is used to provide an annuity to the worker. This is payable at the later of, when the worker becomes entitled to apply for Old Age Security Benefits, and the date that compensation ceases to be payable to the worker. If the accumulated annuity exceeds the minimum amount to be paid out in a lump sum, the worker must purchase an annuity from an external investment organization of their choice. There is no restriction on the term of annuity purchased.

British Columbia

Two methods exist to determine a worker's entitlement to a permanent disability award: the loss of function method and the loss of earnings method. The loss of function method estimates the impairment of a worker's earning capacity based on the nature and degree of injury. The permanent disability award is based on net earnings multiplied by the worker's PMI. The loss of earnings method is undertaken only where a worker's disability is "so exceptional" that an amount determined under the loss of function method would not appropriately compensate the worker. The loss of earnings method is based on 90% of the difference between pre-injury and post-injury earnings, or an estimate of the worker's capable earnings in a suitable occupation. The *Act* does not provide direction on how WorkSafeBC should compare pre-injury and post-injury earnings to determine a worker's loss of earnings award.

A cost of living allowance may be applied annually and benefits are usually paid until retirement at age 65. There are some exceptions that depend on individual circumstances, such as age at the time of injury and a specific plan made prior to the injury to work beyond 65.

If a worker was receiving a monthly disability award, they are entitled to a retirement benefit. The Board sets aside an amount equal to 5% of the worker's permanent disability payments and invests it until the date of retirement. In the case of lump sum benefits, they are paid at the time the retirement award is granted. For monthly benefits, they are paid when the worker reaches the age of retirement.

Alberta

ELB is calculated using date of accident net earnings less net earnings from the worker's new job. 90% of this amount is divided by 12 to determine monthly compensation, and a cost of living adjustment is applied annually. This ELB is paid to age 65, unless there is sufficient and satisfactory evidence to show that the worker would have continued to work past that age, if the injury had not occurred.

After age 65, to recognize loss of pension income caused by decreased opportunity to contribute to pension plans, the WCB pays ELB65 which is the average ELB over the last five years or all ELB if the ELB has been in place for less than five years. This amount is multiplied by the total number of years the worker received ELB (to a maximum of 35), then multiplied by 2%. This ELB65 is paid monthly for life.

Example:

- *Age 55 at time of injury in 2007.*
- *ELB payments of $262.43 ($3,149 annually) after returning to work.*
- *It is now 2017. The worker is 65 and their ELB transfers to ELB65 and calculated to be a monthly payment of $52.49 ($629.83 annually).*

Saskatchewan

Wage-loss benefits are based on 90% of net earnings, and cannot be more than the YMIR on the date of injury. Benefits are adjusted each year based on changes in CPI. Wage-loss benefits continue as long as the injury continues, but not after age 65. Some exceptions could apply. For workers 63 years or older, wage-loss benefits can only be paid for a maximum of two years from the date those wage-loss benefits begin, provided the worker is unable to earn all or part of their earnings because of their injury.

If a worker gets wage-loss benefits for more than 24 months in a row, an amount equal to 10% of the worker's eligible benefits are invested to help the worker build retirement income. The amount set aside, plus accrual of interest is provided to the worker at age 65 and they have six months to purchase an annuity. The total amount set aside may also be paid in a lump sum to the worker if it is less than the minimum annuity amount of $25,000.

Manitoba

When the worker has actual earnings, the actual earnings will be used to calculate the difference between pre-injury earnings and post-injury earnings. When necessary, earnings can be estimated based on Probable Yearly Earnings Capacity, which are the worker's projected earnings for the next 12 months based on the worker's established work pattern. Benefits are paid on 90% of the net loss of earnings.

An average earnings review will take place when the pension benefit entitlement is being calculated, and when a worker has been in receipt of pension benefits for 12 weeks.

Generally, earning loss benefits end at age 65, and are indexed on the first day of the month following the second anniversary of the date of accident and annually thereafter. When the worker is 61 years or older on the date of accident, the date of retirement will be considered to be the accident date plus 4 years.

At age 65, if the worker was paid benefits for 104 weeks following their injury and their employer pension was affected, they are eligible for an annuity. The amount set aside is dependent on the amount the employer was contributing before the injury and interest is applied at the end of each year. The annuity is funded by the WCB, but the worker may also elect to make contributions to the fund. The worker has 4 annuity options to choose from: an annuity that continues during the life of the annuitant; a joint annuity that continues during the lives of the annuitant and the spouse of the annuitant (subject to a decrease of 1/3 on the death of one of them); an annuity that continues for a fixed term of 5, 10, 15, or 20 years; or an annuity that continues for the longer of the life of the annuitant, and a fixed term of 5, 10, 15, or 20 years.

Ontario

Loss of earning benefits are based on 85% of the difference between the worker's pre-injury net average earnings (NAE) and post-injury NAE subject to legislated minimum and maximum amount of compensation.

Loss of earning benefits continue until the worker is no longer impaired; until they no longer have loss of earnings; or until they reach age 65. If the worker is still impaired at age 65, loss of earning benefits stop, but loss of retirement income benefits may apply. If the worker is 63 years old or older at the time of injury, they can receive loss of earning benefits for up to two years as long as they have loss of earnings. Each year, loss of earning payments are adjusted to take inflation into account. Loss of earning benefits are reviewed before the end of the 72nd month post-injury and if there is significant deterioration, loss of earning is again reviewed 24 months after the non-economic loss processing date. After the final loss of earning review it is the worker's responsibility for reporting any material change in circumstances.

Workers who are 55 years of age or older when the WSIB determines that the worker is entitled to loss of earning benefits, have reached maximum medical recovery, and have completed a work transition plan, may elect for a "no review" option. Once the worker elects the no review option the worker is entitled to the same loss of earning benefit payments until they are 65.

If the worker is under 64, on the date of injury, and has received loss of earning benefits for 12 continuous months, an amount equal to 5% of all loss of earning benefits is set aside to pay for loss of retirement income (LRI) benefits. The 5% is over and above regular payment, but will not be paid until age 65. The worker can also choose to make contributions by having an additional 5% deducted from their loss of earning payments. At age 65 LRI benefit is paid based on the amount set aside, contributed by the worker, and any investment income that the contributions earned.

New Brunswick

Loss of earning benefits are based on 85% of the difference between the worker's pre-injury net average earnings (NAE) and post-injury net estimated capable earnings subject to maximum allowable benefits payable. There is no legislated difference between regular loss of earning benefits and long-term disability (LTD) benefits, except that CPP disability benefits are deducted from LTD benefits. Estimated capable earnings are usually zero following the injury (during rehabilitation); however, as the injured worker's medical recovery progresses, actual earnings or estimated capable earnings may change, resulting in a recalculation of earnings loss. Loss of earning benefits are reviewed annually and adjusted where appropriate; they are also indexed annually.

Benefits continue until the loss of earnings cease; the end of the month in which the injured worker reaches age 65; for a period not exceeding two years if the workers was 63 years of age or more at the time of injury; or the disability no longer exists, whichever comes first.

If a worker receives loss of earning benefits for 24 consecutive months, the WCB begins setting aside funds for a retirement annuity benefit. The amount is 10% (changed from 5% in 2009) of benefits plus quarterly interest based on the amount of benefits to which the worker is entitled regardless of the amount the worker actually receives.

Nova Scotia

There are two types of long-term benefits if a workplace injury is permanent. There is a Permanent Impairment Benefit which is paid for life, and calculated as 30% of the PMI on 85% of net average earnings. If there is earnings loss greater than the amount of the Permanent Impairment Benefit, then Extended Earnings Replacement Benefits (EERB) are applied. EERB is the difference between the worker's earnings before the injury and their earnings, or ability to earn, after the injury. EERB is calculated at 75% of net loss of earnings during the first 26 weeks after injury, and 85% after 26 weeks to YMIR, indexed annually and, payable to age 65. EERB is reviewed at 36 months and 24 months after the 36-month review (or as required).

At age 65 EERB is replaced by an annuity, equal to 5% of total EERB benefits plus interest. Interest is applied monthly based on prorated annual rate. The annual rate is based on the five year guaranteed investment certificate rate of return as reported by the Bank of Canada as of December 31 of the preceding year, and is applied to accumulated value including interest to date. The annuity is paid in a lump sum if it is below $10,000.

Prince Edward Island (PEI)

Wage-loss benefits are calculated on 85% of the worker's loss of earnings capacity up to YMIR. Earning loss capacity is the difference between the worker's net average earnings before the accident, and the net average amount the WCB determines the worker is capable of earning after the accident. Benefits are paid until the loss of earnings end, or the date the worker turns 65. The only exception is where the worker is 63 years of age or older at the commencement of a loss of earning capacity. In this circumstance, wage-loss benefits may be paid up to, but no later than, the date 24 months following the date of the accident.

Temporary wage-loss benefits are reviewed prior to the calculation of extended wage-loss benefits. Extended wage-loss benefits are reviewed 36 months after the initial award, as well as 24 months after the 36-month review. Benefits are also reviewed if there is an adjustment to the degree of permanent impairment or a deliberate misrepresentation. Extended wage loss is also adjusted annually by the lesser of 80% of the CPI for Charlottetown and Summerside or 4%.

Pension Replacement Benefits are reviewed on a case-by-case basis by an external actuary. The worker is responsible to demonstrate a loss under the Canadian Pension Plan retirement benefits and/or loss of registered employer sponsored pension plan to the satisfaction of the WCB. This complex pension replacement benefit is payable for the lifetime of the worker and is not transferable.

Newfoundland

When a worker reaches maximum medical recovery, they may qualify for extended earnings loss (EEL) benefits. These benefits are calculated on 80% of the difference between their net income earned before the injury, indexed to the current year up to YMIR, and the actual income the worker earns or is considered capable of earning. Benefits are paid until the worker reaches age 65. A worker who is 63 or older at the time of injury may receive benefits for a maximum of two years.

Workers receiving EEL and turn 65 may apply for a pension replacement benefit. If the worker can show a loss of retirement income from CPP or a registered employer-sponsored pension as a result of their injury, they may be entitled to the amount of pension lost.

Determination of Estimated Capable Earnings

WSCC Current Practice

As the calculation of permanent compensation is not currently based on loss of earnings, or earning capacity, there is no method for determining estimated capable earnings.

Yukon

If the worker has actual earnings in the suitable occupation, those will be used in estimating the worker's loss of earnings. If a worker is unable to return to their pre-injury job, the worker's suitable occupation will generally be identified through the vocational assessment process. The Board will rely on current published labour market information, or on a labour market survey of at least three suitable employers, when determining estimated earnings for a suitable occupation. Wage scales applied to a suitable occupation will be based on the greater of Yukon wage scales for the occupation or the wage scale in the jurisdiction where the worker resides. Where a Yukon wage scale is unavailable, Canadian wage scales will be used.

Where a worker has a physical functional ability to work at least three hours a day, that worker will be considered capable of earning at least the Yukon minimum wage. If entering a new occupation in which the worker has no previous experience the wage will be based on the average of the base entry wage. For workers whose return-to-work plan is designed to improve or augment existing or transferable skills for the suitable occupation, estimated earnings will be the mid-point of the scale.

British Columbia

The *Act* does not provide direction on how pre-injury and post-injury earnings are used to determine a worker's loss of earnings award.

Alberta

The Board estimates the worker's earning capacity in suitable employment when: despite ability, a worker does not engage in employment; or a worker is unable to secure suitable employment; or a worker engages in employment which fails to maximize earning capacity. For the purposes of estimating earning capacity, suitable employment 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 they consider relevant.

Estimated earnings 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.

Saskatchewan

The Board determines the worker's earning capacity if a vocational rehabilitation program is unable to return the worker back to suitable employment that eliminates earnings loss. The worker's earnings loss benefits are reduced by the greater of the worker's earning capacity, or actual earnings.

The earning capacity will normally be the same as their actual earnings. The Board may consider the worker's earning capacity to be greater than the actual earnings if the worker:

a) Does not accept an offer for suitable productive employment.

b) Does not participate in a medical or vocational rehabilitation program.

c) Does not acquire suitable productive employment after completing a vocational rehabilitation program.

d) Accepts a job offer that pays lower than what they could receive from other suitable productive employment.

e) Leaves suitable productive employment, but not because of the injury.

The WCB will estimate the worker's earning capacity using the average weekly wage published by Statistics Canada as of June in the year immediately preceding the year in which the loss of earnings occurs. The worker's earning capacity will be:

a) Zero for the balance of the month when the return-to-work begins plus six full months thereafter;

b) 50% of the average weekly wage for the following 12 months of working;

c) 75% for the following 12 months of working;

d) 100% for the following 12 months of working;

e) 125% for the following 12 months of working; and

f) 150% thereafter.

Manitoba

Generally speaking, the WCB will deem an earning capacity in one of two situations: in the context of vocational rehabilitation or in the context of a recurrence following a voluntary reduction in earnings unrelated to the compensable injury. Deemed earning capacity will generally be used as a last resort after all reasonable or available vocational rehabilitation/re-employment options have been exhausted.

Requirements for WCB to demonstrate deemed earning capacity:

a) The WCB must demonstrate that the worker is capable of competitively finding, competing for, obtaining, and keeping employment in the occupation on which the earning capacity is based.

b) The worker has the physical capacity, education, skills, aptitudes, interest, and personal qualities needed to obtain and keep employment in the occupation in the labour market.

c) That work exists for the occupation.

d) The WCB will use the Individualized Written Rehabilitation Plan (or similar format) as the basis for collecting and weighing information about the worker's earning capacity.

Deemed earning capacity will be used in the loss of earnings calculation when:

a) The worker has completed the training part of the vocational rehabilitation plan designed to help the worker obtain new skills or improve current skills;

b) The worker has been given reasonable job search assistance; and

c) The information the plan was based on, including labour market analysis, has not substantially changed.

When a worker voluntarily reduces earnings for reasons unrelated to the compensable injury and suffers a recurrence, the WCB will deem the worker capable of earning the difference between their average earnings prior to the accident and their average earnings at the time of recurrence.

Ontario

Earnings may be determined when it is decided that a worker will not be provided with work reintegration services, or a work transition plan is completed or closed. The earnings are determined using the identified suitable occupation, which are determined using current wage labour market information. If a worker obtains a job in the identified suitable occupation, the Board generally uses the actual employment earnings to calculate the partial loss of earnings benefit.

The work transition assessment will occur as soon as the worker is functionally fit to return to suitable work. Initially, the WSIB conducts its own assessment of transferable skills. If this does not result in the identification of a suitable occupation, the WSIB arranges for an external assessment.

In determining a suitable occupation, the WSIB works with the worker and employer and considers: a worker's functional abilities; a worker's employment-related aptitudes, abilities and interests; what jobs are available with the injury employer through direct placement, accommodation, or retraining; labour market trends and the likelihood of the worker being able to secure and maintain work within the occupation with another employer; and in accordance with applicable human rights legislation, any pre-existing non-work related conditions a worker may have, as well as any other human rights-related accommodation requirements.

New Brunswick

WorkSafeNB has the authority to determine estimated capable earnings though suitable employment. The suitable employment must consider physical abilities and employment qualifications. It is also further defined to mean: employment for which the injured worker may reasonably become qualified to perform; employment that does not endanger the health, safety, or well-being of other workers in the workplace; employment that allows an injured worker to achieve optimal earning potential; and employment that reasonably exists in the current labour market.

WorkSafeNB uses the National Occupational Classification (NOC) as the primary tool to identify the essential duties of employment, when determining suitable employment for injured workers. It also used regional labour market information, when available, published by federal or provincial government sources to determine suitable employment.

The suitable employment used to determine estimated capable earnings is typically identified during vocational rehabilitation. Once all vocational activities are completed, or the vocational plan comes to an end, estimated capable earnings are calculated. In cases where a return-to-work plan has not been developed, or it is not appropriate to develop one, WorkSafeNB uses regional and national resources to identify suitable employment that may reasonably exist in the current labour market before estimating an injured worker's capable earnings.

WorkSafeNB recognizes the unique situation of workers under the age of 21 and reviews loss of earnings benefits on a case-by-case basis and adjusts benefits accordingly when: the worker is under the age of 21 on the date of accident; and it is established that under normal conditions the injured worker's earnings would have increased. Evidence that indicates that the average earnings would probably have increased includes: acceptance into an educational program at the time of accident; the approaching completion of an educational program at the time of accident; and/or a job offer. Benefits are calculated in one of two ways:

1) If there is a specific career plan in place at the time of accident their average earnings are estimated at the entry-level wage for that occupation. This happens when a specific timeline exists, or rehabilitation is complete and long-term disability is established, whichever occurs first.

2) If there was not a specific career plan in place at the time of accident their average earnings are estimated at 50% of YMIR once rehabilitation is complete and long-term disability is established.

Nova Scotia

To calculate a worker's compensable loss of earnings, if any, the amount that the worker is capable of earning in suitable and reasonably available employment may be considered. For employment to be suitable does not require that the employment necessarily be "the same as" or "comparable to" the worker's pre-accident employment. However, the worker must have the necessary skill to perform, be medically able to perform, and not pose a health or safety hazard to the worker or any co-worker in order for the work to be suitable.

In instances where a worker fails to cooperate in the development or implementation of a vocational rehabilitation program, suitable employment can include employment that would have been suitable had the worker completed an appropriate vocational rehabilitation program.

Prince Edward Island (PEI)

The WCB will determine a worker's loss of earning capacity when it determines the worker has an impairment, and the worker is unable to return to pre-injury employment or obtain alternative employment at the same wage level, or refuses to seek or accept suitable work.

The worker's estimated earnings are determined using the following information:

- The worker's functional ability to work;
- The average wages of the suitable work;
- The worker's work history, education, and analysis of transferable skills; and
- Local labour market information.

The WCB then determines the worker's estimated earnings based on the average wages of three suitable occupations, identified by the WCB, that reasonably exist in PEI. If the worker normally resides outside of PEI, estimated earning capacity is determined using information from the worker's home province or territory.

If a worker completes vocational rehabilitation but continues to have a loss of earning capacity and is unable to find employment in the area they were formally trained, they are eligible for extended wage-loss benefits that are calculated based on the higher of the actual wages earned in the area they were trained or the estimated earnings of the entry level position for which the worker was trained.

Newfoundland

Suitable employment and earnings determination is an outcome of a labour market re-entry assessment. The labour market re-entry assessment may take four to eight weeks to complete and will, among other things, contain a minimum of three options for suitable employment categories for the worker based on the National Occupational Classification system (NOC).

Suitable employment is a category of jobs that are safe, suited to the worker's transferable skills, within the worker's functional abilities and aptitude, and will reduce or eliminate the loss of earnings resulting from the injury. Capacity to work and earn, not the availability of employment opportunity, is the relevant factor.

Earnings are based on average entry wages, average wages, or actual wages for the suitable employment. WorkplaceNL will adopt a flexible approach for determining estimated earning capacity; earnings for workers whose plan involves acquiring a new skill set or entering a new field are based on average entry wages; or actual earnings if higher. Labour market re-entry plans designed to improve existing or transferable skills use average wages or actual earnings if higher.

Dependent Benefits

WSCC Current Practice

Spouse – The spouse is entitled to a one-time lump sum payment equal to 30% of YMIR ($27,180 based on 2017 YMIR), and a monthly pension for life equal to 3.08% of YMIR in the year of the worker's death ($2,790 based on 2017 YMIR).

Dependent Children – A child who is dependent on the worker, and under 19 years of age, receives a monthly pension equal to 0.625% of YMIR in the year of the worker's death ($566 based on 2017 YMIR). Benefits will extend beyond age 19 if the child is enrolled in an academic institution and end when they have been granted a degree or diploma for the first time or completed a course in technical or vocational training.

Yukon

Spouse – The spouse receives a lifetime monthly pension equal to 3.125% of YMIR. The Board may provide additional benefits if in the Board's opinion the spouse is in need, but in no case may a spouse receive an amount greater than the amount that the deceased worker would have received in respect to earnings loss had the worker survived and been totally disabled.

The spouse is entitled to a worker's retirement income. In the event that the retirement annuity is not paid to the worker because of the worker's death, the Board pays the annuity to a spouse or a worker's dependents according to the worker's written direction.

If there is no spouse and a person assumes responsibility for the care and custody of a dependent, they are entitled to the same benefits that would be paid to a spouse.

Dependent Children – Each dependent child of the deceased worker receives a monthly amount equalling 1.25% of YMIR until the child reaches 19, or 21 if the child is in full-time attendance at an educational institution recognized by the Board. In exceptional circumstances, the Board may extend the period for payment of benefits, but not beyond age 25.

British Columbia

Spouse – A lump sum payment of $2,660.14 is paid to the surviving dependent spouse. If a surviving spouse has no dependent children, and is 50 years of age or over, they receive a monthly payment (combined with 50% of CPP benefits payable) equal to 60% of benefits payable had the worker sustained a 100% permanent total disability. The minimum monthly payment is $1,133.74.

If a surviving spouse is under the age of 50 with no dependent children the monthly payment (combined with 50% of CPP benefits payable) starts at 60% of benefits payable had the worker sustained a 100% permanent total disability, and 1% is deducted for each year that the spouse is under 50 years of age. The percentage paid cannot be less than 30% and the minimum monthly payment is $1,133.74. Compensation for a dependent surviving spouse is payable for life.

The spouse, or beneficiary designated by the worker, is also entitled to the amount contained in the retirement benefit fund, should a worker who was entitled to this benefit die prior to age 65. If the worker does not designate a beneficiary the funds are paid to the worker's estate.

Dependent Children – Benefits for dependent children are not considered separate from spousal benefits. The number of dependents changes the spousal benefit in the following ways: with one dependent child the base increases to 85% of the benefits payable to the worker had the worker sustained a 100% PMI; for two children it increases to 90%; for each child beyond two in number the monthly benefit increases by $350.83. Spousal benefits are recalculated as each child turns 19 years of age, or 25 if they are regularly attending an academic, technical, or vocational place of education.

Alberta

Spouse – A lump sum payment of $2,150 is paid to the surviving dependent spouse. Dependent spouses also receive full pension (equal to what the worker would have received if 100% PMI) until the youngest child is 18.

If there are no dependent children, or the children reach the age of 18, and the spouse is gainfully employed, the spouse receives a 5-year reducing term pension. The 5-year reducing term pension is paid as follows:

- Full pension for the first 12-month period
- 80% of the full pension for the second 12-month period
- 60% of the full pension for the third 12-month period
- 40% of the full pension for the fourth 12-month period
- 20% of the full pension for the fifth 12-month period

This pension may be paid as a lump sum, at the beginning of the 5-year period, when requested by the spouse.

If the spouse is not gainfully employed, but is capable of gainful employment, vocational rehabilitation services are offered. If the spouse accepts, they are entitled to full pension until they become gainfully employed, or the end of 60 months following the month of the worker's death or the youngest child reached 18, whichever is earlier.

The spouse is also entitled to the same retirement adjustment the worker would have received, but the eligibility date becomes when the worker would have reached retirement age, or the spouse reaches age 65, whichever is later.

Dependent Children – When the dependent children live with the worker's dependent spouse, the pension paid to the dependent spouse is for the benefit of the spouse and children. The dependent children are not eligible for additional benefits unless they are in necessitous circumstances because of illness. When children do not live with the dependent spouse, they are paid a monthly amount set in policy. The amount is $267.47 per month.

Saskatchewan

Spouse – Earning loss benefits equal to 90% of the deceased worker's net average earnings are paid to the dependent spouse. They are paid for an initial period of 5 years, if there are no children. If there are dependent children, benefits are extended until the youngest child is 16 (or 18 if the child is enrolled in high school or a post-secondary institution).

When the 5 years have ended or the youngest child has reached 16 (or 18 if the child is enrolled in high school or a post-secondary institution), if the spouse can work, their salary is topped up to the amount of the monthly payment to age 65. If the spouse is not working earnings are estimated and that amount is taken away from the monthly payment. If for good reason the spouse is not able to work, the full monthly payment will continue until age 65.

If the deceased worker was entitled to retirement benefits, and the worker passed away before age 65, the WCB directs that the principal sum together with accrued interest be paid to the worker's estate. After the dependent spouse receives earnings loss benefits for 24 months, a separate retirement benefit is set up equal to 10% of their benefits, and the spouse must use this money, plus interest, to purchase an annuity (can be paid as lump sum if less than the minimum).

Dependent Children – At age 18, each dependent child who is a full-time student can get a monthly allowance equal to $376.61, plus the costs of tuition, books, and other required educational fees. Each dependent child will be eligible for these benefits for up to three years between the ages of 18 and 25.

Manitoba

Spouse – An immediate lump sum payment of $12,370 is provided. In addition, a lump sum payment of $80,370 is made, which the spouse can elect to convert into a tax-free annuity (regular monthly payments), administered by the Board. In most cases, the lump sum is converted to a monthly payment equal to 90% of the worker's net average earnings before the date of death for a period of 5 years, or until the youngest child turns 18. If the spouse is 60 years of age or older at the time of the worker's death, monthly payments are made until the month in which the spouse turns 65.

When a worker dies before reaching retirement age or before choosing an annuity type, the WCB will pay the worker's surviving spouse (or estate) a lump sum payment equal to the full value of the worker's retirement annuity account. If the amount is greater than the minimum amount the spouse may select for the provided annuity types.

Dependent Children – A monthly payment of $440 for each child under 18 is paid. If a child is 18 years or older and continuing their education, the benefit will continue for a reasonable amount of time.

Ontario

Spouse – A lump sum is paid to the spouse, and shared equally with dependent children, based on the age of the spouse. The base amount is $40,000; then $1,000 is added for every year the spouse is under age 40, and $1,000 deducted for each year over age 40. The maximum lump sum is $60,000, and the minimum is $20,000.

A monthly benefit is also provided based on a percentage of the deceased worker's net average earning. The monthly benefit payment starts at 40% and decreases 1% for every year the spouse is younger than 40, to a minimum of 20%. The monthly benefit increases 1% for every year the spouse is older than 40, to a maximum of 60%.

For surviving spouses with no children, the percentage is based on their age at the time of the worker's death, does not change as they get older, and is paid for life.

For spouses with children, the monthly payment is based on 85% of the deceased worker's net average earnings at time of death. When their first child turns 19, the benefits are reviewed. If the child is enrolled in an educational program, 10% of the spouse's monthly payment is deducted and paid directly to the child until the child completes a degree, diploma or certificate program, or turns 30, whichever comes first. When the child is no longer entitled to the 10% payment, it reverts back to the spouse if one or more dependent children remain in their care. When the youngest child turns 19, the monthly benefits are adjusted to reflect the spouse's age on the child's 19th birthday, and paid for life.

If the worker was entitled to loss of retirement income benefits and died of natural causes, the money contributed by the WSIB and the worker, plus accumulated investment income, will be used to provide a benefit to the spouse. If the cause of death is a result of the injury (dependents received survivor benefits), the spouse or the estate will receive any money that the worker contributed to the retirement fund (not WSIB's contributions) and its investment income.

Dependent Children – A dependent child, when there is no surviving spouse, is entitled to monthly payments until they complete a degree, diploma, or certificate program, or turn 30, whichever comes first. The total combined payments to all dependent children cannot exceed 85% of the deceased worker's net average earning. The oldest child receives 30% of the parent's net average earnings until age 19, at which point it drops to 10%. If there is more than one dependent child 10% is paid to each additional child (the oldest receives 30%).

New Brunswick

Spouse – A lump sum equal to 50% of the New Brunswick Industrial Aggregate Earnings (NBIAE) ($20,610) is provided to the spouse.

The Board also pays monthly benefits equal to 80% of the deceased worker's average net earnings for a period of one year to the surviving spouse. During this one-year period, with the assistance of an independent financial advisor paid for by the Board, the spouse must elect one of the two following benefit plans:

Plan 1

- Monthly benefits equal to 85% of the worker's average net earnings less any entitlement to CPP, payable until the spouse reaches age 65.
- An amount set aside equal to 5% of the benefits paid, which combined with the accrued interest, shall be used by the spouse to purchase an annuity at age 65.
- Benefits under this plan are subject to a family means test. This means that should the surviving spouse remarry or live with a new spouse, and the net earnings of the new spouse plus the benefits paid to the surviving spouse exceed 85% of the net family income, then only the portion that does not exceed 85% is payable to the dependent spouse.

Plan 2

- A lump sum payment equal to 60% of the deceased worker's average net earnings.
- Benefits equal to 60% of the deceased worker's net annual earnings, payable until the spouse reaches age 65.
- Benefits for each dependent child (outlined below under Dependent Children).
- An amount set aside equal to 8% of benefits paid, which combined with accrued interest shall be used by the surviving spouse to purchase an annuity at age 65.
- No income test applies; however, the total amount of monthly benefits cannot exceed 85% of the deceased worker's monthly average earnings.

If the deceased worker had been entitled to retirement annuity, the worker must indicate a beneficiary. When there are no dependents, WorkSafeNB must be named the beneficiary on the signed contract. When the worker dies before 65 (purchase of an annuity), the Board divides the total amount set aside, plus accrued interest, among surviving dependents. If there are no dependents, the total amount set aside, or the amount remaining in the annuity, reverts to the Accident Fund.

Dependent Children – A child less than 7 years of age receives 10% of NBIAE. A child between 7 and 13 years inclusive receives 12.5% of NBIAE. A child between 14 and 17 years inclusive receives 15% of NBIAE. A child between 18 and 21 years inclusive, when they are attending school on a full-time basis in a recognized educational institution receives 15% of NBIAE.

Nova Scotia

Spouse – When a worker dies from a workplace injury, the Board pays a lump sum death benefit of $15,000. If the worker dies while in receipt of compensation (includes claimants where the death was not necessarily a result of their workplace injury) the spouse or dependent children receive three times the monthly amount which would have been payable to the worker. If the worker had a 100% PMI an additional nine times the monthly benefit is paid.

In the case of a death resulting from a workplace injury, survivor benefits are paid to the spouse and dependent children. The spouse shall receive a pension equivalent to 85% of the worker's net average earnings before the accident. The benefit is paid monthly until either the spouse reaches 65 years of age, or the worker would have reached 65 years of age, whichever is later. An amount equal to 5% of the survivor pension will be set aside to provide an annuity to the spouse, and will be provided to the spouse once the survivor pension ceases to be payable.

Dependent Children – Dependent children receive a benefit of $196 per month. The benefit is payable until the month the child turns 18 or, if attending an approved educational facility, until the end of the school year in which the child attains 25 years of age.

Prince Edward Island (PEI)

Spouse – The Board will pay compensation to a worker's dependents, including a spouse, child, and any other person who may be entitled to benefits resulting from the death of a worker due to injury arising out of and in the course of employment.

The spouse receives a lump sum payment of $10,000, and an amount equal to 70% of the wage-loss benefits that would have been payable to the worker, less 50% of any CPP survivor benefits payable to the spouse as a result of the death. This benefit is payable until the spouse dies, reaches age 65, or the worker would have reached age 65, whichever is later.

If the deceased worker had been entitled to pension replacement benefits, those benefits are not transferable to a surviving spouse or dependents.

Dependent Children – Each child receives an amount equal to 10% of the wage-loss benefits the worker would have received, up to the age of 18, or 22 if the child is enrolled full-time in an educational institution recognized by the Board. Total payment for all children cannot exceed 30% of the wage-loss benefits that would have been payable to the worker.

Newfoundland

Spouse – A lump sum payment is made equal to 26 times the worker's average net earnings at the time of injury, or $15,000, whichever is greater. The spouse is also entitled to a monthly pension equal to 80% of the worker's average net earnings, less CPP survivor's pension, payable until the date the worker would have reached age 65, or for two years if the worker was 63 years of age or older.

Dependent Children – Benefits payable to a surviving spouse are considered to include an allowance for surviving dependent children. Where there is no spouse, or the spouse dies, leaving one or more dependent children of the worker under the age of 18, the monthly pension is paid to a guardian until the youngest child reaches the age of 18, or age 25 if the child is a full-time student.

WORKERS' SAFETY AND COMPENSATION COMMISSION
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