Alberta WCB Policies & Information	Chapter: **BENEFITS**	
	Subject: **PERMANENT DISABILITY**	
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APPLICATION 3: ECONOMIC LOSS PAYMENT - DATES OF ACCIDENT ON OR AFTER JANUARY 1, 2018

1. *What is the purpose of an economic loss payment?*

An economic loss payment (ELP) compensates the worker for loss of earnings if the injury results in compensable permanent work restrictions that cause an impairment of earning capacity.

2. *Who is eligible for an economic loss payment?*

To qualify for an ELP, the worker must meet the following conditions:

- the date of accident is on or after January 1, 1995 (see Application 4 for accidents from January 1, 1995, to December 31, 2017, inclusive)
- the worker has an impairment of earning capacity due to permanent compensable work restrictions (see Part I, 3.0 –Impairment of Earning Capacity and Application 1, Determining Impairment of Earning Capacity)

3. *How does WCB calculate the economic loss payment?*

The economic loss payment is 90% of the difference between:

a) the worker's pre-accident net earnings, calculated in accordance with the *WCA* and the *WC Regulation,*

and

b) the greater of the worker's post-accident actual net earnings or estimated post-accident net earning capacity, calculated in accordance with the *WCA* and the *WC Regulation*.

Subject to periodic review, the ELP is then normally paid until retirement age (see Question 12), at which time it is adjusted to reflect the impact on retirement income.

The only exceptions are workers with 100% permanent clinical impairment and workers presumed to be 100% permanently disabled under s.43(2) of the *WCA*. In these

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Calculating economic loss payments (continued)

cases, WCB does not deduct any post-accident earnings, nor does it adjust the ELP at retirement age.

4. ***How are ELP costs charged to an employer's account?***

As ELP is a permanent disability benefit, the costs are normally capitalized (an estimate of the lifetime cost) when the ELP is implemented and the capitalized costs are charged to the employer's account.

An exception is made to the above rule when WCB expects that the worker will regain pre-accident earning capacity within 6 years from the time the ELP is implemented. In these cases when the loss of earning capacity is expected to be temporary, the costs are not capitalized; instead, they are charged to the employer's account in the payment transaction year. To differentiate these claims, the non-capitalized ELPs are called temporary economic loss (TEL) benefits.

If it becomes apparent that a worker who is receiving TEL benefits will not regain pre-accident earning capacity within the 6-year period, the TEL is converted to an ELP and the capitalized cost is charged to the employer's account at that time. Benefits are also paid as a capitalized ELP if the worker is not expected to regain pre-accident earning capacity before reaching retirement age.

5. ***Are ELP and TEL benefits different?***

The worker receives exactly the same benefit, regardless of whether the economic loss payment is a capitalized ELP or a non-capitalized TEL. The only difference is that WCB may review the TEL more frequently, as it is expected that the worker will return to pre-accident earning capacity within a relatively short time period.

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6. *How frequently are ELP and TEL reviewed?*

The ELP is reviewed 36 months after it is first awarded. After the 36-month review, WCB will normally review the ELP annually until the worker reaches retirement age (see Question 12). If WCB decides annual reviews are not necessary in a particular circumstance (for example, if the worker is very severely disabled and it is clear the worker's impairment of earning capacity will not change), WCB may schedule reviews less frequently or suspend annual reviews.

Because workers receiving TEL benefits are expected to regain their pre-accident earning capacity within a short time frame, TEL are normally reviewed annually, with the first review occurring 12 months after implementation.

In some cases, WCB may conduct ELP interim reviews before the 36-month review.

Before the 36-month review

The following situations are examples of when WCB may conduct interim reviews:

- the worker or accident employer requests an interim review
- the worker is in an apprenticeship program
- the worker is expected to have significant changes in earnings before the 36-month review
- the worker's TEL is converted to an ELP

Worker reaches retirement age before the 36-month review

If a worker reaches retirement age (see Question 12) before the 36-month review, WCB will not conduct the review. Instead, benefits will be adjusted according to the retirement age adjustment formula (see Questions 11-18).

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7. ***What earnings are considered for the review?***

WCB will normally consider gross earnings from all employment sources for the full review period. At the 36-month review, for example, WCB will require confirmation of the worker's earnings for the last three years.

After the 36-month review, workers must submit the required earnings information annually until WCB notifies them that it is no longer necessary. This will ensure there are no interruptions in benefits.

8. ***When will WCB adjust or terminate an ELP/TEL?***

WCB may increase or decrease an ELP/TEL if the review findings show the worker's earning capacity differs from the previous estimate. Increases will only be considered if the worker's reduced earning capacity is due to the compensable work restrictions.

WCB will terminate an ELP/TEL if new evidence indicates the worker's earning capacity is not impaired by compensable work restrictions.

9. ***If an ELP/TEL adjustment is required, when is it effective?***

If the adjustment is a consequence of a scheduled review, increased benefits will normally be effective the date of the review anniversary. Decreased benefits will normally be effective the date the review is completed, unless the review was delayed by the worker's conduct, in which case the adjustment will be effective the date the review is scheduled.

If new evidence indicates the ELP/TEL determination was based on incorrect information or if the review is ad hoc (for example, at the request of the worker or employer), Policy 01-08, *New Evidence*, will apply.

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10. ***Will the ELP/TEL be terminated or adjusted if the worker leaves Alberta or Canada?***

ELP/TEL will normally continue if the worker leaves the province or country. ELP/TEL is based on permanent work restrictions, and it is reasonable to assume those work restrictions will continue to have a similar impact on earning capacity as they would have had in Alberta.

Workers who leave the province or country are still subject to the same reviews as workers who live in Alberta, and an ELP/TEL may be adjusted or terminated as discussed in Question 8.

ELP/TEL will not be increased if the economic conditions in the new place of residence result in reduced earnings. WCB will estimate earning capacity as though the worker had continued to work in suitable employment in Alberta.

11. ***How is ELP affected when a worker reaches retirement age?***

At retirement, the impact on earning capacity is reduced as wages are replaced by pension/retirement income, and ELP is adjusted to reflect that change.

ELP is adjusted when the worker reaches normal retirement age* 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. The adjustment is intended to compensate for the lost opportunity to contribute to a retirement pension plan.

* See Question 18 for retirement income benefits for workers whose TEL or ELP was terminated because they regained pre-accident earning capacity before reaching retirement age.

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12. ***How does WCB determine normal retirement age?***

Age 65 is commonly considered to be normal retirement age, however, statistical data shows that, on average, a worker who is still in the work force at age 60 or older is likely to continue to work for several years. Based on this data, WCB considers normal retirement age to be age 65 or 5 years after the date of accident, whichever is later.

What this means is that workers whose date of accident is before their 60th birthday are considered to have reached normal retirement age on their 65th birthday. Workers whose date of accident is after their 60th birthday are considered to have reached normal retirement age on the 5th anniversary of the accident (for example, a worker who is 63 on the date of accident of January 18, 2018, will reach normal retirement age on January 18, 2023).

13. ***What is considered sufficient and satisfactory evidence that a worker would have continued to work past normal retirement age?***

As with any adjudicative issue, the decision will be made on the balance of probabilities. Workers are not required to provide absolute proof, however, there must be some independent evidence that the worker intended to work after normal retirement age (see Question 12), and would have done so if not for the compensable injury.

Examples of satisfactory independent evidence include:

- continued employment after normal retirement age at the same level and earnings as pre-retirement age [for example, a 51 year old worker with compensable permanent work restrictions returns to work with reduced earning capacity and is paid an ELP. The worker continues to work at that level (same type of work, same hours) until age 69]
- continued part-time employment post-retirement age, provided that the worker is working a minimum of 50% of the hours used to estimate the worker's earning

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Sufficient and satisfactory evidence (continued)

capacity (work that averages less than 50% of the estimated weekly hours is considered to be a personal choice of semi-retirement)

- confirmation from an independent source that the worker had planned to continue after normal retirement age and employment was available

WCB will also consider any other relevant factors such as the normal retirement age for workers in the same pre-accident occupation.

14. ***Will WCB adjust the ELP before the normal retirement age if a worker chooses early retirement?***

WCB will not apply the retirement adjustment to ELP until the worker reaches normal retirement age, as the injury may have been a factor in the worker's decision to retire or to not pursue other employment. However, if the worker would have been expected to have significant increases in earnings if he or she had continued in the workforce, WCB may review and adjust the worker's ELP, based on the estimated earning capacity (see Questions 6 and 8 in this Application, and Application 1, Question 4).

15. ***What happens if a retired worker re-enters the workforce?***

Once the worker has retired and the retirement adjustment has been applied, the retirement adjustment is permanent and will not be reversed if the worker returns to the workforce.

If the worker's new employment is in an industry under the *WCA*, any new accident will be adjudicated as a new claim.

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16. ***How is the retirement adjustment calculated?***

To estimate the impact of the disability on the worker's retirement income (due to the reduced opportunity to contribute to retirement plans), WCB will pay an annual retirement benefit in an amount equal to 2% of the worker's total wage loss compensation.*

*Total wage loss compensation is the sum of all wage loss benefits paid from the date of accident up to the month in which the worker reaches retirement age. It includes temporary wage loss benefits as well as ELP/TEL.

The annual retirement benefit will normally be payable in twelve equal monthly payments for the lifetime of the worker but may be commuted to a lump sum if the conditions set out in Application 8, Lump Sum Commutations, are met.

17. ***Does the retirement adjustment apply to workers who are permanently totally disabled?***

Benefits will not be adjusted or terminated at retirement age if the worker has a 100% clinical impairment, or if the worker is conclusively presumed to be permanently totally disabled under s.43(2) of the *WCA*.

18. ***What are the retirement income provisions for workers with ELP/TEL who regain their pre-accident earning capacity before reaching retirement age?***

When an ELP or TEL is terminated due to full recovery of the worker's pre-accident earning capacity,

and

the worker has been in receipt of economic loss payments (ELP/TEL) continuously for a minimum of two years,

WCB will pay the worker a lump sum retirement benefit in an amount equal to 2% of the worker's total wage loss compensation.*

*Total wage loss compensation is the sum of all wage loss benefits paid from the date of accident up to the month in

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Retirement income provisions for workers who regain their pre-accident earning capacity before reaching retirement age (continued)

which the worker's ELP/TEL ends due to the worker's full recovery of pre-accident earning capacity. It includes temporary wage loss benefits as well as ELP/TEL.

The lump sum is paid to compensate the worker for reduced opportunity to contribute to retirement plans during the period of compensable loss of earning capacity. The worker has full control over its use; WCB does not invest or manage the lump sum for the worker.

19. *When is this policy application effective?*

This policy application (Application 3 – Economic Loss Payment – Dates of Accident on or after January 1, 2018) is effective January 1, 2018, and applies to all claims with a date of accident on or after that date, except when noted otherwise in a specific policy section(s).

Previous versions

- Policy 0404 Part II - January 2018