

**Alberta WCB
Policies &
Information**

Chapter:

BENEFITS

Subject:

PERMANENT DISABILITY

Authorization:

BoD Resolution 2017/08/32

Date:

December 22, 2017

APPLICATION 6: EARNINGS LOSS SUPPLEMENTS

1. *What are Earnings Loss Supplements?*

Earnings Loss Supplements (ELS) are discretionary compensation payments made when a permanent disability award (pension) does not fully compensate the worker for the loss of earning capacity caused by the compensable injury.

2. *Who is eligible for an Earnings Loss Supplement?*

To be eligible for an ELS, the worker must meet the following conditions:

- 1) the worker has compensable permanent work restrictions which cause a loss in earning capacity*, and
- 2) the loss in earning capacity caused by the compensable permanent work restrictions is greater than any pension the worker is receiving for the same injury.

* See Application 1, Determining Impairment of Earning Capacity.

The worker may or may not be receiving a pension, depending on whether the permanent disability includes a measurable clinical impairment.

An ELS is applicable only if the accident occurred on or before December 31, 1994. Claims occurring on or after January 1, 1995 are considered under the provisions of Economic Loss Payments (see Application 3 for dates of accident on or after January 1, 2018, and Application 4 for dates of accident from January 1, 1995, to December 31, 2017, inclusive).

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3. *How does WCB determine the supplement amount?*

WCB determines loss of earning capacity by comparing the worker's post-accident earning capacity with earning capacity at the time of accident, as follows:

- a) the worker's pre-accident net earnings*, calculated in accordance with the *WCA* and the *WC Regulation*,
- b) any periodic compensation the worker is receiving for the same accident

LESS

and

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*.

- * pre-accident net earnings may be either the earnings from date of accident or a rate adjusted under s.61 of the *WCA* (see Policy 04-03)

WCB then calculates an amount up to 90% of the earnings loss, according to the percentage of the earnings loss which, in WCB's opinion, is caused by the compensable disability. Depending on the time period for which the ELS is being paid, WCB may deduct the full value of any CPP disability entitlement for the same injury from the supplement amount. WCB does not deduct CPP benefits for periods on or after June 1, 1996; however, CPP disability benefits are deducted from supplements paid for periods prior to June 1, 1996.

WCB reviews ELS periodically to confirm the amount and the worker's continuing eligibility.

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Limitations

The combined dollar values of an ELS and a permanent disability award under the same claim are not to exceed the compensation the worker would have been entitled to, had the accident resulted in permanent total disability.

ELS for periods on or after June 1, 1996

The combined dollar values of an ELS, post-accident net employment earnings, and an award for permanent disability under the same claim are not to exceed the worker's pre-accident annual net earnings used in calculating the ELS, subject to the provisions of s.59.

ELS for periods before June 1, 1996

The combined dollar values of an ELS, post-accident net employment earnings, an award for permanent disability under the same claim, and any CPP disability entitlement for the same injury are not to exceed the worker's pre-accident annual net earnings used in calculating the ELS, subject to the provisions of s.59.

4. *How long do Earnings Loss Supplements continue?*

If granted, an ELS will continue until the earnings loss ends or the worker reaches retirement age, whichever is first.

Age 65 is commonly considered to be normal retirement age. The ELS will end when the worker reaches 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.

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5. *What is considered sufficient and satisfactory evidence that a worker would have continued to work past age 65?*

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 age 65, and would have done so if not for the compensable injury.

Examples of satisfactory independent evidence include:

- confirmation from the worker’s accident employer, union, or other independent employment source that the worker had planned to continue after age 65 and employment was available
- continued employment post-age 65 at the same level and earnings as pre-age 65 [for example, a 51 year old worker with compensable permanent work restrictions returns to work with reduced earning capacity and is paid an ELS. The worker continues to work at that level (same type of work, same hours) until age 69]
- continued employment post-age 65 at reduced earnings, when it is clear the reduction in earnings is caused by a deterioration of the compensable work restrictions, rather than a personal choice of semi-retirement

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

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6. *What happens if a worker with an ELS becomes unemployed?*

The action taken will depend on the reason the worker became unemployed.

If termination was in some way due to the compensable disability, WCB will review the worker’s medical condition and vocational profile, and readjust the ELS if appropriate.

If termination was for reasons unrelated to the disability, WCB will usually continue to estimate the worker’s earning capacity as though employment continued (see Application 1, Question 4). WCB may adjust the ELS, however, if the termination was not the fault of the worker (for example, a plant closure), and there are unusual circumstances which prevent the worker from obtaining similar employment elsewhere. For example, if it is not reasonable to expect the worker to relocate; the job had been modified extensively to accommodate compensable work restrictions so it is unlikely the worker would be able to obtain similar employment with another employer; or the termination occurs soon after completion of the approved vocational plan, and the plan had identified the employment as being suitable and accessible. Each situation will be judged on its own merits.

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7. *How are benefits paid if a worker with an ELS has a new compensable accident?*

If the new injury is:

- a) unrelated to the disability for which the ELS is being paid, and
- b) results in temporary or permanent disability,

WCB will continue to pay the ELS and will calculate temporary and permanent disability benefits for the new injury based on the worker's employment earnings at the time of the new accident. WCB benefits from prior claims are not considered to be part of the worker's employment earnings.

If the new injury results in permanent disability, the worker may also be eligible for an Earnings Loss Supplement or Economic Loss Payment (determined by the date of accident) for the new injury.

8. *When is this policy application effective?*

This policy application (Application 6 – Earnings Loss Supplements) is effective January 1, 2018, except when noted otherwise in a specific policy section(s).

Previous versions

- [Policy 0404 Part II, Application 6 - January 2018](#)
- [Policy 0404 Part II, Application 5 - December 2016](#)
- [Policy 0404 Part II, Application 5 - August 2015](#)
- [Policy 0404 Part II, Application 5 - January 2007](#)
- [Policy 0404 Part II, Application 5 - January 2004](#)
- [Policy 0404 Part II, Application 5 - June 2003](#)
- [Policy 0404 Part II, Application 5 - June 2002](#)
- [Policy 0404 Part II, Application 5 - January 2002](#)
- [Policy 0404 Part II, Application 5 - October 2001](#)

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- [Policy 0404 Part II, Application 5 - June 2001](#)
- [Policy 0404 Part II, Application 5 - September 1999](#)
- [Policy 0404 Part II, Application 5 \(consolidated manual 1st Issue\) - February 1997](#)