

**Alberta WCB
Policies &
Information**

Chapter:

BENEFITS

Subject:

FATALITIES

Authorization:

BoD Resolution 2018/01/05

Date:

February 21, 2018

APPLICATION 6: ACCIDENTS BETWEEN JANUARY 1, 1974, AND DECEMBER 31, 1981, INCLUSIVE

1. *Who is considered a dependent spouse?*

The worker’s widow or widower is the dependent spouse, provided the dependent spouse:

- a) was wholly or partially dependent on the worker’s earnings at the time of the worker’s death, or
- b) would have been so, if not for the worker’s incapacity caused by the accident.

This includes a legal spouse who was not living with the worker, whom the worker was obliged to support financially.

If there is no dependent widow or widower, a worker’s common-law spouse, as defined in the *Worker’s Compensation Act, 1973 (as amended)* [1973 *WCA*], may be considered the dependent spouse.

2. *How does the WCA define a common-law spouse?*

Section 1 of the 1973 *WCA* defines a common-law spouse as “any man or woman who although not legally married to a person lives and cohabits with that person as the spouse of that person and is known as such in the community in which they have lived.”

According to s.30 of the 1973 *WCA*, a dependent common-law spouse may be considered the dependent spouse for compensation purposes if the worker:

- a) cohabited with the dependent common-law spouse for the five years immediately before the worker’s death, or
- b) cohabited for the two years immediately before the worker’s death with a dependent common-law spouse by whom he or she had one or more children.

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3. *What benefits are dependent spouses eligible for when the worker's accident was between January 1, 1974 and December 31, 1981?* A dependent spouse is eligible for a pension based on the worker's earnings. The pension is equal to the amount the worker would have received if he or she had lived and been permanently totally disabled (see Appendix F for the minimum pension amounts).
4. *For how long is the pension paid?* The pension is paid until the dependent spouse dies or remarries. In 1980, the 1973 *WCA* was amended so the pension also ends if the dependent spouse is in or enters a common-law relationship as defined in the 1973 *WCA* on or after November 27, 1980.

According to s.38(1) of the 1973 *WCA*, as amended, the pension is terminated if the dependent spouse:

“enters into a common-law relationship, whether before or after the coming into force of this section, and cohabits with the common-law spouse for a period of at least

- (i) 5 years, if there is no child of the common-law relationship, or
- (ii) 2 years, if there is a child of the common-law relationship.”

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5. *How are benefits affected when a dependent spouse remarries or enters a common-law relationship?*

As explained in Question 4, the dependent spouse’s pension ends when he or she remarries or enters a common-law relationship.

At that time, the dependent spouse is entitled to a lump sum payment. The lump sum amount is determined by the legislation in effect at the time the dependent spouse remarries or enters a common-law relationship.

Since November 27, 1980, the lump sum amount is equal to 36 months’ pension benefits at the rate the dependent spouse was receiving at the time of remarriage. In the case of a common-law relationship, the lump sum is based on the rate the dependent spouse was receiving at the end of the 5-year or 2-year period, as applicable.

If the worker’s children are still dependent when the dependent spouse’s pension ends, WCB continues to pay an amount for each dependent child. The maximum amounts for each child are set out in Addendum B at the end of this policy.

6. *How does the Special Payment Act affect benefits for remarried spouses?*

The *Special Payment Act* is separate legislation passed by the Alberta government in 2000. This Act does not affect the provisions of the *WCA*. The *Special Payment Act* authorizes payment of an additional lump sum payment to spouses whose pensions are terminated because of remarriage or because of entering a common-law relationship.

Spouses who meet the criteria are eligible for a lump sum of \$80,000. Information about the criteria is available from WCB.

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7. *Who is considered a dependent child?*

According to the 1973 *WCA*, in addition to the child of a current marriage, a dependent child includes an illegitimate child, a grandchild, the child of a husband or wife by a former marriage, as well as any other child to whom the worker stood *in loco parentis* (in the place of a parent).

To be dependent, the child must have been wholly or partially dependent on the worker's earnings at the time of the worker's death (or would be so dependent, if not for the worker's incapacity due to the accident).

8. *What if dependent children are living with a foster parent?*

If the worker's dependent children are living with a foster parent because there was no dependent spouse or the dependent spouse later died, WCB pays compensation to the foster parent for the care and maintenance of the children. The minimum pension is listed in Appendix F.

If more than one person is acting as foster parent, WCB divides the amount proportionately among the foster parents. The amount is divided based on the number of the worker's dependent children each foster-parent is caring for.

Compensation to the foster parent continues until:

- a) the youngest dependent child with the foster parent turns 18, or
- b) if the dependent child is an invalid, for as long as, in WCB's opinion, it might reasonably be expected that the worker would have continued to contribute to the support of the child.

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9. *What other provisions are there for dependent children?*

NOTE: Section 75 was repealed January 1, 2018; however, the repeal of the section does not affect a dependent child's eligibility under s.75(4) for periods prior to January 1, 2018, nor does it affect the continuation of benefits for an invalid dependent child still receiving benefits under s.75(4) as of December 31, 2017.

Under s.75(4) of the RSA 2000 *WCA* (see side bar), a dependent child receiving compensation under any previous *WCA* is given an additional payment to increase the compensation to the amount set out in Addendum B.

If the dependent spouse's benefits stop because the dependent spouse dies, remarries, or enters a common-law relationship (see Question 5), WCB pays compensation to each dependent child at the rate set out in Addendum B. The only exception is if the child is already receiving an equivalent amount under another section of the *WCA*.

Payments to the dependent child continue:

a) until the child turns 18

OR

b) if the child turns 18 while attending school, WCB may continue compensation payments until the dependent child:

- fails to make satisfactory progress at school, or
- stops attending school, or
- turns 25 years of age, or
- obtains a first degree or certificate in a post-secondary course of education,

whichever comes first

OR

c) if the dependent child is an invalid, for as long as the worker, in WCB's opinion, would reasonably have been expected to contribute to the child's support, regardless of the child's age.

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10. *What benefits are available for other dependants?*

Compensation to other dependants is payable only if there is no dependent spouse or dependent children.

WCB pays the dependant compensation in an amount it considers reasonable, proportionate to the monetary loss caused by the worker's death.

According to s.76 of the RSA 2000 *WCA*, the amount paid is not to exceed the maximum amount payable under the *WCA* in effect at the time of the accident, as adjusted in accordance with that *WCA*.

The payment continues for as long as, in WCB's opinion, it might reasonably be expected the worker would have continued to contribute to the dependant's support.

11. *Who is considered an "other dependant"?*

To be considered an "other dependant", the person must be a member of the worker's family, other than a dependent spouse or dependent child:

- a) who was wholly or partially dependent on the worker's earnings when the worker died, or
- b) who would have been so dependent, if not for the worker's incapacity due to the accident.

A person is considered partially dependent only when he or she is partially dependent on contributions from the worker for the ordinary necessities of life.

Section 1 of the 1973 *WCA* defines a member of a family as a "wife, husband, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother, half-sister and a person who stood *in loco parentis* to the worker, or to whom the worker stood *in loco parentis*, whether related to him by consanguinity or not, and

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Other dependant (continued) where the worker is the parent or grandparent of an illegitimate child, includes such child and where the worker is an illegitimate child includes each of his parents and grandparents.”

12. When is this policy application effective?

This policy application (Application 6 – Accidents Between January 1, 1974 and December 31, 1981, Inclusive) is effective September 1, 2018, except when noted otherwise in a specific policy section(s).

[Document History](#)

Previous versions

- [Policy 0408 Part II, Application 4 - April 2018](#)
- [Policy 0408 Part II, Application 4 - February 2018](#)
- [Policy 0408 Part II, Application 4 - August 2015](#)
- [Policy 0408 Part II, Application 4 - January 2004](#)
- [Policy 0408 Part II, Application 4 - February 2002](#)
- [Policy 0408 Part II \(consolidated manual 1st Issue\) - February 1997](#)