



This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Workers Compensation Act* and the *Rehabilitation Services and Claims Manual, Volumes I and II* for purposes of interpretation and application of the law.

Factsheet #13  
Updated: January 2013

## APPEALING YOUR WAGE RATE (PRE 2002 CLAIMS)

### What is a wage rate?

Before WorkSafeBC pays you benefits, it must decide on what earnings to base those benefits. Your **wage rate** is the outcome of that decision, and it determines how much money you will receive from WorkSafeBC to compensate you for your lost ability to work. Generally, your wage rate will be less than your earnings, and represents 75 percent of your pre-injury earnings, up to a maximum amount.

WorkSafeBC also uses the wage rate when deciding such things as what help they will give you in finding new work if you cannot return to your old job (through rehabilitation and retraining), and the amount of pension you will receive for a permanent disability.

The goal of wage rate is to best represent the actual loss of earnings suffered by the worker. Wage rates are considered at the following three points in a claim:

1. **Initial wage rate** - the rate used for your first 8 weeks on wage loss benefits;
2. **Long term rate** - the wage rate established at your **eight week rate review** after 8 weeks of wage loss benefits; **and**
3. **Permanent disability wage rate** - the rate used to calculate a pension for a permanent impairment to your ability to work and make money.

### Can I request a review of my wage rate?

Yes, all wage rate decisions can be reviewed. WorkSafeBC has to pay you fairly, based on how much money you are losing by not working. If you disagree with your wage rate, you can request a review from the Review Division within **90 days** from the date of the decision. If the Review Division denies your request, you can appeal to the Workers' Compensation Appeal Tribunal (WCAT) within **30 days** from the date of the decision.

For more information:  
Website: [www.labour.gov.bc.ca/wab](http://www.labour.gov.bc.ca/wab)



Lower Mainland/Fraser Valley/Kootenays: 1-800-663-4261  
Northern & Central Interior: 1-800-663-6695  
Vancouver Island: 1-800-661-4066

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If you are attempting to request a review or appeal beyond that time you must first apply for an Extension of Time from the Review Division (if you are late requesting a review) or WCAT (if you are late filing for an appeal).

For further information on obtaining extensions of time, please see the Factsheets, *Appeals to the Workers' Compensation Appeal Tribunal* and *Reviews of WorkSafeBC Compensation or Rehabilitation Decisions*.

### How does WorkSafeBC determine my wage rates?

For the first eight weeks of a claim, WorkSafeBC usually bases your wage rate on your hourly, daily, or weekly wages at the time of your injury.

If your claim lasts longer than eight weeks, WorkSafeBC will reset your wage rate in an **eight week rate review**. This is called your long term wage rate - and it replaces your initial wage rate. WorkSafeBC normally sets the long term wage rate based on your earnings in the year before your injury. However, if WorkSafeBC accepts that those earnings do not represent your usual earnings, it may calculate your long term wage rate on an average of your earnings in the three or even five years before your injury. WorkSafeBC would normally take into consideration your earnings from the three or five year period prior to the injury where the 1-year earnings are unusually low for some reason, such as an atypical work stoppage, injury, or family problem that prevented you from working for a period of the 1-year time frame.

Be aware that the long term wage rate is often lower than your initial wage rate.

Usually, the rate decided at the eight week rate review is also used for your **permanent disability award**. However, there are special circumstances where the disability awards adjudicator or officer may use a different rate than the eight week rate for your permanent disability award. The adjudicator or officer must explain in writing on the WorkSafeBC file why a different rate was used. Some of the reasons could be: your young age, your level of education, some special training you have, or the long-term significance of the disability.

If your wage loss benefits did not last eight weeks and no eight week review was done, then the adjudicator or officer may give reasons (but is not required to) for setting your permanent wage rate differently than your initial rate.

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### What if I am not satisfied with my wage rate?

When you request a review of your wage rate, it is important to understand **what** WorkSafeBC originally decided and **how** it reached that decision. Then, in your appeal, you can clarify information that was misinterpreted or misunderstood, and provide new information that was not considered by WorkSafeBC.

WorkSafeBC has different ways of deciding a wage rate. As discussed above, the most common method of deciding the wage rate is to average your earnings for the 12 months before the injury. However, in a Request for Review you can ask for another method of deciding your wage rate, based on your employment situation. You must be able to provide a good reason for changing how your wage rate was calculated.

Below are the most common circumstances where the method of determining your wage rate might be changed.

#### 1. **Your earnings in the year before the injury were unusually low.**

If your earnings in the 12 months before your injury were unusually low and do not represent what you are losing now, you can ask WorkSafeBC to average your earnings from a 3 (or even 5-year) period before the injury.

Whatever period WorkSafeBC uses to average your earnings, it is important to provide information about any periods when you were not working. In some cases, these periods will be left out when WorkSafeBC averages your earnings over the relevant time period, resulting in a higher wage rate. For example:

- if you were disabled because of illness or injury during the period of employment used by WorkSafeBC, and you can supply a medical certificate confirming your disability, the period of your disability may be excluded from the calculation; **or**
- if you were unable to work because you were attending school and you can prove this, the period of going to school will be excluded in most cases.

WorkSafeBC usually includes other periods during which you did not work when they calculate your average wage, even if you were receiving Employment Insurance (EI). For exceptions, see #4, below. WorkSafeBC includes the **time** you were on EI, but they do not count your **income** from employment insurance as part of your earnings.

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### What is included in earnings?

Only earnings from employment are included in the wage rate calculation. This includes salary, overtime, tips or gratuities, commissions, and some fringe benefits such as room and board, vacation allowances, and travel allowances. However, severance pay or strike pay is **not** included in earnings. Income from investment, insurance, employment insurance, or welfare is also **not** included.

### 2. You got a raise in pay or a promotion just before the injury.

Sometimes WorkSafeBC will pay you based on what you would have earned if you had not been injured. If you were injured when you had just obtained a raise in pay or a promotion that you expected to go on into the future, this may apply to you.

WorkSafeBC will want confirmation that you would have continued working at the same job in the future if you had not been injured. In most cases you will need a letter from your employer. If you can provide this or similar information, WorkSafeBC may look at your rate of pay on the day of your injury and project this rate into the future.

### 3. You were doing a new job in a different occupation just before the injury.

If you changed occupations less than a year before your injury, your average earnings in the one, three, or five years before the injury might not fairly represent your long-term loss of income. If you can persuade WorkSafeBC that your change of occupation was relatively permanent, it may consider only your earnings while you worked in the new occupation. You will need a letter from your employer or union confirming that your new occupation was relatively permanent. The period of employment in the new occupation that WorkSafeBC normally uses is the three months before your injury.

### 4. You just entered the work force or arrived in Canada shortly before the injury.

You may have been working for only a short time (a few months, for example), or you may have worked part-time before your injury because:

- You just entered the work force because you are young or recently left school;

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- You rejoined the work force after many years of being away, for example as a homemaker or with a non-work related illness or injury; or
- You recently arrived in Canada.

If any of these situations apply to you, WorkSafeBC may look at your case and the nature of the job at which you were injured, including whether it was full-time or part-time, to determine your wage rate.

WorkSafeBC may also base your wage rate on the average earnings of people in your occupation in British Columbia, based on statistical information. In certain cases, if you are a college or university student injured during work, WorkSafeBC may look at your career plans and marks to decide what occupation to use for the average wage rate.

If you have recently arrived in Canada, WorkSafeBC may also consider your work history, qualifications and certifications.

### **5. You were injured while learning a new trade or occupation.**

If you are injured while in a formal apprenticeship, WorkSafeBC may adjust your wage rate according to scheduled wage rate increases. This is the **only** case where WorkSafeBC will use an increase in earnings that you expected **after** the date of injury to set the wage rate.

Usually, there is no eight-week rate review if you are an apprentice. However, if in the year before the injury, you had a layoff or you apprenticed for more than one employer, you will have an eight-week review.

If you have a permanent disability, WorkSafeBC should look at the journey person's rate of pay for your wage rate.

### **What if I disagree with a decision?**

If you do not agree with WorkSafeBC decision, you have the right to request a review. You must request a review within **90 days**. If you disagree with the Review Division decision you have **30 days** to file an appeal to the Workers' Compensation Appeal Tribunal.