



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 #24  
Updated: January 2013

## PERMANENT DISABILITY AWARDS

For injuries occurring on or after June 30, 2002  
or where the first indication of permanent disability occurred on or after June 30, 2002

### What is a permanent disability award?

A permanent disability award is money paid by WorkSafeBC when it is determined that your workplace injury or work related disease is not likely to get significantly better or worse, and you have been left with a continuing disability.

Changes to the *Workers Compensation Act* on June 30, 2002, created new rules for permanent disability awards. Even if you were injured before June 30, 2002, some of these changes may apply to your claim if the first sign of your permanent disability occurred on or after that date.

### What are the two types of permanent disability awards?

Your permanent disability award will be paid to you in one of two ways: You will either receive a Permanent Functional Impairment (PFI) award or a Loss of Earnings (LOE) award.

In most cases WorkSafeBC will pay a PFI award. If WorkSafeBC finds that you are not properly compensated by a PFI award because your disability has an exceptionally great impact on your ability to work in your pre-injury occupation, then you may be found entitled to an LOE award.

### How do I get a permanent disability award?

You do not need to apply for a permanent disability award. The case manager accepts which conditions and injuries are permanent and may result in a disability. He or she then refers your file to the Disability Awards Department for an assessment of those specific conditions.

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 think that the case manager should have referred you to Disability Awards, or referred more conditions or injuries to Disability Awards than he or she did, you should request a review of that decision. Requests for Review must be submitted within 90 days of the date of the letter, on which the referral decision is made.

You must have medical evidence, such as a doctor's report, which explains how the ongoing problems are due to your work injury and why these problems are permanent. If, for example, your doctor says you have lost some movement of a joint or strength, and you are not going to recover that loss, the doctor should also say how this is related to your injury.

### **What will happen when my claim is referred to the Disability Awards Department?**

After your claim is referred to the Disability Awards Department, the first step in the assessment process begins with your assessment by a medical professional, who measures any decreased function resulting from your injury. In some cases, Disability Awards will be able to determine your functional impairment and award without another physical examination, using the medical and other information on file and its own Permanent Disability Evaluation Schedule (PDES) or other disability schedule. In any case, your functional impairment will be expressed as a percentage of total disability, generally having regard to its disability schedules.

For example, if you have lost an eye (but suffer no other permanent conditions) because of an injury, your disability is assessed as at 18 percent functional impairment, because the PDES specifies that total loss of sight in one eye is equal to 18 percent of total disability.

In all cases, permanent disability awards are based on how the injury affects the average person's ability to earn money. WorkSafeBC does not pay for pain and suffering. However, in limited circumstances a permanent disability award may be for a different amount than what corresponds to the disability under the PDES. This occurs because the *Act* requires WorkSafeBC to consider other factors beyond the extent of your injury-related permanent disability.

### **Other factors required by the *Act***

The other factors that must be considered are proportional entitlement, enhancement and devaluation.

Proportional entitlement is used where a workplace injury increases a disability that you had beforehand. In such cases, WorkSafeBC determines how much of your permanent disability is due to your injury and how much existed before your injury. Your PFI award is then based on the amount of the disability caused by the workplace injury. You are not compensated for the amount of permanent disability that you had before being injured at work. For example, if you had decreased (20/50) vision in an eye before sustaining a workplace injury in which you lost the eye, your permanent partial disability award would be assessed based on the difference between the award for total loss of vision and the award that WorkSafeBC would grant for a vision

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impairment of 20/50. You would receive a disability award based on 16 percent of total disability (the scheduled 18% for the loss of a fully functional eye less the 2 percent of total disability that would be awarded for 20/50 vision in that eye).

Enhancement takes into account the combined effect of two or more disabilities, whether or not all are from the workplace injury. If WorkSafeBC agrees that the combined effect is greater than the separate disabilities, then the PFI award may be increased for the workplace disability to account for the increased impact it has because of a second (or third, etc.) disability. For example, consider a case where you have a permanent left knee disability equal to 15 percent of total, and you sustain a workplace injury resulting in a permanent disability of the right ankle worth 10 percent of total. WorkSafeBC may increase your PFI award for your ankle by 50 percent (of the award, not of total disability), giving you a 15-percent award for your right ankle, in addition to any award that you already had for your left knee disability.

Devaluation is used to make a PFI award more accurately reflect the permanent disability associated with a workplace injury, where a worker had already a smaller partial disability in the *same area* of the body. It is used where the newer disability replaces and adds to the existing one. For example, if you lost a hand in an accident (a disability worth 54 percent of total, according to the PDES) and later lost the remainder of that arm, to just above the elbow (a disability worth 60 percent of total, according to the PDES), you would receive a permanent disability award of 6 percent for the second injury (60 percent devalued by 54%), to reflect that you did not lose your hand in the second incident (even though you would have, had it not been for the prior accident).

### How is a PFI award calculated?

Your percentage of disability (PFI) is applied to the long term wage rate. This rate is set either after the first ten weeks of your disability or when your condition becomes permanent, whichever comes first. For more information, please read our Factsheet called *Ten Week Wage Rate Review*.

For example, if you earn \$3500 net per month when you are injured, and have a 5-percent PFI from that injury, your permanent disability award is calculated as follows:

Average net earnings (long-term wage rate):	\$3,500 per month
Compensation factor:	
90% of average net earnings (\$3,500 x 90% = \$3,150)	\$3,150 per month
Your permanent disability award: (\$3,150 x 5% = \$157)	\$157.50 per month

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After your PFI award has been calculated, WorkSafeBC will send you a letter setting out the details of your PFI award and your appeal options. It is important to ensure that you agree with the PFI assessment, and that the award is appropriate given the partial disability rating and your long-term wage rate.

Most permanent disability awards stop after this first step. However, if you are unable to return to your regular job or to work at all, WorkSafeBC may go on to consider you for a Loss of Earnings (LOE). If you are found entitled to a loss of earnings award and if this award would be greater than your PFI award, you will be granted the loss of earnings instead of your PFI award (see “What if you cannot go back to work?” below).

### **What if you disagree with the PFI award?**

If you have questions about your PFI, you should carefully look at the decision letter, and any information you receive with the decision with your doctor.

If you disagree with the award, you can appeal the decision. You will need evidence from your doctor that your disability is greater than that identified in your PFI examination and report. Your doctor will need to identify measurements of impairment which are significantly different from those which support WorkSafeBC’s PFI assessment, or detail in what manner the WorkSafeBC medical examiner's findings are incomplete. For example, your doctor could find:

- a greater loss of motion;
- a different level of amputation;
- more weakness; or
- something WorkSafeBC missed entirely.

You will need this evidence to have a chance of winning an appeal on a PFI award.

### **What happens if my condition changes while receiving a PFI award?**

WorkSafeBC will reassess your PFI award again if there is evidence to suggest your condition has changed significantly. If your condition has worsened since your last permanent disability examination then you should have your doctor tell WorkSafeBC. If the case manager agrees that there has been a significant change which is permanent, then your claim will be referred to the Disability Awards Department for an examination and a new decision on permanent disability will be made.

### **What happens if I cannot go back to work?**

If you cannot go back to your old job, you may be entitled to an LOE award.

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Before the legislative and policy changes which came out in June 2002, WorkSafeBC was required to consider the permanent disability award using both the functional award method and the LOE method, and would grant whichever was the greater. The old law and policy continues to apply to those pensions granted prior to June 30, 2002 and will also apply to any reopening of a claim for a worsening in a compensable condition where the first indication of permanent disability (of the original injury or disease) occurred prior to June 30, 2002. However, if your injury occurred since June 30, 2002 you will fall under the current law and policy. For further information, please refer to our Understanding a Pension Decision factsheet.

In order to be assessed for a LOE award, your disability and the effect of your disability on your occupation must be “so exceptional” that your PFI award does not properly compensate you.

If you wish to reopen a claim where the injury occurred prior to June 30, 2002, but the first indication of permanent disability is not found until after June 30, 2002, you will largely fall under the new law and policy. However, the wage rate for pension purposes will be calculated using the formula from the former law and policy, i.e. it will be based on 75% of gross earnings rather than the 90% of net earnings now in use.

### **What is the “so exceptional” test?**

WorkSafeBC is in the process of revising the manner in which it applies the “so exceptional test”. (The information set out here is based on WorkSafeBC’s practice based on its August 2012 interim practice directive C6-2). For WorkSafeBC to find that your situation is so exceptional) it must find as follows:

- First: WorkSafeBC must find that you are unable to return to your pre-injury occupation or that you would suffer a significant loss of earnings in returning to that occupation.
- Second: WorkSafeBC would have to find that there is no suitable occupation to which you could adapt, again without suffering a significant loss of earnings.

Prior to the second determination set out above, you may be offered retraining to a physically suitable occupation through WorkSafeBC’s vocational rehabilitation services (“VRS”). If you refuse to fully co-operate with VRS, this will not prevent WorkSafeBC from “deeming” you capable of a return to work to the proposed occupation or occupations, and deeming you capable of certain earnings within that occupation. If you have not cooperated with VRS you will have a hard time challenging this deeming.

### 1. Unable to return to occupation or unable to return to another suitable occupation without a significant loss of earnings

A vocational rehabilitation consultant at WorkSafeBC will look at whether you can return to your job and if not, whether you have the necessary skills, including the physical ability and required training and education to return to another suitable occupation. If you cannot work to your former capacity, then WorkSafeBC must consider whether your inability or reduced capacity will result in a significant loss of earnings.

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WorkSafeBC's VRS may offer education, training, or other services in order to assist you to adapt to a certain occupation or occupations.

### 2. Consideration of Significance of Loss

If you can adapt to another suitable occupation, WorkSafeBC will look at whether or not your PFI appropriately compensates you, or whether you will suffer a significant loss of earnings. If you can return to another suitable occupation and you have a significant loss of earnings, you will be assessed for a partial loss of earnings award.

To decide this, WorkSafeBC will compare the average gross earnings in your pre-injury occupation (up to a maximum level covered by WorkSafeBC) with the combined total of your expected (or deemed) gross earnings in your post-injury occupation plus the PFI award you would receive if you were not granted a loss of earnings award. Generally speaking, if the average earnings after your injury plus your PFI award entitlement are less than 75 percent of the pre-injury average gross earnings, you will be assessed for a LOE award. However, this is only a guideline: WorkSafeBC must consider each case individually.

#### **How will the loss of earnings be assessed?**

If your case is considered "so exceptional", the Disability Awards Department will ask a vocational rehabilitation consultant ("VRC") to write an employability assessment. This assessment is a recommendation to the Disability Awards Department setting out your likely long-term earnings over the next three to five years. This projection will take into account any education or training offered by VRS, whether or not you agreed to participate in the training.

The VRC will provide you with a copy of the employability assessment. You have 30 days to write to the Disability Awards Department to explain what you disagree with. The Disability Awards Department will consider the employability assessment and your response.

The Disability Awards Department will reach a decision on what you are able to earn in a "suitable and reasonably available occupation" in the long-term, whether you are entitled to a LOE award, and the amount of your LOE award, if any.

#### **If I receive a LOE award, how will it be calculated?**

The calculation is shown in the following example. If you had a net wage rate of \$3,500 per month and your net earnings after the injury are expected to be \$1,500 per month in your new occupation over the long term, your permanent disability award would be calculated as follows:

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Average net earnings before injury (Long-term wage rate)	\$3,500 per month
Average net employment earnings after injury	\$1,500.00 per month
Amount of PFI award	<u>\$ 500.00 per month</u>
Total post-injury earnings	\$2,000.00 per month
Difference in earnings (Pre-injury earnings less total post injury)	\$1,500.00 per month
Compensation factor ( $\$1,500$ (from above) $\times$ 90% = $\$1,350$ )	\$1,350.00 per month

Your LOE award as calculated above would be \$1,350.00 per month.

### How will the permanent disability award be paid?

Generally, disability awards are paid at the end of each month and may be deposited directly into your bank account.

WorkSafeBC will pay a lump sum when the total disability is 10 percent or less and the monthly award is not more than \$200. You may also request payment of your award in a lump sum, in certain circumstances. This payment of a lump sum is called a commutation. For more information, see the Factsheet called *Permanent Disability Awards: Lump Sums and Commutations*.

### How will Canada Pension Plan Disability Benefits affect my permanent disability award?

If you are receiving Canada Pension Plan (CPP) disability benefits and WorkSafeBC permanent disability benefits for the same injury, WorkSafeBC may deduct up to 50 percent of the money CPP pays to you from your WorkSafeBC permanent disability benefits. For more information, please read the Factsheet called *Canada Pension Plan Benefits and WorkSafeBC Benefits*.

### When will my permanent disability benefits stop?

If you were injured on or after June 30, 2002 (or if you were injured before that date, but the first indication of a permanent disability did not appear until on or after June 30, 2002), the award will usually be paid until the earlier of your 65<sup>th</sup> birthday or your death. There are exceptions to this general rule. For more information see the Factsheet *Duration of Benefits*.

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WorkSafeBC also invests a portion of each monthly disability award it pays, before any adjustment for CPP benefits. This investment is paid to you when you turn 65 (or to a beneficiary, in the event of your death before then). For more information see the Factsheet *Retirement Benefits*.

### **What if you do not agree with the permanent disability award decision?**

If you do not agree with the 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.