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 #35
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TEN WEEK WAGE RATE REVIEW

What is the Ten Week Review?

If a work-related injury or disease disables you from working, WorkSafeBC will pay you wage loss benefits.

For the first ten weeks, wage loss is based on 90% of your net earnings at the time of the injury. WorkSafeBC decides your net earnings by using a formula that estimates:

- probable income tax;
- Employment Insurance deductions; and
- Canada Pension Plan deductions.

If you are disabled from working more than ten weeks, WorkSafeBC must review the initial wage rate set on your claim. The wage rate on your claim after 10 weeks is called the long term wage rate.

To determine net earnings, information about your personal tax status will now be applied to your long term wage as opposed to a general formula that was used for the initial wage rate.

How Does WorkSafeBC Set The Long Term Wage Rate?

The *Workers Compensation Act* says that the long-term wage rate should generally be based on the earnings in the 12-month period immediately before the date of injury. Therefore, if you did not work all of the past 12 months or your wages varied during the year, your long term wage rate may be less than your initial wage rate.

What does WorkSafeBC consider to be earnings?

Average earnings are wages or salary. Earnings used to determine your long term wage rate can also be:

1. Extraordinary or Irregular Wage Payments. This includes commissions, piecework, bonuses, tips and regular overtime. These will be included in your average earnings if WorkSafeBC has

2. proof of your information through independent sources. Statutory holiday payments or vacation allowances can also be included in setting the wage rate on a claim.

3. Room and Board. The dollar value of room and board can be included in average earnings, unless you continue to receive room and board while you are disabled from work.

4. Employment Insurance Payments. Employment Insurance will only be included in average earnings if there is independent proof that you received those benefits due to your employment in an occupation or industry that results in recurring seasonal or temporary interruptions of employment.

5. Any portion of the wages you received which represents a charge for rental of your own equipment is excluded from average earnings. If your earnings include payment for business expenses or costs associated with equipment, WorkSafeBC will average your earnings using only the labour component. This is the portion of the earnings that remains after deductions for business expenses and costs associated with equipment.

There are more detailed rules governing the calculation of wage rates for self-employed workers such as owner-operators and fishers.

For the purpose of determining earnings, WorkSafeBC will not recognize investment income or other income in which there is no labour component.

What if my earnings would have increased, had I not been injured?

In special circumstances WorkSafeBC may determine your long term rate without using your actual earnings. These include:

- If you are a registered apprentice, learner or in an employer sponsored training program, WorkSafeBC can use the starting pay rate for that trade or occupation to set your long term wage rate.

- If you had a permanent job but were injured before you had worked <u>for a full 12 months with your employer</u>, WorkSafeBC can use the 12-month earnings of another worker in similar employment with the same employer or another employer in the same region. If WorkSafeBC cannot determine the earnings of a similarly-situated worker, it will use a regional class average to determine the long term wage rate.

What if my earnings in the 12 month period are not as high as my normal earnings?

The Act provides a number of exceptions to the 12 month rule in setting the long term wage rate.

Exceptional circumstances include:

Prior Periods of Compensable Wage Loss

Where you received wage loss or vocational allowances from WorkSafeBC in the 12 month period prior to the injury, the 12 month rule will not be applied.
In these circumstances, WorkSafeBC may use a longer or shorter period of time to average the earnings and they will exclude from consideration those periods of time in which you received wage loss compensation.

Significant Unusual and/or Irregular Changes in the Pattern of Employment

Where you had a regular pattern of employment, but the earnings in the 12 month period prior to the injury do not reflect your historical earnings because of significant unusual or irregular disruption in the pattern of employment the 12 month rule will not be applied.

Examples of significant and/or irregular changes include reduced income due to non-work related injuries or illness, education leave, or maternity/paternity leave.

If you can show that you lost a lot of time from work, that the lost time was unusual for you, and that your lost time was not part of a pattern, WorkSafeBC can use a longer or shorter period of time to average your earnings. It would normally exclude the period of the disruption from the average earnings period.

If your lost time was part of a seasonal pattern in your work you can ask WorkSafeBC to include your Employment Insurance benefits in your earnings.

Reduced Future Career Options Due to the Injury

If you can show that your injury reduced or excluded your future career options, WorkSafeBC may look at your likely future earnings. This policy usually applies only to students and young workers under the age of 25. A possibility of promotion in the future is not considered an exceptional circumstance.

Assessment of the labour component of your average earnings

When part of your income is from self employment or you provide your own equipment to do your job, WorkSafeBC may consider your earnings for a period of more than 12 months, if necessary to more accurately determine your long term average earnings. WorkSafeBC will deduct from your gross income that portion which is intended to cover operating costs and expenses. Deducting operating expenses allows WorkSafeBC to estimate the portion of your income that is paid for your labour.

Other Reasons where exceptional circumstances may apply include:

- where a worker was employed on a temporary basis at the time of injury;
- recent entrants or re-entrants to the labour forces; and
- new immigrants.

What if I have Personal Optional Protection?

If you purchased personal optional protection (POP), your wage rate will be based only on the earnings for which you purchased coverage (90% of your POP coverage). Your long term rate is the same as your initial wage rate.

What if I am a casual worker?

If you have an infrequent or irregular pattern of employment, WorkSafeBC considers you to be a casual worker. Your wage rate is based on your earnings in the 12 months prior to your injury. There is no ten week wage rate review.

What if I disagree with the decision?

A WorkSafeBC officer makes the ten-week rate review decision. You should speak to the officer about the decision and make sure WorkSafeBC has all your earnings information and make sure you understand the 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.