



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 #08
Updated: January 2013

WAGE RATES FOR CLAIMS: REOPENED MORE THAN 3 YEARS AFTER THE ORIGINAL INJURY

When your condition recurs or becomes worse, WorkSafeBC will reopen your claim and re-determine the benefits to which you may be entitled. If the worsening means that you will have an additional period of temporary disability, you will be entitled to temporary wage loss benefits. If the worsening is a permanent worsening, you will be entitled to a permanent disability award, or an increased permanent disability award if you had already been granted one. You may even be entitled to vocational rehabilitation benefits, if the worsening means that you will be unable to return to your regular work.

When you were originally injured, your wage rate for benefits was based on only a percentage of your pre-injury earnings. This percentage was either 75% of gross earnings if you were injured before June 30-, 2002, or it was 90% of net earnings, if you were injured after June 30, 2002. When your claim is reopened, your wage rate will be equivalent to 90% of net earnings.

With a reopening, the earnings selected by WorkSafeBC to calculate your wage rate will depend on whether your condition recurred or became worse *within* three years of your original injury or *more than* three years after your original injury. This Fact Sheet describes the calculation of wage rate where the reopening is greater than 3 years from the original injury date. Please see also our Fact Sheet: *Wage Rate for Claims: Reopened Within 3 Years after the Original Injury*.

What if I earn the SAME AMOUNT now as I did when I was originally injured?

If your current employment is at the same rate as your rate originally set on the claim (or review rate), WorkSafeBC will use the original wage rate with a cost-of-living adjustment.

For more information:
Website: 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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What if I earn MORE now than I did at the time of the original injury?

If your earnings are greater now than when the original wage rate (or review rate) was set, your benefits will be based on your earnings now. You will get a new wage rate based on your earnings at the time your claim is reopened. After ten weeks of benefits under the reopened claim or when your condition becomes permanent, whichever comes first, WorkSafeBC will do a ten-week rate review to set your long-term wage rate.

If you are receiving periodic permanent disability benefits at the time of the reopening, they will not be deducted from temporary wage loss benefits except if the combined payments exceed the maximum amount payable by law.

What if I am earning LESS than I did at the time the original wage rate was set?

If your current earnings are less than your original earnings (and the wage rate is based on them), WorkSafeBC will decide whether the injury itself prevents you from earning a greater income. If WorkSafeBC accepts that your lower earnings are due to your injury or disease, they will use your original wage rate with a cost-of-living adjustment.

However, if your lower earnings are found to be related to other factors such as an economic downturn, your relocation to an area of significantly reduced employment opportunity, or non-compensable health conditions or personal problems, WorkSafeBC will base your wage rate on current earnings.

What if I am unemployed?

WorkSafeBC will decide whether or not your unemployment is related to the original injury.

If WorkSafeBC decides the unemployment is due to your original injury, your original wage rate is used to determine your benefits, with a cost of living adjustment up to the date of reopening.

If WorkSafeBC decides that your unemployment is not due to the original injury, you will only receive wage loss benefits if you can show that you have a **potential loss of income** due to the reopening of the claim. (You may, however, receive health care benefits.)

For example: A potential loss of income would exist if you were a fisher who normally does seasonal work and you had to turn down fishing work because of the reopened claim.

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The factors considered by WorkSafeBC in assessing your potential loss of income, are the same sort of factors which would be used in determining whether current earnings should be used when you have reduced earnings. These factors include:

- Would you have found work or earned a higher income if not for the disability? If yes, this may indicate that there is a potential loss. However, if your unemployment is due to an economic downturn or other employment difficulties caused, this may indicate there is no potential loss.
- Is your unemployment due to a lifestyle choice? For example, if you moved to a remote area where there are limited employment opportunities, this may indicate that there is no potential loss.
- Were you actively searching for a job prior to the reopening? Did you register with any provincial or federal government agencies to assist in the job search? If so, this may indicate there is a potential loss.
- Do you have other non-compensable health conditions or personal problems that would limit the possibility for you to gain employment? If so, this may indicate that there is no potential loss.
- Did you maintain union status? If you remained available for dispatch to jobs, or been dispatched to jobs, then this may indicate a potential loss. If the worker has declined offers of dispatch, this may indicate no potential loss.
- Were you recently on some form of worker's compensation benefits or other disability benefit due to a different disability? Have you since recovered but not yet returned to work? If so, this may indicate a potential loss.

What if I disagree with the decision?

If you do not agree with WorkSafeBC's 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.

If you are requesting a review, you will need to answer these questions:

- What exactly were your earnings at the time of reopening the claim?
- If your earnings were lower than your previous wage rate, why were they lower?

If your earnings were lower at the time of reopening than your previous wage rate, you will need to provide WorkSafeBC with proof that the injury has affected your employment. This could be a letter from your family doctor, specialist, chiropractor, or physiotherapist stating that the reduction in your earnings is significantly due to the work-related injury or disease.