Section Title: Benefits Administration - Wage Loss
Subject: Net Average Earnings
Effective Date: January 1, 2001 to December 31, 2005

POLICY PURPOSE

This policy describes how the worker's net average earnings are calculated.

Workers who have accidents after December 31, 1991, will receive wage loss benefits or their survivors' benefits based on a percentage of the worker's net average earnings. Net average earnings are calculated in a two step process.

First, the Workers Compensation Board (WCB) determines the worker's average earnings before the accident. That process is described in policy 44.80.10.10, *Average Earnings*. From those average earnings, the WCB calculates amounts representing probable deductions for income tax payable, Canada Pension Plan (CPP) contributions, Employment Insurance (EI) premiums and other deductions as the Board of Directors may establish by regulation. Those amounts are deducted from "average earnings" to arrive at the worker's "net average earnings." The probable deductions that may be used in calculating a worker's net average earnings are described in this policy.

This policy applies to all accidents on or after January 1, 2001. For accidents prior to this date, please refer to policy 44.80.10.40.01, *90% of Net Average Earnings*.

A. POLICY

Net Average Earnings

(i) Relationship to Average Earnings

1. The WCB determines a worker's net average earnings by deducting from the worker's average earnings the probable deductions for the following:
    - income tax payable by the worker;
    - Canada Pension Plan contributions payable by the worker;
    - Employment Insurance premiums payable by the worker; and
    - other deductions the Board of Directors may establish by regulation.
2. Net average earnings is recalculated whenever the worker's average earnings change.

(ii) Probable Deductions from Average Earnings

1. Probable deductions for CPP contributions and EI premiums are based on requirements of the *Canada Pension Plan Act* and the *Employment Insurance Act*.

2. When determining probable amounts, the WCB considers the contribution levels required under those *Acts*. Workers who are not required to pay CPP contributions or EI premiums do not have these probable contributions or premiums deducted.

3. Probable deductions for income tax are based on the worker's average earnings and the tax credits and deductions that the WCB allows. Workers who are not required to pay income tax do not have probable income tax deducted.

4. The WCB allows a worker to claim the following tax credits: basic personal amount, spouse or common-law partner amount, amount for an eligible dependant, dependent children age 18 or younger and infirm dependants age 18 or older. For the purpose of determining the probable deduction for income tax, the worker's average earnings will be reduced by the following tax deductions: child care expenses and support payments. Probable income tax will then be applied to the reduced average earnings.

5. Tax credits and deductions that a worker may claim are established at the date of accident. These credits and deductions will be adjusted on the first day of the month following the second anniversary of the accident and annually thereafter.

(iii) Recurrences or New Accidents

1. When a worker returns to work following an injury and subsequently makes a claim which is accepted by the WCB as a "recurrence" of the original injury with a real and substantial attachment to the labour force, the worker's net average earnings will be the higher of net average earnings at the time of recurrence, or pre-injury net average earnings. The worker's net average earnings at the time of the recurrence will be based on the tax credits and deductions he or she can claim at that time.

2. If the claim is accepted by the WCB as a continuing result of the original injury without a real and substantial attachment to the labour force, the worker's net average earnings will be based on pre-injury net average earnings.

3. If the claim is accepted as a "new accident", the worker's net average earnings will be based on net average earnings at the time of the accident.

B. REFERENCES

The Workers Compensation Act, subsections 29(1)(a)(ii), 39(1), 40(1), and 40(3)
WCB Policy 44.80.10.10, *Average Earnings*
WCB Policy 44.80.30.10, *Establishing Post-Accident Earning Capacity*
WCB Policy 44.10.20.50, *Recurring Effects of Injuries*

History:
1. Policy 44.80.10.40 established by Board Order 45/91 on December 17, 1991.
2. Policy amended by Board Order 20/93 on June 28, 1993, to cease effect on June 30, 1993. Re-issued to Policy Manual as 44.80.10.40.02
3. Policy 44.80.10.40 approved by Board Order 20/93 on June 28, 1993 to reflect amendments to the federal *Income Tax Act* effective July 1, 1993. Re-issued to Policy Manual as 44.80.10.40.01

4. Policy 44.80.10.40 approved by Board Order 13/2000 on April 27, 2000. Policy renamed Net Average Earnings. The major changes to the policy include the addition of tax deductions that a worker may claim and a revised method for determining net average earnings when a recurrence occurs. Effective January 1, 2001 for accidents on or after January 1, 2001.
5. Policy was amended by Board Order 31/2003 on October 30, 2003, to reflect a wording change to Point A. (i) 2. Administrative Guidelines have been added to this policy and the name of a policy in the "References" section has been corrected.
6. Updated July 1, 2005 – Bill 41 effective July 6, 2001 redefined "spouse" and added a separate definition of "common-law partner". The change in the policy adds the phrase "or common-law partner" after "spouse".
7. Policy amended by Board Order 28/05, on September 29, 2005, to rescind Board Order 13/00 effective January 1, 2006. The rescinded policy will continue to apply to net average earning decisions made on accidents from January 1, 2001, to December 31, 2005. The recurrence provisions apply to recurrences from January 1, 2001, to December 31, 2005. This policy will apply to any reconsiderations and appeals that derive from these decisions/accidents and re-issued as 44.80.10.40.01.
8. Minor formatting and grammatical changes were made to the policy June 27, 2012.

C. <u>ADMINISTRATIVE GUIDELINES</u>

1. In calculating probable income tax, the WCB will only use the allowable tax:

   - credits that the worker is entitled to claim under the *Income Tax Act* at the time of the accident (or at a subsequent indexing date); and,
   - deductions that the worker is entitled to claim under the *Income Tax Act* at the time of the accident (or at a subsequent indexing date) **or** a reasonable estimate of what the worker will be allowed to claim for the applicable tax year.

   The "allowable" tax credits and deductions used in the above calculation are limited to those listed in item # (ii) 4 of the policy (although a worker may be allowed additional credits or deductions for other things under the Income Tax Act when filing his/her income tax return).

2. The WCB may request confirmation of the tax credit and deduction amounts and/or may verify through subsequent tax returns that the tax credits and estimated deduction amounts provided by the worker and used by the WCB were reasonable. If there is a significant difference, the WCB will recalculate net average earnings retroactively and the wage loss benefit will be adjusted accordingly (possibly resulting in a benefit overpayment if the estimated deduction amount was too high).