



WORKERS' COMPENSATION: A Guide for New Brunswick Workers

DISCLAIMER New Brunswick law protects employers' and workers' rights under three pieces of legislation: the *Workplace Health, Safety and Compensation Commission Act*, the *Workers' Compensation Act* and the *Occupational Health and Safety Act*.

This guide is for information purposes *only* and must not be interpreted as the legislation and/or policies administered by the WHSCC of New Brunswick.

Our vision

*Healthy and safe workplaces
in New Brunswick*

Mission

The Workplace Health, Safety and Compensation Commission is dedicated to the promotion of a safe and healthy work environment and the provision of services to workplaces, employers and the injured workers of New Brunswick.

Mandate

Promote the creation of a workplace environment where all employers and workers view all occupational disease and accidents as being preventable.

Provide insurance and insurance related services to the employer community.

Provide compensation benefits, including rehabilitation, medical, vocational, counseling and safe return-to-work services to injured workers.

Our values

We dedicate ourselves to the provision of prompt, effective, efficient and caring services to our clients.

We believe that a team approach ensures that all members of the Commission are working towards a shared vision, mission and goals.

We are committed to providing competent and energetic leadership that is focused on a clear direction for the Commission.

We ensure that our decisions are made with a sense of integrity, credibility, and accountability.

We ensure that our communications are based on trust, mutual respect, openness, and clear and reliable information.

We manage our human, material and financial resources effectively in responding to our mandate.

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What is the WHSCC?

WHAT IS THE WHSCC?

The Workplace Health, Safety and Compensation Commission (WHSCC) is dedicated to the promotion of a safe and healthy work environment and the provision of services to employers and workers in New Brunswick.

The WHSCC is an employer-funded Crown Corporation, and not a provincial government department. The WHSCC reports to the New Brunswick Legislature through the Minister of Training and Employment Development, and provides cost-effective disability and liability insurance for approximately 13,000 employers and 285,000 workers in New Brunswick.

The WHSCC administers three pieces of legislation: (1) the *Occupational Health and Safety (OHS) Act* and regulations; (2) the *Workers' Compensation (WC) Act* and regulations; and (3) the *Workplace Health, Safety and Compensation Commission Act*.

The *OHS Act* asserts that every worker is entitled to a safe and healthy workplace. This act places primary responsibility for occupational health and safety in the hands of workers and employers and grants them three basic rights:

- the right to know about workplace hazards;
- the right to participate in solving health and safety problems; and
- the right to refuse dangerous work.

Note: The *OHS Act* also sets out specific accident reporting requirements, and defines the rights and responsibilities of employers and employees. For more information on your rights and responsibilities under the *OHS Act*, please contact us. This guide addresses the legislative requirements of the *Workers' Compensation Act*.

What is the workers' compensation system?

Like other pieces of workers' compensation legislation in Canada, the *Workers' Compensation Act* of New Brunswick is based on the Meredith Principles, which formed the basis of an historic agreement between labour and business. According to the Meredith Principles, employers agreed to fund a workers' compensation system, and in exchange, workers gave up the right to sue employers for compensation of work-related injuries.

In New Brunswick, workers' compensation is administered through a no-fault insurance system set up under the *Workers' Compensation Act*. The workers' compensation system protects employers and workers against the impact of work injuries by compensating injured workers for lost income, health care, and other costs – as well as protecting employers from being sued by workers who are injured on the job.

How does it work?

In New Brunswick, the *WC Act* requires all employers with three or more part-time or full-time employees at any time during the year to register for coverage with the WHSCC. Employers are grouped according to industry and associated risk, and are assessed an annual payment based on their rate group and yearly payroll.

Employers are not permitted to collect compensation contributions from workers.

GUIDING PRINCIPLES OF WORKERS' COMPENSATION

No fault compensation. Workers are eligible to receive benefits for work-related injuries or occupational diseases, no matter who is at fault.

Collective liability. All employers in covered industries share responsibility for fully funding the cost of workers' compensation insurance.

Universal immunity. Participating employers and their workers have universal immunity against lawsuits for work-related accidents.

Exclusive judicial jurisdiction. The workers' compensation system has exclusive legal authority to make all decisions arising under the *Workers' Compensation Act*, subject to the rules of natural justice.

Fair compensation and fair premiums. Compensation should be fair and should account for the nature of the injury as well as the impact on employment earnings. Furthermore, premiums should be fair and competitive and account for the full cost of the system including claims, reserves, and administration.

Workers' compensation in New Brunswick is guided by principles formulated by the former Chief Justice of Ontario, Sir William Meredith, more than 80 years ago.

Benefit of doubt to worker. Adjudication decisions favour the injured worker where all evidence for and against is equally balanced.

Comprehensive injury prevention and disability management. The WHSCC administers the *Occupational Health and Safety Act* and associated regulations. The WHSCC provides a comprehensive range of services to both prevent injuries and manage disabilities.

Long-term stability, financial security and cost-effectiveness. The system is structured and operated to ensure its long-term stability, financial security, and cost-effectiveness.

[what is the WHSCC?]

ROLES AND RESPONSIBILITIES

The WHSCC's responsibility is to provide high quality workers' compensation-related services to employers and injured workers. Employers, workers and health care providers are also responsible for supporting the workers' compensation system.

The **WHSCC** must:

- provide injured workers with clear information in a timely manner;
- provide injured workers with effective compensation and rehabilitation services to help them return to employment;
- work with workers, employers and labour organizations to promote injury prevention and develop effective disability management services; and
- maintain sound financial and administrative management practices.

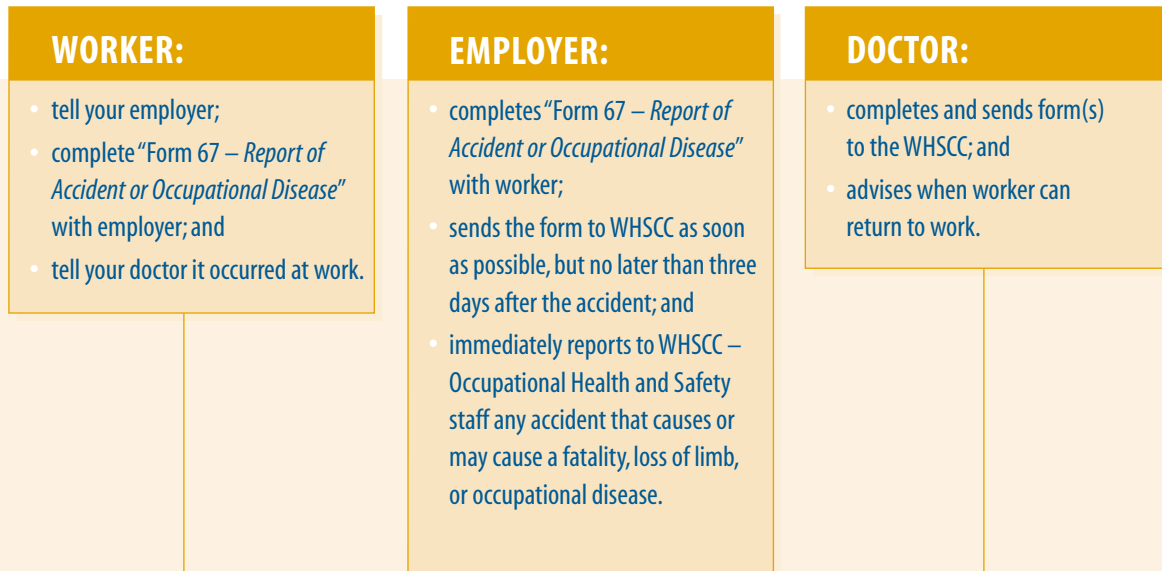
Employers are responsible for paying assessment premiums, reporting injuries and helping injured workers return to work by offering modified or alternative employment.

Workers are responsible for full participation in their rehabilitation plan and maintaining regular contact with their employer, the WHSCC and their health care providers.

Health care providers are responsible for supporting the worker's recovery and return to work by working with the injured worker, the employer, other health care providers and the WHSCC.

[what is the WHSCC?]

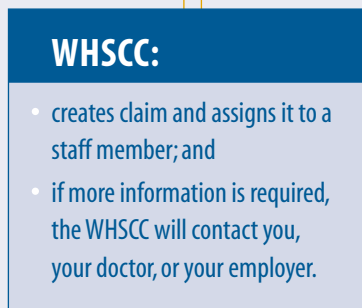
HOW DOES A WORKERS' COMPENSATION CLAIM GET STARTED?



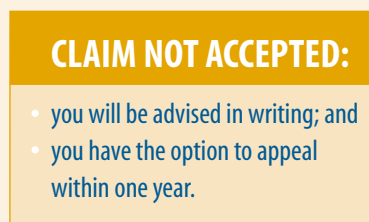
stage 1

FORM 67

MEDICAL FORM



stage 2



stage 3

Coverage and reporting

COVERAGE AND REPORTING OF ACCIDENTS

What is workers' compensation?

Workers' compensation is a no-fault liability insurance system that provides financial, medical and rehabilitation assistance for workers covered by workers' compensation who are injured as a result of their employment, or suffer from an occupational disease.

The *Workers' Compensation Act* substitutes the injured worker's right to legal action against an employer with a more positive and prompt method of compensation. Arrangements cannot be made between the worker and the employer to forego any workers' compensation benefits to which the worker or the worker's dependents are entitled.

Who pays for workers' compensation?

Assessed employers fully fund the workers' compensation system. Workers do not contribute financially to the system.

What is an "accident"?

Under the *Workers' Compensation Act*, an *accident must arise out of employment and in the course of employment*, and can be one of the following:

- a wilful and intentional act, not being the act of the worker who suffers the accident;
- a chance event or incident occasioned by a physical or natural cause;
- a disablement caused by an occupational disease; and/or
- a disablement or disabling condition.

An accident does not include the disablement of mental stress or disablement caused by mental stress, unless that disablement resulted from an acute reaction to a traumatic event.

What is an "occupational disease"?

An occupational disease is any disease that is peculiar to, or characteristic of, a particular industrial process, trade, or occupation, which is declared to be an occupational disease by regulation.

What does the term "compensation" mean?

The term "compensation" refers to a monetary payment made to an injured worker to reimburse lost earnings that result from a workplace injury.

As a general rule, the Workers' Compensation Act covers every person who works for a company with three or more employed workers.

How do I know if I am covered by the Workers' Compensation Act?

As a general rule, the *Workers' Compensation Act* covers every person who works for a company with three or more employed workers. However, there are exceptions to this rule. For example, in the fishing industry, coverage is only required for companies that employ 25 or more workers at the same time.

The *Workers' Compensation Act* does not cover family members of the employer who reside with the employer and who are under 16 years of age, persons employed as domestic servants, Armed Forces personnel, professional athletes and members of the RCMP.

If you are unsure of your coverage, ask your employer if the business has workers' compensation insurance for its employees. You can also call our Assessment Services inquiry line at 1 800 222-9645.

Do I have to work full time to be covered?

If you work for an employer that must have workers' compensation insurance, you are covered whether you are a full-time, part-time, temporary or casual worker.

What if I am a volunteer firefighter?

Volunteer firefighters are considered employees of the village, town or municipality that hires them and are protected by the *WC Act* while carrying out firefighting duties. Volunteer firefighters are protected from the time they receive an emergency call until the time they return home, or to the place from which they responded to the emergency, as long as they used the most direct route. Volunteer firefighters are also covered as they perform duties relating to the maintenance of firefighting equipment and as they attend training sessions authorized by the fire chief.

[coverage and reporting]

What types of injuries should I report to file a claim?

You and your employer should complete Form 67 – *Report of Accident or Occupational Disease* for all work-related injuries, whether or not you lose time from work.

Are there any conditions or situations that may affect my coverage?

If you believe your injury is work-related, always report the injury. The WHSCC reviews and assesses all claims on a case-by-case basis. Benefits will not be paid if the injury is not work-related.

Some conditions or situations that are not considered work related include pre-existing or unrelated health problems such as diabetes, arthritis, or old sports injuries. However, if you are injured and the injury makes the

pre-existing condition worse, you may be eligible to receive benefits during your recovery period from the aggravated pre-existing condition.

Am I covered when travelling to and from work?

Generally, if you are in an accident while travelling to and from work, you are not covered by workers' compensation. However, if you are travelling at the request of your employer, you may be covered. The WHSCC reviews each case individually.

What if I am injured on my employer's property?

Workers' compensation coverage is in place for you from the time you arrive on your employer's property or job site until the time you leave, provided you are there for work-related purposes.

YOU SHOULD REPORT ALL WORK-RELATED ACCIDENTS OR DISEASES.

The following list outlines the type of injuries that can occur.

- a) **Traumatic injuries** happen quickly, causing trauma to the body. Examples include broken bones, severe cuts, and burns.
- b) **Injuries caused by repeated activities** include strains or sprains caused by repeatedly performing the same activity. For example, an assembly line worker may develop a repetitive strain injury in his/her wrist as a result of performing job duties.

- c) **Occupational diseases** are caused by a work site condition. For example, workers repeatedly exposed to toxic materials in the workplace may develop conditions that impact their health.
- d) **Recurrences and difficulties with an old work-related injury.** The acceptance of a claim for recurrence of an injury is based on the continuity of symptoms, as well as the medical relationship between the present condition and the past injury.

What to report

Am I covered while employed outside of New Brunswick?

Workers are covered while they are employed outside of New Brunswick if the following conditions apply:

- the worker's usual place of employment is in New Brunswick;
- the worker is working outside of New Brunswick for a specific period of time and at the request of the employer;
- the employer is a registered WHSCC employer and operates within the province;
- the employer provided a written request to the Commission for coverage with the names of the workers to be covered; and
- the employer included these workers in their payroll.

Additionally, the WHSCC should be advised prior to your leaving the province.

“Am I covered while employed outside of New Brunswick?”

What if I am injured while working outside of New Brunswick?

If your employer is not required to register, or is not granted registration in the province where your accident occurred, your claim must be made with the WHSCC of New Brunswick regardless of the “accident province.”

If you are covered by workers' compensation in the accident province and your home province, you can choose compensation from one province or the other, but *not both*. To apply for benefits from another province, you must sign a form of election (affidavit) indicating that you are not applying for benefits in your home province.

There are some instances where neither one of these situations applies. In such cases, decisions on specific claims are based on individual circumstances.

What about my health insurance at work?

The WHSCC does not accept responsibility for employer-sponsored health insurance plans that provided benefits at the time of injury. You may no longer be entitled to such a health plan while on workers' compensation; you should confirm this with your employer.

Can I receive other income while on workers' compensation benefits?

The *Workers' Compensation Act* states that an injured worker cannot receive more than 85% of his or her net pre-accident earnings in compensation payments. The WHSCC will consider all employment-related income when calculating your benefits. It is important that you inform the WHSCC of all income you receive while on benefits as soon as possible to avoid overpayment.

Will I receive compensation benefits if the injury was my fault?

Yes. Workers are eligible for benefits for work-related injuries, regardless of who is at fault. Workers' compensation is “no-fault guaranteed” insurance. However, if your injury is caused by your own serious and wilful misconduct, you may not be eligible for benefits.

[coverage and reporting]

If I am covered by workers' compensation insurance, can I sue the person or company responsible for my injury?

No. You cannot sue the person or company responsible for your injury if they have, or are required to have, workers' compensation coverage. You are still insured if your employer is required to have workers' compensation coverage, but has not registered.

What if my accident involved a third party?

If your injury was caused by a company or person not covered by the *WC Act* (a third party), and you are in the course of employment at the

What if I have a pre-existing medical condition?

If you have an accident that aggravates a pre-existing condition, benefits may be payable for the aggravation period.

What if I have a recurrence of an old work-related injury?

Claim acceptance for the recurrence of an old work-related injury is based on the continuity of symptoms, and the medical relationship between your present condition and your past injury. It is sometimes difficult to confirm that the condition is an aggravation of your previous injury, rather than a new unrelated incident.

You and your employer are required by law to report your work-related injury to the WHSCC. Your employer can be fined if it is not reported, and your failure to report your injury in a timely manner may result in your being denied compensation benefits.

time of the accident, you may choose to claim compensation from the WHSCC or take action against the third party.

If you elect compensation, the WHSCC may proceed with legal action against the third party, and any monies exceeding the total cost of your claim including future benefit entitlement, legal costs, and administration, will be paid to you or your dependents.

Can my employer and I agree not to report my injury to the WHSCC?

No. You and your employer are required by law to report your work-related injury to the WHSCC. Your employer can be fined if it is not reported, and your failure to report your injury in a timely manner may result in your being denied compensation benefits.

Could my compensation claim be investigated?

Yes. The WHSCC may undertake an investigation regarding the facts of your claim if they are in dispute. The WHSCC also investigates allegations of fraud and abuse that come to our attention.

Can I get information from my claim file?

Yes. You can make a written request for a copy of your claim file. Your employer is also entitled to a copy of your claim file. A small fee will be applied to process this request.

If you are injured

IF YOU ARE INJURED AT WORK

What should I do if I am injured on the job?

In the event of an accident, injury or occupational disease at work, you must immediately take the following action:

- report the accident to your employer before leaving work, if possible;
- *a report of the accident must be made even if you do not require medical attention;*
- get medical treatment, as required;
- with your employer, complete an accident report (Form 67 – *Report of Accident or Occupational Disease*) and ensure that the report is forwarded to the WHSCC; and
- advise your treating physician that your injury is work-related so medical reports can be forwarded immediately to the WHSCC.

If you and your employer disagree about the claim or any aspect of it, you must still complete a Form 67 – *Report of Accident or Occupational Disease* and immediately forward it to the WHSCC.

What should my employer do?

Immediately following your accident, your employer should take the actions outlined below.

Under the *Workers' Compensation Act*, your employer must:

- provide or pay the cost of immediate transportation from the injury site to a medical treatment facility when required; and
- report the injury to the WHSCC within three days of being notified, by completing a Form 67 – *Report of Accident or Occupational Disease*, whether or not you have lost time from work.

Under the *Occupational Health and Safety Act*, your employer must:

- immediately report when an employee is injured in a manner that causes, or may cause, a fatality, a loss of limb or an occupational disease, or requires or may require hospitalization.

When completing the accident report, it is important that your employer obtain information about the events leading up to the injury. He or she should ask you whether there were any witnesses to your injury, what specific activities you were engaged in, and what your physical body movements were, at the time of your injury. Your employer should also speak with your co-workers and any other individuals you have identified as a witness.

What should my physician or other health care provider do?

Your health care provider must do the following:

- send medical reports pertaining to your injury to the WHSCC as soon as possible; and
- help you understand your physical injury and discuss a recovery plan.

What happens after I file a claim?

The WHSCC will verify that your employer is registered or must be registered for workers' compensation insurance. If you are covered, the WHSCC determines the acceptability of your claim and states, in writing, whether or not they have accepted it.

In the event of a lost-time claim, you and your employer are notified in writing within a few days of the decision.

After filing a claim

ROLES AND RESPONSIBILITIES AFTER FILING A CLAIM

What are my responsibilities after I file a claim?

If you need ongoing medical treatments:

- keep your appointments with health care providers (physicians, physical therapists, chiropractors);
- ask your health care providers to send reports to the WHSCC;
- follow the treatment plan developed by your health care providers;
- discuss your progress with your physician so you understand when you can return to work;
- inform your adjudicator or case manager of any changes in your medical recovery;
- regularly discuss your progress, a possible return-to-work date, and if necessary, alternative work options, with your employer;
- regularly contact your adjudicator or case manager;
- tell your adjudicator or case manager when your doctor tells you that you are fit to return to work;
- understand and follow all work restrictions, if you return to work early, so your re-employment is safe for everyone;
- advise the WHSCC if you stop working or need to change your duties because of your injury;
- keep receipts for expenses directly related to your workplace injury;
- use your claim number when you write letters to, or call the WHSCC;
- advise your adjudicator or case manager if you will be leaving the province or if you are moving out of the province; and
- participate fully in modified work accommodations made available by your employer and supported by your treating physician.

What are my employer's responsibilities when I am injured?

Your employer must:

- provide or pay the cost of immediate transportation from the injury site to a medical treatment facility;
- report your injury to the WHSCC within three days of being notified;
- keep accurate first aid records;
- work with you, your health care providers, and the WHSCC to develop an effective return-to-work plan;
- make every effort, short of undue hardship, to accommodate you if you suffer a work restriction (as per provincial human rights legislation); and
- maintain regular contact with you and the WHSCC.

What are my health care providers' responsibilities?

Your health care providers should:

- send their reports to the WHSCC as soon as possible;
- help you understand what is wrong and what can be done to assist in your recovery; and
- work together with you, your other health care providers and the WHSCC to develop an effective return-to-work plan.

What are the WHSCC's responsibilities?

The WHSCC will:

- provide you with clear information about your case and the services available in a timely manner;
- provide you with effective compensation and rehabilitation services to help you return to employment;
- ensure that you receive appropriate medical treatment;
- involve you, your employer and your health care providers in the return-to-work process;
- help you return to work in a safe and efficient manner;
- expedite medical management when necessary; and
- provide vocational assistance and conduct job modifications to assist in your return to work.

Compensation benefits

COMPENSATION BENEFITS

What types of benefits can I get?

Compensation benefits under the *Workers' Compensation Act* include:

- payment for time lost from work;
- medical treatment and health care expenses;
- transportation allowances;
- personal care allowances;
- loss of opportunity award;
- Long-Term Disability benefits;
- benefits to dependents of fatally injured workers; and
- assistance with funeral expenses.

How are my Loss of Earnings benefits calculated?

Your initial loss of earnings is based on the information available at the time your claim is adjudicated. In most cases, your employer provides this information on a WHSCC Form 67 (initial accident report). No later than three months after the start of your claim, and then at any time during the claim management process, the WHSCC may review your earnings and adjust your benefits to more appropriately reflect what best represents your loss of earnings. In some cases, the WHSCC considers earnings for up to three years prior to your injury, or recurrence of your injury, in order to determine what best represents your loss of earnings. Other earnings, such as Employment Insurance benefits, are included as regular employment earnings.

You will be compensated at 85% of your average net earnings, not to exceed the maximum compensation allowable for the year of the injury. Net earnings are calculated by deducting income tax, Canada Pension Plan (CPP) contributions and Employment Insurance (EI) premiums from your established, pre-accident gross earnings. The tax deduction information provided by your employer will be used to establish your income tax exemptions.

See example 1, at left.

[example 1]

Tom earned \$500 gross per week at the time of his workplace accident. He suffered serious injuries and was admitted to hospital.

The basic tax exemption was \$7,634.

After deductions for CPP, EI, and income tax, Tom's net earnings were \$386.01.

Under the *Workers' Compensation Act*, the current benefit is 85% of net, so Tom will receive \$328.01 per week from the WHSCC.

| | |
|------------------------------------|------------------|
| Gross earnings per week | \$ 500.00 |
| CPP contributions | -20.34 |
| EI premiums | -11.00 |
| Income tax | -82.65 |
| Net loss of earnings | \$ 386.01 |
| 85% of net loss of earnings | \$ 328.01 |

Actual benefits received from the WHSCC are not taxable. However, recipients must report WHSCC benefits to the Canada Customs and Revenue Agency as these benefits may affect tax credits.

What is the “waiting period” for benefits?

In New Brunswick, workers’ compensation benefits begin once you have gone the equivalent of three days without receiving any employment-related income following your injury, unless your injury caused you to be admitted to hospital as an in-patient.

However, if you remain on benefits for more than 20 working days, you will be reimbursed for the three-day waiting period.

The three-day waiting period is based on a five-day work week regardless of the number of days worked per week. The three-day period is equivalent to $\frac{3}{5}$ of a five-day work week and represents $\frac{3}{5}$ or 60% of the average weekly wage.

For injured workers who suffer a recurrence of their injury, the three-day waiting period also applies, unless the injury recurrence has occurred within 20 working days of the original injury.

See example 2, at right.

Is there a limit on insurable earnings?

Yes. The maximum insurable earnings are an amount equal to 1.5 times the *New Brunswick Industrial Aggregate Earnings* (NBIAE) amount. In 2003, the maximum insured salary is \$48,400.

What is the NBIAE?

The NBIAE is an amount set by the WHSCC as of January 1st each year. It is based on yearly increases in the Consumer Price Index for Canada, and monthly reports published by Statistics Canada.

Are workers’ compensation benefits taxable?

Actual benefits received from the WHSCC are not taxable. However, recipients must report WHSCC benefits to the Canada Customs and Revenue Agency as these benefits may affect tax credits.

[example 2]

Martine earned \$500 gross per week at the time of her accident. She suffered minor injuries and was off work for only three weeks.

Her basic tax exemption was \$7,131.

| | |
|---|------------------|
| Gross earnings per week | \$ 500.00 |
| CPP contributions | -20.34 |
| El premiums | -11.00 |
| Income tax | -82.65 |
| Net loss of earnings | \$ 386.01 |
| 85% of net loss of earnings | \$ 328.01 |
| $\frac{3}{5}$ or 60% of weekly benefit (waiting period) | -196.81 |
| Entitlement for first cheque | \$ 131.20 |

In Martine’s case, her *first cheque* would be reduced by \$196.87, which represents $\frac{3}{5}$ or 60% of the weekly benefit amount.

[compensation benefits]

During the time period that you receive Loss of Earnings benefits, you must report the receipt of employment-related income from any source to the WHSCC.

Can employers “top up” Loss of Earnings benefits?

The injured worker must report to the Commission all employment-related income received while on compensation. Such income will be deducted from the worker’s regular benefits if the total top-up plus the WHSCC entitlement exceeds 85% of pre-accident net earnings. The worker may receive top-up from the employer only when the pre-accident earnings exceed the maximum compensation for the year of the injury.

The employer may choose to continue paying the injured worker full salary. The amount of post-accident income earned by the injured worker has an effect on their Loss of Earnings benefits only. This has no effect on other benefits the injured worker might be eligible for under the *WC Act*.

What if I have two or more jobs?

Your pre-accident earnings, including all full- or part-time jobs you might have, are used to calculate average earnings, provided you are unable to perform all pre-accident jobs.

Do I have to report receipt of employment-related income?

During the time period that you receive Loss of Earnings benefits, you must report the receipt of employment-related income from any source to the WHSCC. This includes Employment Insurance, vacation pay, bonuses, and disability insurance paid or arranged by your employer. The WHSCC will consider such income to determine your loss of earnings.

Is there a maximum age for receiving benefits?

Yes. Wage loss benefits from the WHSCC cease when you turn 65 years old. If you are 63 or older when your loss of earnings begins, you are entitled to receive benefits for a maximum of two years as long as you are restricted by your injury from performing your pre-accident work. Medical aid related to your injury is paid for life.

What about Canada Pension Plan Disability benefits?

An injured worker who receives Canada Pension / Quebec Pension Plan Disability (CPPD) benefits must report such benefits to the Commission. CPPD benefits compensate individuals who cannot work due to disability. Eligibility for CPPD benefits is not related to a specific accident or event and may include congenital or acquired disabilities.

To receive WHSCC compensation benefits, a worker must have been injured in the course of his or her job and the injury must have arisen out of that job. WHSCC Loss of Earnings benefits recognize the financial impact of the individual’s injury and are meant to replace lost earnings.

Since CPPD recognizes and compensates for the “entire person,” it is in effect paying benefits on both “work-related” and “non work-related” portions of the disablement. The receipt of full CPPD and WHSCC Loss of Earnings benefits would constitute double payment of benefits for lost wages relating to the work injury.

[compensation benefits]

[example 3]

If Mary made \$10 per hour before the accident and is subsequently considered capable of earning \$6 per hour after the accident, then the residual loss of earnings is \$4 per hour (40% disability). Therefore 40% of the CPPD benefits would be deducted from WHSCC benefits as that is considered to be the portion of the CPPD award related to the work-related injury.

[example 4]

If John is injured and not considered capable of any earnings, then John would be entitled to full LTD benefits from the WHSCC and 100% of his CPPD benefits would be deducted.

As a result, the WHSCC deducts from your Loss of Earnings benefits an amount equal to the portion of CPPD benefits representing the “loss of earnings caused by the work-related injury,” relative to your “pre-accident earnings.”

See example 3, above.

In rare cases where the worker has a work-related injury but CPPD benefits are “solely” attributable to a non work-related condition, CPPD benefits are not deducted from WHSCC benefits.

The children’s portion of the CPPD is excluded from the adjustment.

What about entitlement to Long-Term Disability benefits?

Injured workers who complete rehabilitation and suffer a loss of earnings because of a permanent work restriction related to their compensable

accident may be entitled to Long-Term Disability (LTD) benefits.

The Long-Term Disability benefit is the difference between what the worker was earning before the accident (average earnings), and what the worker is estimated to be capable of earning, or is earning at a suitable occupation (estimated capable earnings, also known as deeming, up to the maximum allowable for that year.

Canada Pension Plan Disability benefits and Quebec Pension Plan benefits are deducted from the worker’s entitlement to LTD benefits (see section on CPPD benefits). As well, if the combined benefit exceeds 85% of pre-accident net earnings, LTD benefits will be reduced by an amount equal to the excess amount.

See example 4, at left.

What are “estimated capable earnings”?

Estimated capable earnings are earnings that a worker is estimated to be capable of earning at a *suitable occupation* after sustaining the injury as per section 38.1(1) of the *WC Act*. This process is often referred to as “*deeming*.”

What is a “suitable occupation”?

A suitable occupation means employment at an appropriate job that an injured worker is capable of performing, considering the worker’s physical abilities and employment qualifications, and which does not endanger the health, safety or physical well-being of the worker.

[compensation benefits]

When are Long-Term Disability benefits terminated?

LTD benefits are payable until:

- the loss of earnings ceases;
- the work restriction which prevented the worker from returning to the pre-accident employment no longer exists; and/or
- the worker reaches age 65.

What about medical treatment and expenses?

The WHSCC pays all reasonable expenses for required medical treatment arising from the work-related injury, including hospital fees and approved health care provider (physician, chiropractor, physiotherapist, etc.) fees.

The WHSCC may also pay or reimburse workers for the cost of prescription medication and physical aids, such as assistive devices. Expenses related to clothing damaged during the accident may also be reimbursed. Medical aid expenses relating to your injury remain the responsibility of the WHSCC for your life.

What about travel expenses?

The WHSCC makes payments to help cover your claim-related travel expenses. These are expenses incurred while travelling in relation to a claim, above those incurred in day-to-day living. Expenses covered may include, but are not limited to, transportation, accommodation, meals and associated child/dependent care expenses. Claim-related travel includes travel to and from medical appointments, Appeals Tribunal hearings, and training. There is a daily exclusion zone for any reimbursement of travel.

What is a Personal Care allowance?

The WHSCC provides monthly financial care allowances for you if you require, as a result

of your work-related injury or occupational disease, ongoing assistance with personal care and the activities of daily living. These allowances are provided in accordance with a fee schedule and based on the level of assistance you require as identified by an assessment. A care allowance is separate and distinct from other benefits paid by the WHSCC.

Is there a pension annuity?

An amount equal to 5% of your benefits is set aside to provide a pension annuity at age 65, if you have been on benefits for more than two consecutive years. This annuity will offset, in part, any reduction in CPP retirement benefits or personal pension contributions that results from your workplace injury. The annuity is unaffected by benefits you receive from CPP.

What is a Permanent Physical Impairment (PPI) award?

As of January 1, 1982, if you suffer a permanent physical impairment as a result of your compensable accident, you are entitled to a lump sum award in recognition of your loss of opportunity. The WHSCC completes a PPI evaluation within timeframes set out by regulation and once the injured worker has achieved maximum medical improvement. The evaluation is performed by a certified independent medical examiner (usually a WHSCC physician).

A WHSCC medical advisor reviews the evaluation and calculates the award in accordance with the approved rating schedule as prescribed by regulation. The award is in addition to any compensation you may receive for loss of earnings. The award is not intended to compensate you for lost earnings, pain, suffering or lost enjoyment of life. The award is not a settlement of your claim, nor does it affect your entitlement to other compensation benefits.

[compensation benefits]

Does the WHSCC pay for burial expenses if I suffer fatal injuries?

For burial expenses, the WHSCC will pay an amount equal to the 20% of the NBIAE, less the entitlement from Canada Pension Plan. If the worker's body must be transferred for burial, additional monies may be paid.

Are there benefits for my surviving spouse and dependents?

Yes. Under the *WC Act*, a "spouse" includes both formal and common-law relationships provided the latter meets certain criteria. Surviving spouses will receive monthly benefits equal to 80% of the deceased worker's average net earnings for the first 12 months following the worker's death.

Within one year of the death of the worker, the surviving spouse must choose to receive benefits under one of the plans shown at left.

[plan A]

Monthly benefits based on 85% of the deceased worker's average net earnings, payable to age 65. In addition, an amount equal to 5% of the benefits will be set aside for the surviving spouse to provide a pension beginning at age 65. These benefits are subject to a "family" income test.

[plan B]

A lump sum payment of 60% of the net annual income of the deceased worker, plus monthly benefits based on 60% of the deceased worker's average net earnings, plus benefits for each dependent child. The benefit depends on the age of the dependent child / children. In addition, an amount equal to 8% of the monthly surviving spouse benefits (60% worker's average net earnings) will be set aside for the surviving spouse to provide a pension at age 65. No income test applies in this case. However, the total amount of monthly benefits (spousal and dependent children) paid cannot exceed 85% of the deceased worker's monthly average earnings.

At no time will the total benefits paid above exceed those that would be paid to a completely disabled worker.

Are my children from a previous relationship eligible for benefits?

Yes. If you suffer fatal injuries, your dependent children from a previous marriage or relationship are also eligible for benefits.

Are benefits terminated upon remarriage?

No. Survivor benefits are not terminated upon remarriage or cohabitation.

Case management

CASE MANAGEMENT

What is case management?

After a workplace accident, the Commission's goal is to return you to work in a safe and efficient manner. Case management is a way of coordinating everyone involved in your case to achieve that goal – the worker, the employer, and the health care providers. Case management is usually for long-term cases, meaning an injured worker who is off work for six weeks or more.

Who are the members of my case management team?

The team may include your case manager, an occupational therapist, a medical advisor and a rehabilitation specialist, dedicated to your rehabilitation.

What are my case manager's responsibilities?

Your case manager will be your main contact with the WHSCC and all other team members. Your case manager is responsible for the development, implementation, monitoring, and evaluation of your rehabilitation and return-to-work plan.

What does an occupational therapist do?

The occupational therapist works with you and your employer to ensure your safe return to work. The occupational therapist may visit your job site to determine if changes must be made to help you get back on the job. The therapist may also arrange a gradual return to work schedule for you. They may conduct home evaluations to assist you if you require help with activities of daily living.

Case management is a way of coordinating everyone involved in your case.

What does a medical advisor do?

The medical advisor is a WHSCC physician who provides medical expertise to the case management team concerning the medical management of your case. The medical advisor may also conduct a medical examination.

What is the rehabilitation specialist's role?

If you cannot return to pre-accident employment due to work restrictions resulting from your injury, the rehabilitation specialist provides information on retraining and alternative employment options as well as vocational counseling services. The rehabilitation specialist's goal is to help you find safe, suitable employment, while attempting to match your pre-accident earnings.

Return to work

RETURN TO WORK

What are the benefits of returning to work?

Suitable modified or alternative work benefits you and your pre-accident employer. It allows you to be independent and productive, and provides you with opportunities to gain additional skills and experience. Other benefits may include protecting your seniority rights and other related employer benefits, such as sponsored health insurance and vacation days. Your return to work also benefits your employer, allowing them to retain a skilled, valuable worker who is familiar with and actively involved in its business.

Who decides when I should return to work?

Your doctor and other health care providers send progress reports to your adjudicator or case manager, who will use them and other information to determine when you are fit to return to work.

If you have temporary work restrictions, your case manager will discuss modified work options with your employer.

What happens if I can't return to the job I had before my injury / illness?

If you have temporary work restrictions, your case manager will discuss modified work options with your employer. Modified work promotes an early and gradual return to pre-accident employment. If you suffer a permanent work restriction, your case manager will discuss with your employer alternative work options that match your functional abilities. If alternative options are unavailable, you and your case management team will work to develop a vocational plan to enable you to work in an alternate position. Depending on your interests, physical condition and learning ability, your vocational plan could include formal training, training on the job, and a counselor-assisted job search.

[return to work]

The WHSCC is responsible for providing you with fair compensation and services that help you return to work. The Commission will support you in your job search efforts.

Does my employer have to give me a job when I am ready to return to work?

Your employer has a legal obligation to make every reasonable effort, short of undue hardship, to accommodate you if you suffer a temporary or permanent disability resulting from a work-related accident. These obligations stem from section 3 of the New Brunswick *Human Rights Act* and section 42.1 of the *Workers' Compensation Act*.

While you (and your union) have a duty to cooperate with, and participate in the accommodation process, the primary responsibility rests with your employer who has the ultimate control over the workplace. Your employer must make every reasonable effort to accommodate the particular needs of your disability in your return to work.

Will the WHSCC find me a job?

No, the WHSCC will not find you a job. The WHSCC is responsible for providing you with fair compensation and services that help you return to work. The Commission will support you in your job search efforts and in doing so, may provide up to 13 weeks of benefits.

What happens if I am considered medically fit to return to the same type of job I had when I was hurt, but I cannot find work?

If you cannot return to work because of a poor job market or another reason not related to your injury, workers' compensation benefits will not cover you. If this happens, you may need to apply for another type of insurance coverage such as federal Employment Insurance or CPP Disability benefits.

What happens if I am considered medically fit to return to work, but I choose not to? Do I continue to receive benefits?

When your adjudicator or case manager finds you medically fit to return to work, you are expected to return to suitable employment. If you decide not to return to work, the WHSCC will reduce or stop your benefits.

WORKERS' REHABILITATION CENTRE

What is the Workers' Rehabilitation Centre (WRC)? What programs are offered?

The WHSCC owns and operates the Workers' Rehabilitation Centre, which provides specialized and comprehensive occupational rehabilitation services.

The WRC has treated injured workers since 1965. Located in Saint John, New Brunswick, the Centre is the only occupational rehabilitation centre of its kind in Eastern Canada. The Canadian Council on Health Services Accreditation accredits the Centre.

If you are admitted to the WRC, you will participate in a rehabilitation program designed especially for you. The WRC offers the programs shown at right.

Where do I stay?

If your treatment requires an overnight stay and you do not live in the local area, the choice of where to stay is yours. We will cover your expenses as per our transportation policy.

What about meals?

The WRC's dietitian designs three well-balanced meals, plus snacks, for the cafeteria every day.

What do I need to bring?

If you are admitted to the WRC, you should bring casual, comfortable clothing, a swimsuit, and closed-toe shoes, such as sneakers or walking shoes. You will have your own locker to store your personal belongings. As well, you should bring any required prescription medicine.

Your case manager will provide you with more information and will answer your questions at the time of your referral to the WRC.

[programs]

The WRC offers the following programs:

- **Work Recovery** provides intensive occupational rehabilitation to prepare injured workers to return to the workplace;
- **Pain Management** helps injured workers cope with chronic pain to increase their level of activity, to prepare for employment, and to generally improve their quality of life;
- **Vocational Evaluation** assesses injured workers' physical, psychological, and vocational capabilities – and assists in setting realistic occupational goals;
- **Assistive Devices** provides devices designed to maximize injured workers' functional independence, including artificial limbs, braces, splints, and modified tools; and
- **Health Services** maintains injured workers' participation in their rehabilitation program by providing nursing services on site.

Appeals

QUESTIONING A DECISION

What if I disagree with a decision on my claim?

Workers, dependents, and employers can appeal decisions of the Workplace Health, Safety and Compensation Commission.

Before submitting an application of appeal to the Appeals Tribunal, you must provide all relevant information to the original decision-maker.

The original decision-maker is the person who signed the letter informing you of the decision. In providing all relevant information to the original decision-maker, you ensure that you obtain all of the services and benefits that you are eligible to receive without unnecessary delay.

Is there a time limit for appeals?

Legislation effective June 1, 2001 imposed a time limit on appeals. As of that date, you have a one-year time limit from the date of the decision to file an appeal. WHSCC decisions made prior to June 1, 2001 are not affected by this change.

What is the Appeals Tribunal?

The Appeals Tribunal operates at arm's length from the WHSCC. As an administrative tribunal, it operates on the premise of natural justice. Hearings require structure, must be fair, and are a tool to collect necessary information.

How do I submit an appeal?

To submit an application of appeal to the Appeals Tribunal, you do not need to fill out any lengthy forms. However, you must submit the following information in writing to the Registrar:

- your name, address and claim or employer number;
- date of the decision being appealed;
- issue being appealed as well as your request;
- reasons supporting your appeal; and
- your preferred official language.

What is an Appeals Panel hearing?

An Appeals Panel will consider your appeal at an Appeals Panel *hearing*. You may choose either an oral presentation or a paper review. The Appeals Panel consists of a Three-Person Panel or a Single-Person Panel.

A Three-Person Panel is made up of a Chairperson and two panel members. The Chairperson is chosen from the Appeals Tribunal's list of individuals appointed for that purpose. The two remaining Panel members consist of a workers' representative and an employers' representative, also chosen from pre-established lists. Members of the panel act on an impartial basis.

A Single-Person Panel is subject to the consent of all parties and consists of a Chairperson acting alone.

The Appeals Tribunal holds its hearings in regions throughout the province in the official language chosen by the person submitting the appeal. Appeals Panel decisions are *final* and delivered in writing.

You [and your employer] are both entitled to appeal a decision made on your claim and will be notified in the event that an appeal is filed.

Can I bring a witness to my appeal?

Any party to an appeal can bring witness(es) to the hearing. However, the Appeals Tribunal should be advised, in writing, of witnesses at least three weeks before the hearing date. The notice must include the name(s) of the witness(es) and must explain the purpose of having the witness(es) at the hearing.

What about new documents or reports?

Ordinarily, all relevant information should have been submitted to the original decision-maker. However, if this is not possible and it is necessary to submit documents to the Appeals Tribunal, then such information must be submitted at least three weeks prior to the hearing date. Any documents not provided three weeks prior to the hearing date, but presented at the hearing, are subject to the acceptance of the Appeals Panel.

Is there someone who can help me with my appeal?

Workers' advocates are located throughout the province to help you on matters pertaining to the *Workers' Compensation Act* and, in particular, with the appeals process.

Workers' advocate services are available to you at no charge.

What happens after an Appeals Panel hearing?

After your hearing is finished, the Appeals Panel members will discuss the documentary and oral evidence, and render a decision. All parties will be informed in writing of the Panel's decision and reasons. Any decision, order, or ruling of the Appeals Tribunal is *final*. If your appeal is accepted, it will be sent to the Commission for implementation.

If your appeal is not accepted, there are two other options, outlined below, that you may want to consider.

Court of Appeal

Any decision, order or ruling of the Appeals Tribunal is *final* and subject to an appeal to the Court of Appeal for questions as to jurisdiction or law.

Any party intending to appeal to the Court of Appeal must, within 30 days of notice of the Appeals Tribunal's decision, order, or ruling, apply to the Appeals Tribunal for a Statement of Facts.

Reconsideration

Appeals Panel decisions are *final* and delivered in writing. However, decisions may only be reconsidered by the Appeals Panel when new, substantial information is submitted.

[appeals]

Can my employer appeal a decision on my claim?

Yes. You and your employer both have an interest in your claim, with similar rights to fair and equal treatment. You are both entitled to appeal a decision made on your claim, and will be notified in the event that an appeal is filed. As well, you are both entitled to attend any Appeals hearing relating to your claim.

If your employer files an appeal relating to your claim, you can access the free services of a workers' advocate, or elect to retain the services of a lawyer or other representative, at your own expense. Like you, your employer can also enlist assistance with an appeal. They can access the services of an employers' advocate, free of charge, or they can retain the services of a lawyer or other representative at their expense.

Workers' advocates

WORKERS' ADVOCATES

What do workers' advocates do?

Workers' advocates are in place to help you and your family with matters pertaining to the *Workers' Compensation Act* and, in particular, with the appeals process.

The advocates are employees of the Department of Training and Employment Development and are independent of the WHSCC. Note that advocates have full access to all WHSCC files and records relating to your claim.

Is there a fee for their service?

The services of a workers' advocate are available to you at no charge.

How can a workers' advocate help me?

A workers' advocate can help you by:

- providing general information about the workers' compensation system, policies, procedures, etc.;
- advising you on what actions to take;
- helping to gather the necessary information;
- determining if there is a problem with a claim that can be resolved through an appeal;
- helping to prepare an appeal, written or oral; and
- appearing with you, or as your representative, at an appeal hearing.

How do I access a workers' advocate?

Telephone or write the Office of the Workers' Advocate nearest you. You will need to provide them with some basic information concerning your claim and the nature of the problem. Always refer to your WHSCC claim number, and state what you want clearly. Please call and

arrange an appointment with an advocate before coming to the office.

Contact information

Office of the Workers' Advocate
Department of Training and
Employment Development

470 York Street
PO Box 6000
Fredericton NB E3B 5H1
Telephone: 506 453-3247
Fax: 506 453-3990

8 Castle Street
PO Box 5001
Saint John NB E2L 4Y9
Telephone: 506 658-2166
Fax: 506 658-3075

360 St. George Street
Bathurst NB E2A 1B9
Telephone: 506 549-5361
Fax: 506 549-5351

121 Church Street
PO Box 5001
Edmundston NB E3V 3L3
Telephone: 506 735-2082
Fax: 506 735-2558

770 Main Street, 4th Floor
PO Box 5001
Moncton NB E1C 8R3
Telephone: 506 869-6455
Fax: 506 869-6608

150 Pleasant Street
PO Box 1030
Miramichi NB E1V 3V5
Telephone: 506 624-2125
Fax: 506 624-5482

[emergencies]

Health and Safety Emergencies

Toll free: 1 800 442-9776

Claims Enquiry

Toll free: 1 800 222-9775

Assessment Services

Toll free: 1 800 222-9645

Nova Scotia, PEI, Newfoundland, Quebec and Ontario

Toll free: 1 800 222-9775

[offices]

Saint John

1 Portland Street
PO Box 160
Saint John NB E2L 3X9

Head Office

Telephone: 506 632-2200
Toll free: 1 800 222-9775

Appeals Tribunal

Telephone: 506 632-2200
Toll free: 1 800 222-9775
Fax: 506 633-3989

Grand Bay-Westfield Workers' Rehabilitation Centre

Location

3700 Westfield Road
Saint John NB E2M 5Z4
Telephone: 506 738-8411
Toll free: 1 800 222-9781
Fax: 506 738-3470

Postal Address

PO Box 160
Saint John NB E2L 3X9

Bathurst Office

Place Bathurst Mall
1300 St. Peter Avenue
Suite 220
Bathurst NB E2A 3A6
Telephone: 506 547-7300
Toll free: 1 800 561-2524
Fax: 506 547-7311
506 547-2982

Grand Falls Office

166 Broadway Blvd., Suite 300
PO Box 7244
Grand Falls NB E3Z 2J9
Telephone: 506 475-2550
Toll free: 1 800 222-9775
Fax: 506 475-2568

Fredericton Office

500 Beaverbrook Court
4th Floor
Fredericton NB E3B 5X4
Telephone: 506 453-2467
Toll free: 1 800 442-9776
Fax: 506 453-7982

Moncton Office

100 Arden Street, Suite 200
Moncton NB E1C 4B7
Telephone: 506 867-0525
Toll free: 1 800 222-9775
Fax: 506 859-6911

How to contact the WHSCC