

**Policy Amendment Proposal –  
Determining Suitable Employment and Earnings Capacity Loss  
(CS-08 “Fitness for Employment, Suitable Occupation, Deeming”)**

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**Section Reference**

Sections 8, 20, 21, 36, 37 and 41 of the *Workers’ Compensation Act* R.S.Y. 2002 (the *Act*).

**General Information**

The injured worker, the employer, the Yukon Workers’ Compensation Health & Safety Board (YWCHSB) and health care providers share responsibility for assisting the worker in mitigating the effects of a work-related disability. This is typically achieved through the recovery, rehabilitation and return to work processes.

In some cases, a worker will be unable to fully overcome the effects of a work-related injury and will continue to have a loss of earnings capacity. This worker is entitled to compensation for the difference between their pre-injury earnings, as determined under Policy CL-35, “Loss of Earnings Benefits”<sup>1</sup>, and their estimated earnings capacity once rehabilitation is completed.

This policy, which outlines how the YWCHSB will estimate a worker’s loss of earning capacity, will ensure that a fair, reasonable and predictable approach is followed.

Policy CS-11, “Rehabilitation”, outlines the fundamental principles used to assist the worker in overcoming the effects of their injury and returning them to their pre-injury work with their employer.

Together with Policy CS-11, “Rehabilitation”, this policy ensures a collaborative and client-centred approach that is based on input, feedback and the worker’s proactive participation in the process.

Appendix A outlines the key steps in determining a suitable occupation and earnings capacity loss.

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<sup>1</sup> Policy CL-35, “Loss of Earnings Benefits” provides the methodology used to determine a worker’s Short-Term Benefit (based on the worker’s earnings immediately before the disability arose) and a worker’s Long-Term Benefit (based on the worker’s earnings over the best 12 consecutive months in the 24 month period immediately preceding the disability).

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**Application**

This policy applies to all injured workers who have a loss of earnings capacity. It will be considered when the worker’s rehabilitation plan, as per Policy CS-11, “Rehabilitation”, is developed and applied when the rehabilitation plan is completed.

**Policy Statement**

**1.0 Roles and Responsibilities**

Policy CS-11, “Rehabilitation”, emphasizes engaging workers, employers and case management team members at various stages of the recovery and return to work processes. The case management team may also be involved in the process of estimating a worker’s loss of earnings capacity.

An explanation of the process for estimating the worker’s loss of earnings capacity, including how it fits within the rehabilitation process, will be provided to the worker. This will be done as early as appropriate, with the primary focus being the worker’s recovery and return to work.

The YWCHSB will proactively involve the worker throughout the process and ensure that the worker is advised of the outcome and the implications for his or her benefits.

Workers have an ongoing obligation to inform the YWCHSB of any changes in their circumstances that may affect the estimation of their loss of earnings capacity.

**2.0 Process - Estimating Loss of Earning Capacity**

Estimating a worker's loss of earning capacity due to a work-related disability requires:

- i) the identification of a suitable occupation for the worker, based on a vocational assessment, and
- ii) estimation of the earnings that the worker could earn in that suitable occupation.

An illustration of estimated earnings loss calculations is provided in Appendix B.

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**3.0 Identification of a Suitable Occupation**

The worker’s suitable occupation will generally be identified through the development and implementation of his or her rehabilitation plan, as per Policy CS-11, “Rehabilitation”.

In all cases, except where the worker is considered capable of earning minimum wage, the occupation that the worker has chosen (or a default option, if applicable) must meet the definition of 'suitable occupation' set out in Policy CS-11, “Rehabilitation”, defined as:

*“...an occupation or occupations that have been identified by the Board based on:*

- *the worker's abilities and skills;*
- *the worker's limitations and barriers;*
- *match of the worker's abilities/limitations to occupations referenced in the National Occupation Classification System (NOC); and*
- *evaluation of potential occupations to local or Yukon-wide job market for suitability, including having a realistic expectation of availability.”*

The worker’s ability to remain employed in the Yukon, as well as the worker’s choice of employment pattern (full-time, part-time, seasonal), are factors taken into consideration in the analysis of the worker’s vocational options, the identification of a suitable occupation, and the estimation of any loss of earnings capacity.

In order to receive benefits in a timely manner, a worker is expected to participate in the development and implementation of their rehabilitation plan. The YWCHSB will apply the provisions of Policy CL-30, “Suspension, Reduction, or Termination of Compensation” for the duration of the worker’s non-participation in the development and implementation of the rehabilitation plan.

**4.0 Earnings for the Suitable Occupation**

The YWCHSB will rely on current (i.e., not more than 3 years old) published labour market information or, in the absence of published labour market information, on a labour market survey of at least three suitable employers when determining estimated earnings for the suitable occupation.

Wage scales applied to a suitable occupation will be based on the greater of Yukon wage scales for the occupation or the wage scale in the jurisdiction where the worker resides. Where a Yukon wage scale is unavailable, Canadian wage scales will be used.

Once the YWCHSB has identified an appropriate wage scale, an appropriate earnings level on the scale must be determined.

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Where a worker has the physical functional ability to work at least 3 hours a day that worker will be considered capable of earning the minimum wage (in effect at the time the policy is applied), with the exception of a head injury or Post-Traumatic Stress Disorder.

**i) Acquiring a New Skill – Estimating Earnings**

The estimated earnings level on the wage scale for workers whose suitable occupation involves acquiring a new skill set or entering a new field will be based on the average of the base entry wage.

**ii) Transferable Skills Development – Estimating Earnings**

For workers whose rehabilitation plan is designed to improve existing or transferable skills for the suitable occupation, estimated earnings will be the mid-point on the scale.

**iii) Actual Earnings in the Suitable Occupation**

If the worker has actual earnings in the suitable occupation, the YWCHSB will use those earnings in estimating the worker’s loss of earning capacity if:

- (a) the actual wages are higher than the average entry wage or average wages as appropriate under (i) or (ii) above; or
- (b) the actual wages are within 90% of the average entry wages or average wages, as appropriate under (i) or (ii) above.

**5.0 Application of Policy CS-01, “Treatment”**

If, as part of the worker’s rehabilitation plan, the YWCHSB is providing the worker with treatment under Policy CS-01, “Treatment”, application of this policy will be deferred pending completion of the treatment.

**6.0 Application of Policy CS-02, “Re-Employment Assistance Allowance”**

If, as part of the worker’s rehabilitation plan, the YWCHSB is providing the worker with a re-employment assistance allowance under Policy CS-02, “Re-Employment Assistance Allowance”, application of this policy will be deferred until the re-employment assistance is complete.

**7.0 Indexing of Benefits**

The worker’s post-injury earnings capacity (actual or estimated) will be indexed annually at the same indexing factor applied to the amount calculated for the worker’s average weekly earnings immediately before the work-related disability arose, for example:

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	Year One	Year Two (4% indexing)
Earnings before disability	\$ 30,000	\$ 31,200
Post-injury earnings capacity	20,000	20,800
Difference	10,000	10,400
X 75%		
	\$ 7,500	\$ 7,800

However, where a worker’s actual earnings exceed indexed post-injury earnings capacity, actual earnings will be used to calculate the worker’s wage loss.

**8.0 Periodic Review**

Where a worker has a loss of earnings capacity the YWCHSB will partner with the worker to annually determine if there has been:

- i) a change in the worker’s earnings;
- ii) a change in the worker’s fitness for employment; or
- iii) any new information that may affect the worker’s claim.

Workers under this policy who do not incur a loss of earnings as a result of their work-related injury can apply for a review should their fitness for employment change due to the injury.

Changes made to the worker’s estimated loss of earning capacity will be communicated to the worker verbally, where possible, and in writing. These changes will also be documented on the claim file.

**9.0 Exceptional Circumstance**

In cases where the individual circumstances of a case are such that the provisions of this policy cannot be applied, or to do so would lead to unfair or unintended results, the YWCHSB will decide the case based on its individual merits and justice. Such a decision will be considered for that specific case only and will not be precedent setting

**10.0 Appeal Rights**

All claims decisions may be appealed to the Workers’ Compensation Appeal Tribunal, following a review by the YWCHSB’s Hearing Officer.

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**History**

CS-08, “Fitness for Employment, Suitable Occupation, Deeming”, effective November 9, 1994.

**References**

Policy CS-01, “Treatment”

Policy CS-02, “Re-Employment Assistance Allowance”

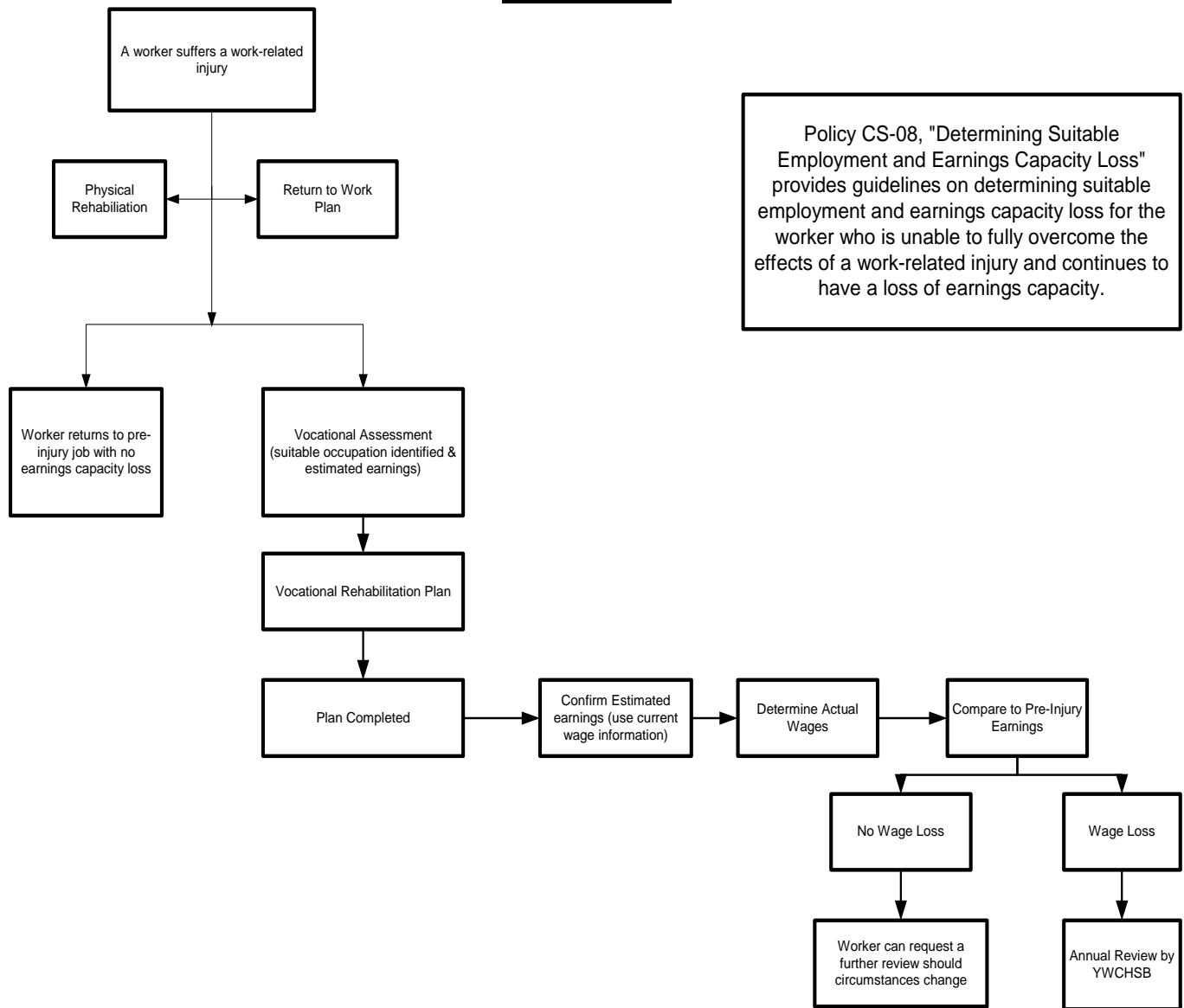
Policy CS-11, “Rehabilitation”

Policy CL-30, “Suspension, Reduction and Termination of Compensation”

Policy CL-35, “Loss of Earnings Benefits”

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**APPENDIX A**



Policy CS-08, "Determining Suitable Employment and Earnings Capacity Loss" provides guidelines on determining suitable employment and earnings capacity loss for the worker who is unable to fully overcome the effects of a work-related injury and continues to have a loss of earnings capacity.

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**APPENDIX B**

Wage loss benefits are paid to a worker when a compensable disability results in a loss of earnings ability. The difference between the worker’s average earnings before the injury, and what the worker is determined to be capable of earning after the injury determines the amount of wage loss benefits paid. For example<sup>2</sup>:

Example 1	Year One	Year Two (4% indexing)
Earnings before disability	\$ 30,000	\$ 31,200
Post-injury earning	20,000	20,800
Difference	10,000	10,400
X 75%		
	\$ 7,500	\$ 7,800

Example 2 (Seasonal Worker)	Year One	Year Two (4% indexing)
Earnings before disability (Long-term rate – using CL-35)	\$ 50,000	\$ 52,000
Post-injury earning	20,000	20,800
Difference (less than MWR)	30,000	31,200
X 75%		
	\$ 22,500	\$ 23,400

Example 3 (Earning Over MWR)	Year One	Year Two (4% indexing)
Earnings before disability	\$150,000	\$156,000
Post-injury earning	20,000	20,800
Difference (over MWR)	130,000	135,200
MWR	\$ 69,500	\$ 71,000 (est.)
Post – injury earnings	20,000	20,800
Paid only to MWR	49,500	50,200
X 75%		
	\$ 37,125	\$ 37,650

<sup>2</sup> These examples are intended for illustration purposes only. They do not take into account factors such as average weekly wage calculations, and review adjustments, etc.