

Adjudicative Advice

CLARIFICATION – Dependent contractors: determining average earnings

Background

Operational Policy manual (OPM) document #18-02-08 entitled “Determining Average Earnings – Exceptional Cases” details how average earnings are to be determined for dependent contractors. The policy states that net business income is used during the calculation period based on income reported to the Canada Customs and Revenue Agency (CCRA), or an audited financial statement of earnings prepared by a chartered accountant. The period of calculation is the 12 months prior to the date of accident, or a lesser period.

It has been pointed out that income reported to CCRA for these workers usually follows a calendar year. As such, earnings may not be available to the date of the accident without having the worker request an audited financial statement for the period in question. A dependent contractor may be unwilling to obtain such a financial statement depending on the circumstances. In order to proceed with these claims, the following guidelines are provided to decision-makers.

Guidelines

The following guidelines are presented in hierarchical order of preference. As a result, decision-makers should only move downward in the hierarchy if absolutely necessary.

1) Request income reported to CCRA on the Statement of Business Activities or an audited financial state-

ment of earnings for the 12 month, or lesser period immediately prior to the actual date of accident as required in OPM #18-02-08. Upon receipt complete ‘Worksheet to Determine the Level of Earnings for Dependent Contractors’ by adding back appropriate expenses.

- 2) If income reported to CCRA does not represent the 12 months prior to the accident, and an audited financial statement is not available, request either:
 - the prior calendar year’s CCRA T1 General and an Income and Expense Statement, and/or the CCRA Statement of Business Activities.
 - This information is then used to complete the ‘Worksheet to Determine the Level of Earnings for Dependent Contractors’ by adding back appropriate expenses.
- 3) If the dependent contractor has not submitted information to CCRA due to the fact he/she has not been operating long enough, an Income and Expense Statement that would normally be provided to CCRA will have to be submitted.
- 4) For dependent contractors that have been in operation for less than one year and an Income and Expense Statement is not available, the decision-maker may set the average earnings using 1/3rd of the maximum annual insurable earnings ceiling (pro-rated). However, this

Notice: This document is intended to assist WSIB decision-makers in reaching consistent decisions in similar fact situations and to supplement applicable WSIB policies and guidelines as set out in the Operational Policy Manual (OPM). This document is **not a policy** and in the event of a conflict between this document and an OPM policy or guideline, the decision-maker will rely on the latter.

would represent a “temporary earnings basis” only. Any appeal of a temporary earnings basis would require that the conditions specified in OPM #18-02-08 be satisfied.

NOTE:

- Guidelines #2, #3 and #4 do not conform with the specific direction set out in OPM #18-02-08. Consequently, average earnings determined using these guidelines will be treated similarly to a temporary earnings basis. If either the employer or dependent contractor objects to the earnings that have been set in this manner, an audited financial statement must be obtained and the earnings set based on earnings for the 12 months prior to the date of accident.
- A claim should not be sent to the Appeals Branch without earnings confirmed by an audited financial statement for the 12 months prior to the accident in accordance with OPM #18-02-08.

Primary Paid Claims

Primary adjudicators will review Form 7's to ensure that they identify any flags as to whether the worker is a “dependent contractor”. Primary will look for the type of occupation, method of payment (source deductions) and whether the subcontractor box has been ticked off on the form 7.

If the information suggests that the worker is a dependent contractor, the Primary Adjudicator will confirm with the employer by telephone and they will flag it in a memo for the claims adjudicators.

If the claim is allowable, the Primary Adjudicator will pay at a temporary rate of \$250/week or less, depending on what earnings information is provided on the Form 7, or what information is indicated by the employer when contacted by telephone.

The claims adjudicator will then send the worker a letter explaining what information is required to set the proper earnings basis. Decision-makers will follow the above guidelines to set the proper earnings. A period of six weeks of loss of earnings (LOE) benefits can be paid to allow the dependent contractor sufficient time to submit the necessary information. At the end of that period, LOE benefits may be suspended until the earnings are provided unless the dependent contractor can provide an adequate explanation regarding the delay.

Claims Quality Loop

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