

# SFL Pension & Benefits Conference

Judy Henley, ICD.D, MTMS

Board Director, Labour Representative

Saskatchewan Workers' Compensation Board

# The Workers' Compensation Act, 2013

## Legislation on compensation at 65 and Pension Annuity

### Amount of compensation for loss of earnings

68(1) If an injury to a worker results in a loss of earnings beyond the day of the injury, the board shall determine the loss of earnings resulting from the injury and shall ensure compensation to the worker:

- (a) in the case of a worker who sustained an injury before September 1, 1985, in an amount equal to 75% of that loss of earnings; or

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- (b) in the case of a worker who sustained an injury on or after September 1, 1985, in an amount equal to 90% of that loss of earnings.
- (2) Compensation pursuant to subsection (1) is payable for as long as the loss of earnings continues, but the compensation is no longer payable when the worker reaches the age of 65.

# Background

Section 68(2) of the Act states that compensation “is payable for as long as the loss of earnings continues, but the compensation is no longer payable when the worker reaches the age of 65.”

# Injured worker 63 years of age or more

- 71 Notwithstanding subsection 68(2), if a worker is 63 years of age or more at the commencement of the worker's loss of earnings resulting from the injury, the board may provide the compensation pursuant to subsection 68(1) for a period of not more than two years following the date of the commencement of the loss of earnings.

# Definition

**Not more than two years**, as referenced in section 71 of *The Workers' Compensation Act, 2013* (the "Act"), means the worker may be entitled to earnings loss compensation for a period of not more than two years following the commencement of earnings loss date.

# Background

Section 71 of the Act provides special consideration to workers injured at 63 years of age or older by extending earnings loss compensation for a period of not more than two years after the commencement of earnings loss date. This provision may extend the date of termination beyond age 65.

**Note:** The two years entitlement is based on medical documentation that verifies the worker is not able to work due to a workplace injury. If a new injury occurs after returning to work that may reset the two years.

# POL 09/2012 Workers Under Age 63

1. Workers under age 63 at the commencement of earnings loss are entitled to earnings loss compensation from the commencement of earnings loss date until:
  - a. The loss of earnings cease, or
  - b. The end of the month in which the worker reaches age 65, whichever occurs first.
2. Workers in receipt of benefits for a period exceeding 24 consecutive months are eligible for an annuity to be paid at the age of 65.

# POL 09-2012 Workers Age 63 and Over

3. Workers 63 years of age or over at the commencement of earnings loss are entitled to earnings loss compensation from the commencement of earnings loss date until:
  - a. The loss of earnings cease, or
  - b. A period of two years has expired (i.e., compensation will be payable up to and including the day prior to the second anniversary of the commencement of earnings loss date), which-ever occurs first.
4. Workers age 63 or over qualifying for compensation benefits under Section 71 are not entitled to annuity benefits under Section 73. To qualify for the annuity, a worker must be absent from the workforce in excess of 24 consecutive months before reaching age 65.

# POL 09/2012 Effects of Retirement

5. Retirement benefits (e.g., employer sponsored pension plans, Canada Pension Plan Retirement benefits, Old Age Security Pension, etc.) will not be considered as earnings in the calculation of earnings loss compensation under the Act.

# POL 09/2012 Termination of Compensation Benefits

6. When earnings loss compensation benefits are terminated, workers will be advised of the options for alternative support programs.

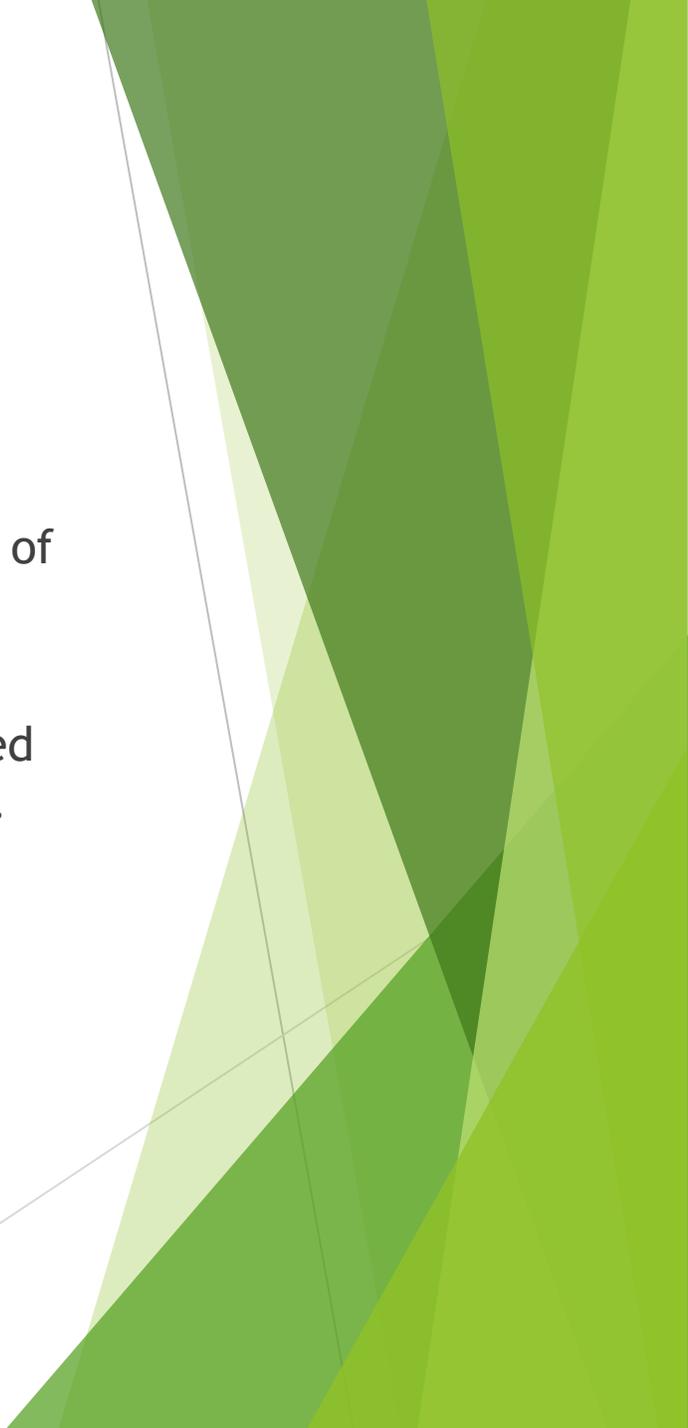
# POL 09/2012 Other Entitlements

7. The limits outlined in Section 71 exclusively impact the provision of earnings loss compensation. Other entitlements (e.g., medical aid, personal care allowance, independence allowance, etc.) may be extended beyond the two-year period.

# Percentage of compensation set aside for annuity at age 65

- 73 (1) In this section, “**minimum annuity amount**” means \$25,000, adjusted annually by the percentage increase in the Consumer Price Index.
- (2) For the purposes of subsection (1), the percentage increase in the Consumer Price Index must be the percentage increase for the 12 months ending on November 30 in each year, and that percentage increase must be applied to determine the minimum annuity amount for the year following the year in which the calculation is made.

**Note:** 2026 minimum annuity is \$33,900

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- (3) If compensation is paid to a worker for a period exceeding 24 consecutive months, the board shall set aside an amount equal to 10% of the compensation paid during the 24-month period and of the future compensation to be paid after the expiry of the 24-month period.
  - (4) The amount set aside pursuant to subsection (3), together with accrued interest, must be used to provide an annuity for the worker at age 65.

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- (5) The amount set aside pursuant to subsection (3) may be:
    - (a) set aside in the reserves of the board; or
    - (b) at the request of the worker, paid into an established superannuation plan.
  - (6) If the total of the accumulated capital set aside by the board pursuant to subsection (3) to provide an annuity for a worker and interest on that amount is less than the minimum annuity amount when the worker reaches the age of 65, the board may, in lieu of an annuity and at the request of the worker, pay to the worker the accumulated capital and interest.

# Definitions

**Eligible compensation** is the amount paid to compensate for earnings loss, which includes benefit payments made to:

- ▶ The worker or dependent spouse.
- ▶ The employer on behalf of the worker (salary continuance), and
- ▶ A third party on behalf of the worker (e.g., Employment Insurance, Maintenance Enforcement or Canada Revenue Agency).

# Definition

**Life annuity** is a financial product that provides an individual with a monthly payment for the rest of their life. The amount of this monthly payment is based on the amount invested and the interest rates at the time the life annuity is purchased.

**Qualifying period** means a period exceeding 24 consecutive months in which the worker or dependent spouse receives eligible compensation for any portion of the month prior to reaching age 65. A single qualifying period may result from eligible compensation paid on more than one injury claim.

# POL 01 / 2024

1. If a worker or dependent spouse receives eligible compensation for more than 24 consecutive months, the WCB will set aside an amount equal to 10 per cent of eligible compensation paid:
  - a) During the qualifying period, and
  - b) After the qualifying period up to the end of the month the worker or dependent spouse turns age 65.
2. An annuity amount will not be set aside on eligible compensation paid on any other work related injury claim(s) that does not form part of the qualifying period (i.e., claims that are less than 24 months in duration).

# POL 01 / 2024

3. The amount will be set aside until the last day of the month in which the worker reaches age 65, and together with accrued interest, will be used to provide an annuity for the worker or dependent spouse.
4. If the amount set aside in the worker's annuity program (including any interest it has earned) is less than the minimum, the worker can either buy an annuity or have the full amount paid out as cash. The minimum annuity amount is adjusted each year by the percentage increase as noted in the Consumer Price Index (CPI) - Annual Increase procedure, and rounded up to the nearest \$100.

# POL 01/2024

## Salary Continuance

5. Payments made by WCB to the employer on behalf of the worker (salary continuance) will be considered for the annuities qualifying period.
6. An amount will not be set aside on payments made to the employer while the worker is on salary continuance, unless the employer confirms that they are not contributing to the Canada Pension Plan (CPP) and/or an employer-sponsored pension plan on behalf of the worker.

# POL 01 / 2024

## Suspension of Benefits

7. If the suspension of benefits is a result of acceptable or unacceptable circumstances, or pregnancy, as outlined in the Suspension of Benefits policy, the qualifying period will:
  - a. Pause regardless of the duration of the suspension, and
  - b. Resume on the day of the first payment following the suspension.

# POL 01 / 2024

## Suspension of Benefits

8. Suspension of benefits as a result of incarceration as outlined in the Suspension of Benefits
  - While Incarcerated policy, will impact the qualifying period as follows:
    - a. If the suspension is less than a full calendar month and the worker still receives compensation in a month (even for a period of less than a day), that month still counts as part of the qualifying period, or
    - b. If the suspension is for a full calendar month, the qualifying period will restart on the day of the first payment following the suspension.

# POL 01 / 2024

## Interest

9. The annual interest rate for annuities is based on the internally calculated smoothed rate of return earned by the WCB's investment portfolio. Interest will annually accrue:
  - a. Beginning on the first day of the month following the qualifying period, and
  - b. On the amount (principal and interest accrued from previous years) set aside to provide an annuity.
10. Interest will accrue on the current year at an estimated rate equal to the interest rate used for the immediate preceding year. At the end of each year, the WCB will calculate the actual annual interest rate and adjust the estimated accrued interest to the actual amount for any balances still set aside.

# POL 01/2024

## Interest

11. Accrual of interest will cease:
  - a. Six months after the later of:
    - i. The worker or dependent spouse reaching age 65, or
    - ii. The worker or dependent spouse being contacted by the WCB to purchase an annuity.
  - b. Six months after the worker or dependent spouse turns 65, if the WCB has been unable to contact the worker or dependent spouse, or
  - c. Six months after the death of a worker or dependent spouse.

# POL 01 / 2024

## Interest

12. If a worker's earnings loss benefits are retroactively adjusted, interest on the annuity may be retroactively adjusted to the first of the month in which interest on the annuity would have accrued. The following criteria must be met before interest is adjusted:
  - a. The decision to adjust compensation is made on or after January 1, 2003 (adjustments of compensation prior to January 1, 2003 are not eligible for annuity interest adjustments).
  - b. The retroactive adjustment to compensation results in a net annuity change (increase or decrease) greater than \$100, and
  - c. The retroactive compensation adjustment period begins more than six months prior to the end of the month in which the adjustment is made.

# POL 01/2024

## Recurrence of a Work-Related Injury

13. If the worker has already qualified for an annuity, then returns to work and subsequently suffers a recurrence of the original injury, the WCB will continue to set aside annuity amounts in the month the worker is off work again as a result the recurrence of the original injury as the qualifying period has already been met.
14. If the qualifying period was not met prior to a return to work and the worker returns to work and later suffers a recurrence of the original injury:
  - a. The initial months the worker was in receipt of compensation will not be used to establish entitlement to an annuity, and
  - b. The qualifying period restarts.

# POL 01/2024

## Death before 65

15. If the worker or dependent spouse passes away prior to reaching 65 years of age, the principal sum with accrued interest will be paid to the worker's or dependent spouse's estate upon receipt of the death certificate or other proof of death and verification of the executor of the estate.
  
16. If the worker's death was a result of the work-related injury for which they were receiving earnings loss benefits, annuity payouts will not reduce compensation payable to dependents.

# POL 01/2024

## Purchase of an Annuity

17. If the total amount set aside on all claims that have qualified for annuity contributions (even if those amounts relate to different injuries and different qualifying periods) as of the last day of the month in which the worker or dependent spouse reaches age 65 is equal to or greater than the minimum annuity amount, the worker or dependent spouse will be required to purchase a life annuity, which must be:
  - a. Non-registered.
  - b. Guaranteed to return the purchase price, and
  - c. Payable in equal installments.

# POL 01/2024

## Purchase of Annuity

18. If the total amount set aside on all claims that have qualified for annuity contributions (even if those amounts relate to different injuries and different qualifying periods) as of the last day of the month in which the worker or dependent spouse reaches age 65 is less than the minimum annuity amount, they may choose a lump sum payout of the accumulated principal and interest in lieu of an annuity.
  
19. The minimum annuity amount will be based on the year the worker or dependent spouse reaches age 65 outlined in the Consumer Price Index (CPI)
  - Annual Increase procedure.

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## Purchase of an Annuity

20. Upon evidence that the worker or dependent spouse has entered into a contract to purchase an annuity, the amount set aside will be paid to the annuity provider/company on behalf of the worker or dependent spouse.

# POL 01 / 2024

## Qualifying for Annuities after Age 65

21. If an annuity is payable as a result of an adjustment to previous earnings loss benefits for a worker or a dependent spouse over the age of 65:
  - a. The worker or dependent spouse will be required to purchase an annuity if the principal and any retroactive interest is over the minimum annuity amount, or
  - b. The worker or dependent spouse will receive a lump sum payout, in lieu of an annuity, if the principal and any retroactive interest is under the minimum amount.
22. If a worker has been previously paid annuity funds and an additional annuity amount is awarded after age 65, there will be no cumulative effect when determining if the amount payable is below the minimum.

# POL 01 / 2024

## Special Considerations - Alternate Annuities

23. In recognition of unusual circumstances where a life annuity would not sufficiently meet the objective of replacing the worker's or dependent spouse's reduction of retirement income, the WCB will consider requests for an alternate form of annuity on or after the worker or dependent spouse reaches age 65. The alternate annuity must:
- a. Be for the purpose of providing retirement income.
  - b. Detail the terms, conditions and carrier of the alternate annuity.
  - c. Guarantee the alternate annuity will:
    - i. Return the principal portion of the annuity.
    - ii. Be payable from a non-registered fund, and
    - iii. Be payable for equal installments over a period of at least 10 years.

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## Special Considerations - Alternate Annuities

24. If the alternate annuity does not meet the criteria above, Finance will make a decision on a case-by-case basis. If the request is accepted, a Final Release form will be required.

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## Special Considerations - Lump Sum Payouts

25. The WCB will consider requests for a lump sum payout due to terminal illness or foreign residency on a case-by-case basis.

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## Special Considerations - Reconsideration

26. Reconsideration of a decision regarding annuities will only be made by the Tribunal and is not subject to the regular appeal process.

# Board may supplement annuity

- 74 If the board determines that the impact of the injury on the retirement income of the worker is greater than is recognized by the payments pursuant to subsection 73(3) and that it causes an undue hardship to the worker, the board may supplement the income of that worker on and after the day on which the worker reaches the age of 65 to increase the amount of the worker's income to the minimum amount of compensation then payable.

# POL 01 / 2024

## Annuity Supplement

27. At the request of the worker, the WCB may supplement their income on and after age 65 to increase the amount of income to the minimum amount of compensation (Section 75) then payable if:
  - a. The worker is receiving annuity payments or has received a lump sum payout.
  - b. The Tribunal determines that the impact of the injury on the retirement income of the worker is greater than the annuity payment(s), and
  - c. The impact of the injury on the retirement income causes undue financial hardship to the worker.

# POL 01 / 2024

## Annuity Supplement

28. The annuity supplement will be paid on and after the day on which the worker reaches the age of 65 and will be paid monthly. The amount will be reviewed annually and adjusted based on the percentage increase in minimum compensation.

# PRO 01/2024

To qualify for an annuity supplement under Section 74 of the Act, three criteria must be met. The WCB finance department will request income verification information including the most recent income tax returns and net worth statements. They will then use the following three-step analysis:

# PRO 01/2024

**Criteria one** - confirm whether the amount of the total current monthly retirement income is below the statutory minimum compensation for the year the worker turns 65 by verifying the worker's:

- (a) Canada Pension Plan (CPP)
- (b) Old Age Security
- (c) Annuity payments that result from the purchase of an annuity with funds provided by the WCB annuity program
- (d) Other annuity payments, and
- (e) Other employer-related pension.

# PRO 01/2024

**Criteria two** - confirm whether the worker's injury has caused a reduction in retirement income. To determine this, the WCB finance department will:

- (a) Calculate what the worker's monthly CPP income would have been if the injury did not occur using the gross earnings reported on the claim, indexed yearly for the Consumer Price Index, and the CPP Statement of Contributions, and
- (b) Compare the calculated figure to the amount the worker is currently receiving.

# PRO 01/2024

**Criteria three** - confirm whether the reduction of retirement income determined in the second step has not been adequately compensated by the annuity payments. If the monthly CPP and annuity payment is less than the estimate of what the CPP would have been had the injury not occurred, then there is a reduction in retirement income.

QUESTIONS?