

 Yukon Workers' Compensation Health and Safety Board	Part:	Earnings Loss		
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LUMP SUM PAYMENTS AND ADVANCES (PRIOR YEARS)

GENERAL INFORMATION

Prior to 1993, the Workers' Compensation Acts and Ordinances ("prior legislation") in Yukon provided for lump sum payments to injured workers with partial or total disabilities. They also provided for advance payments in restricted circumstances. These provisions date back to the 1950's. The *Workers' Compensation Act* of 1992 deleted these provisions.

DEFINITIONS

- 1. Advances:** the Yukon Workers' Compensation Health and Safety Board (YWCHSB) might, under prior legislation, advance sums against periodic payments of compensation in amounts it deems appropriate where, in its opinion, the interest or pressing needs of a worker¹ warrants it. These advances will be made only in circumstances where it can be determined that the injured worker's long term financial security will not be compromised.

- 2. Impaired Work Capacity²:** the diminished earning capacity of a worker. The word *impaired* is to be understood in this context. It is not to be confused with the term *impairment*, which is a separate medical concept.

- 3. Lump Sum Payments:** Under prior legislation, the YWCHSB in its discretion, had the authority to commute periodic payments of compensation by making a lump sum payment to a worker.

These provisions were introduced during the pension era of benefits, when benefits were paid for the life of the worker. In 1983, the "dual award" system of benefits was introduced. Between 1982 and 1992, an injured worker might elect a lump sum payment for a permanent impairment with earnings loss to be paid until the age of 65. Alternatively, a worker might apply, if eligible, for a lump sum payment of both

¹ or person entitled to payment under the legislation of the day

² Because this phrase has remained in the legislation throughout the years while the context of workers' compensation has changed over time (e.g. shift from pension system to dual benefits), it is difficult to provide a comprehensive definition that satisfies the framework of each separate *Act*.

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permanent impairment and earnings loss benefits, based on future payments to the age of 65.

PURPOSE

This policy establishes the circumstances in which the YWCHSB will provide lump sum payments and advances under pre-1993 workers' compensation legislation.

POLICY STATEMENT

1. Lump Sum Payments

10 per cent (10%) or Less Impaired Work Capacity

Where compensation is payable in respect of partial disability of a worker, and the disability has not impaired by more than 10 per cent (10%) the work capacity of the worker immediately before the accident, the YWCHSB in its discretion, may pay to the worker a lump sum in lieu of periodic payments of compensation.

This will generally occur where the periodic payment involves a relatively small sum. Although not required by legislation, the YWCHSB will obtain the consent of the worker through acceptance of the lump sum payment in writing.

More than 10 per cent (10%) Impaired Work Capacity

Any application for a lump sum payment in respect of the partial or total disability of a worker, where the disability has impaired by more than 10 per cent (10%) the work capacity of the worker immediately before the accident, must be approved by the Director of Claimant Services according to all of the following criteria:

(Note: prior to the application of the criteria, the YWCHSB will provide to the worker the net present value and method of calculation of the lump sum payment as determined by the YWCHSB's actuary.)

- a) The request for a lump sum payment or advance must be in writing.
- b) The applicant must have a verifiable, stable source of income, independent of YWCHSB benefits, such as investments, a business venture or earnings from other employment. If the stable source of income is from other employment, the worker will:
 - i) have a stable employment history of at least five years;
 - ii) not have any other injury which might impair his/her earning capacity;and

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- iii) be in reasonable health considering present age, occupation and employment (see d), below).
- c) The lump sum must be applied to a specific purpose, which will enhance the financial position of the applicant, such as:
 - i) to purchase a home or pay down a mortgage. These applications shall include a confirmed statement of cost from the financial institution holding the mortgage, or a conditional, signed sale agreement from the real estate agent or the vendor; or
 - ii) to buy a business, in whole or in part, or to start a business. To be considered, the application must contain a business plan approved by a recognized financial institution³.
- d) Where the net present value of the lump sum payment is in excess of the specific purpose to which it is to be applied, the worker will prepare and submit a financial plan to the YWCHSB for the remaining amount. The financial plan will include the written endorsement of the independent financial advisor (see g) below).
- e) The applicant must be able to demonstrate the ability to manage his/her financial affairs, both prior to and following the time the disability arose. In order to make this determination the YWCHSB may require additional information from the worker, which may include medical or legal documentation concerning his/her competence in this regard.
- f) The applicant must provide written medical certification that he/she has reached the point of maximum medical improvement, and is in reasonable health given the injury.
- g) At the applicant's own expense⁴, he/she is required to receive independent financial and legal advice, with a copy of that advice to be provided to the YWCHSB. This preserves the required independence and avoids potential conflict of interest by the YWCHSB.

Both advisors must attest, in writing, that the worker understands the consequences of the request for a lump sum payment and that it is, in the opinion of the advisor, in the worker's best interests to receive such payment.

³ such as any of Canada's major banks, or the Federal Business Development Bank

⁴ an advance may be allowed for this purpose, according to the conditions set out under part 4 of this policy

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Only persons who have one of the following professional designations may provide independent financial advice:

- i) Chartered Accountant (CA)
- ii) Certified Management Accountant (CMA)
- iii) Certified General Accountant (CGA)
- iv) Certified Financial Planner (CFP)

Only a lawyer practicing in Yukon or the jurisdiction in which the applicant resides may provide the required legal advice.

Settlement in Full

Where a lump sum payment has been made to a worker as settlement in full of all compensation entitlement in respect of the disability, this acceptance must be provided in writing.

A worker who opts for commutation of periodic payment of benefits is not entitled to receive any further or other compensation in respect of the injury (subsection 32(3)). This includes any future annuity entitlement that would have otherwise been payable.

Any annuity eligibility will be frozen as of the date of the lump sum payment. The YWCHSB will continue to hold any amount currently in reserve until the worker reaches the age of 65, at which time the annuity will be paid out to the worker according to the applicable legislation or policy of the day.

In accordance with subsection 29(1), the worker may be allowed to receive additional medical treatment for that injury.

Ineligible Applications

Where compensation is payable in respect of the partial or total disability of a worker, and the injury has impaired the work capacity of the worker by more than 10 per cent (10%), any application for a lump sum payment will be denied in cases where:

- a) the injury is unsettled and there is significant risk of deterioration;
- b) the applicant has no source of income independent of YWCHSB benefits, or cannot verify income;
- c) the worker is currently participating in a vocational rehabilitation program;

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- d) a third party action is underway or being contemplated as a result of the accident which caused the worker's injury; or
- e) the percentage of injury is in dispute and the worker has initiated an appeal.

2. Injury Arising Between 1982 and 1992

After January 1, 1983 the "pension system" of compensation was replaced by the "dual award system". For the following 10 years, until January 1, 1993, the lump sum payment provisions available under the old pension system continued in the legislation. At the same time, new provisions allowed for a lump sum award for a permanent injury and also for periodic payments for loss of earning capacity. For work-related injuries occurring during this 10-year period, applications for a lump sum payment will, of necessity, only include a lump sum award for impairment of earning capacity to age 65, as permanent disability lump sums are covered separately.

3. Other Requirements for Lump Sum Payments

Only workers are eligible for lump sum payments. This entitlement does not extend to a worker's surviving dependents, unless otherwise specified in the legislation applicable to that claim.

YWCHSB general counsel shall be consulted prior to lump sum amounts of over 10 per cent (10%) impairment of earning capacity being paid out.

The President/CEO shall report all approved applications for lump sum payments of impaired work capacity over 10 per cent (10%) to the Board of Directors.

4. Advances of Periodic Payments of Compensation

The YWCHSB will review requests for advances of periodic payments of compensation on a case-by-case basis to ensure the ongoing financial security of workers.⁵ Requests for advances shall be reviewed using the following criteria:

- a) The *Act* requires that the advance must be for a specific purpose⁶, and that the YWCHSB must be of the opinion that the interests and pressing needs of the person warrant the advance.

⁵ or person entitled to payment under the legislation of the day

⁶ Such purpose may include payment for independent financial and legal advice, as required under part A of this policy.

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- b) The applicant must demonstrate a stable source of income, other than his/her periodic payment of compensation, which would enable the applicant to repay the advance within the prescribed period (see f) below).
- c) The advance must not jeopardize the injured worker's ability to meet ongoing financial obligations.
- d) The applicant must be able to demonstrate the ability to manage his/her own financial affairs both prior to and following the time the disability arose. In order to make this determination, the YWCHSB may require additional information from the worker, which may include medical or legal documentation concerning his/her competence in this regard.
- e) Advances are limited to a maximum of the equivalent of one year's periodic payments of compensation. No further advances will be considered until any currently advanced amounts are repaid to the YWCHSB in full.

Until repayment has been made to the YWCHSB, periodic payments of compensation will be withheld and the advanced amount will be offset by the amount of those payments. Periodic payments of compensation will resume once the advanced amount is repaid in full.

- f) The repayment period will be for a period of up to one year.

APPLICATION

This policy applies to all requests for lump sum payments or advances pursuant to s.32 and 30(3) of the *Workers' Compensation Act*, R.S.Y. 1986, and all similar provisions in workers' compensation legislation prior to 1993.

The policy applies to all applications as of the effective date. It includes all current applications for a lump sum payment or advance for which a final decision by the YWCHSB has not yet been made, but excludes all applications where payment has already been issued by the YWCHSB.

ACT REFERENCES

Subsections. 29(1), 30(3) and 32, *Workers' Compensation Act*, R.S.Y. 1986, and all similar provisions in any predecessor legislation

HISTORY

CL-53, "Lump Sum Payments and Advances (Prior Years)," effective February 17, 2004, revoked July 1, 2008.