



Reporting Wages & Earnings to WSIB

Base Rate + Vacation Pay (10%) + RSP = Earnings Basis



By: Gary Majesky, WSIB Consultant & Executive Board Member

A frequent source of controversy and confusion when injured workers, and accident employers submit claims to the WSIB is what to report in terms of earnings?

A common misconception among our employers, members and some Board personnel is that the Earnings Basis for the purpose of calculating LOE benefits is the base rate. Some believe it's the entire wage package.

In fact, both approaches are misinformed because the Board recognizes the following as insurable earnings for the purposes of calculating both the short and long term LOE benefit rate. However, the exact dollar amounts will vary depending on the sector or agreement a member is working under. I've used the May 2015 ICI journeyman wage rate to illustrate the Earnings Basis formula when reporting to WSIB:

Base Rate	\$41.49	per/hr
Vacation Pay	\$4.78	(10% paid hourly on every cheque)
RSP	<u>\$1.24</u>	(RSP earnings, ask union for authority)
	\$47.51	Hourly Wage Reported to WSIB

In 2000, I was involved in a WSIB Appeal whether our unique RSP contribution was earnings or a benefit, and therefore, included in the Earnings Basis formula when calculating an injured workers hourly wage.

To be sure our RSP provision is unique and resulted in an appeal because the WSIB initially concluded our RSP contribution made on behalf of members was a "registered retirement savings plan", therefore, a benefit. However this was not the case, but rather, the contributions are made to a "retirement savings plan", not registered under the *Pension Benefits Act*. Since the RSP contribution was not vested nor locked in and members can request withdrawals from the funds at any time upon his or her request, it was concluded that the RSP was deemed earnings.

The WSIB's rationale was the IBEW LU 353 retirement savings plan contributions did not meet the relevant requirements under Section 25 of the *Workplace Safety and Insurance Act*, and are to be considered earnings. Section 25 excludes benefit and pension contributions which are not considered earnings for the purposes of calculating an injured workers loss of earnings benefits.

Apprentices Earnings Based on Journeyman Wage

For apprentices the Board uses the Journeyman wage rate to calculate the LOE benefit rate pursuant to Operational Policy 18-

02-08 - Exceptional Circumstances. There is also no requirement or authority to conduct a long term earnings recalculation for apprentices. Consequently, it is very important that apprentices "document" on the **Form 6, Workers Report of Injury** that they are an apprentice, and print their TQAA, Ministry Apprenticeship Contract # (and not the JAC reference #), as these are entirely different.

Apprentices Treated Differently / Calculating the Earnings Basis

WSIB decision makers are well aware of the special provisions for calculating the benefit rate of apprentices by using the Journeyman Wage Rate, but often times this is overlooked. The authority is found in Operational Policy 18-02-08, Determining LOE Benefits in Exceptional Cases:

Apprentices

For workers who are apprentices, the decision-maker determines the average earnings by using the average earnings of a journeyman employed by the employer in the same trade as the worker.

If the employer did not employ a journeyman in the same trade as the worker, the worker's average earnings are determined by using the average earnings of a journeyman employed in the same geographical area as the employer and employed in the same trade as the worker.

Once established, the average earnings remain the same for the life of the claim, with no recalculation.

The antecedent authority to the special treatment of *Students, Apprentices or Learners* took place on January 18, 1991 when Regulation 951 of the Act was amended. The Board explained in a February 1991 Policy Report that:

In a situation involving an apprentice or learner, the compensation rate is based on an amount equivalent to that which the employer is paying a journeyman or full-time worker at the time of accident. If the employer has no such worker for comparison, the earnings of a journeyman or full-time worker in the same trade and working in the same locality are used.

This approach was the subject of a review by the WSIB titled *Types of Workers: Students, Apprentices, and Learners*, which outlined the special rules for dealing with claims of students, apprentices, and learners. The Question and Answer section provided clarification, and states:



Definition (Who is an apprentice?)

- Registered under the *Trades Qualifications and Apprenticeship Act* (specified construction trades) or the *Apprenticeship and Certification Act* (all other trades).
- Signed a contract of apprenticeship for training and instruction in a trade, through or from an employer (see Policy 12-04-13, Apprentices).

Coverage (Are all apprentices covered by the WSIB?)

- No, only those who have a contract of apprenticeship with an employer whose business is covered under the *WSIA* either compulsorily, or by registering for coverage by application.
- Coverage is provided during the work placement but not during classroom courses.

Calculating Earnings (How are pre-injury average earnings calculated for apprentices?)

- Based on the average earnings of a typical journeyman employed by the employer at the time of the accident and in the same trade as the apprentice, even if it is higher than the apprentice's actual wages.

When are pre-injury average earnings adjusted for apprentices?

- Once established, the average earnings remain the same for the life of the claim, with no adjustment.

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24%

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10%

Skeptical of doctor's recommendation

7%

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4%

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¹ Best Doctors data, 2013.



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