

Questions and Answers regarding WSIB benefits and workers age 63 or older

The Ontario Government recently passed Bill 211. This legislation will remove the mandatory retirement age for workers in Ontario as of December 12, 2006. This document is intended to help answer questions regarding benefits and services provided by the WSIB to workers age 63 or older at the time of the injury*, as well as the corresponding impacts on the employer's premiums and experience rating.
(*for the purposes of this document injury also means occupational disease)

1. Will ending mandatory retirement affect WSIB benefits and services?

No. The current *Workplace Safety and Insurance Act, 1997* (WSIA) and the prior *Workers' Compensation Act*, are exempt from the change to the Ontario *Human Rights Code* which removes mandatory retirement at age 65.

2. What wage loss benefits are older workers entitled to?

Loss of earnings (LOE) benefits (accidents after January 1, 1998)

- will still end at age 65 for workers who were less than 63-years-old at the time of injury
- may still be paid to workers aged 63 or older at the time of injury for up to two years after the date of injury.

Future Economic Loss (FEL) (accidents from January 2, 1990 to December 31, 1997)

- will still end at age 65 for workers who were less than 64-years-old at the time of injury
- workers who are 64 years of age or older at the time of injury are not entitled to FEL benefits, however, they may be entitled to temporary total disability benefits so long as temporary total disability continues.

Temporary Disability Benefits (Accidents prior to 1990)

- temporary total or temporary partial disability benefits may be paid for periods where a worker is disabled from working and, in cases where a Permanent Disability (PD) pension has been awarded, when the worker is considered to be below the assessed PD level.

3. What "pension" benefits are older workers entitled to?

Loss of Retirement Income (LRI) benefit (for accidents on or after January 2, 1990)

- LRI benefit is not available to workers who are 64 or older at the time of injury.

Non-Economic Loss (NEL) benefit (accidents on or after January 2, 1990)

- if the injury leads to a permanent impairment the worker may be entitled to a NEL benefit.

Permanent Disability (PD) benefit (accidents prior to January 2, 1990)

- if the injury leads to a permanent disability the worker may be entitled to a PD pension and certain supplementary benefits.

4. What other benefits are older workers entitled to?

Health Care - entitlement to health care benefits (as they relate to the injury) continues past the age of 65, regardless of accident date. Entitlement is possible throughout the worker's lifetime if the injury results in a permanent impairment/disability.

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- 5. Are employers and workers still required to participate in early and safe return to work? (WSIA s.40)**
The WSIA requires that the employer and the worker co-operate in the early and safe return to work of the worker. There is no age limitation on this requirement.
- 6. Does the employer still have an obligation to re-employ older workers? (WSIA s.41)**
The WSIA stipulates that an employer's obligation to re-employ ends on the date the worker reaches age 65. This provision will continue to apply.
- 7. Are older workers entitled to Labour Market Re-entry (LMR)?**
Entitlement to an LMR plan is determined on a case-by-case basis. Generally, LMR plans are not considered to be appropriate for workers age 63 or older. However, when deciding whether an LMR plan is appropriate, an LMR assessment may be conducted. An LMR assessment guides the WSIB decision maker in determining if a worker would benefit from an LMR plan.
- 8. Does an employer have to maintain employment benefits for older workers when they are injured?**
Yes. The employer must maintain any contributions they were making to the worker's employment benefits (health care, life insurance, pension benefits) for 1 year after the injury, when the worker is absent from work due to the injury, regardless of the worker's age. Also, the worker needs to continue to pay their contribution for employment benefits, if any, for 1 year after the injury, while they are absent from work.
- 9. If a worker who is 63 or older is injured, can the worker sue the employer for further benefits once LOE ends, after 2 years or less?**
No. The WSIB system is based on a no-fault collective liability system. In an historic compromise, workers gave up the right to sue their employer for their work-related injuries, in exchange for a guaranteed level of compensation. Employers, for their part, receive protection from lawsuits in exchange for financing the program. This no-fault status does not change due to the worker's age or once the worker's benefits end.
- 10. Is an employer's obligation to report and pay premiums affected in any way for workers who are 63 years or older?**
No. An employer's reporting and payment obligations are not affected for older workers. Employers must continue to report and pay WSIB premiums for workers who are 63 years or older in the same manner as for other workers who are less than 63 years of age.
- 11. Will an employer's experience rating be affected in any way if the employer employs workers who are 63 years or older?**
No. An employer's experience rating will not be affected if the employer has workers who are 63 years or older. The WSIB's three experience rating programs (NEER, CAD-7, and MAP) considers the accident costs for all workers regardless of age, which appear on the employer's accident cost statement.
- 12. Does the WSIB receive many claims from workers age 65 or older?**
The WSIB's claims experience with workplace injuries or illnesses sustained by workers age 65 or older represents approximately less than 1% of claims filed each year.