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Ontario Government Proposes Changes to Workers' Compensation System

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On April 20, 2026, the Ontario government introduced the *Protecting Ontario's Workers and Economic Resilience Act, 2026*, which, if passed, will make the following changes to the workers' compensation system within the province:

- Increase loss of earnings ("LOE") benefits from 85% to 90% of the difference between a worker's pre-injury and post injury net average earnings.
- Allow the Workplace Safety and Insurance Board ("WSIB") to pay LOE benefits to a worker over the age of 65 if the worker asserts they would have worked past this age.
- Allow the WSIB to review and adjust payments of LOE benefits to a worker more than 72-months after the worker's injury.
- Set a maximum threshold for the total income a worker may receive from collateral benefits and LOE benefits.
- Make workers' compensation coverage mandatory for employers that operate a residential care facility or group home.

Increase of LOE Benefits = Higher Claims Costs for Employers

In 1998, the government reduced LOE benefits from 90% to 85% of the difference between a worker's pre-injury and post injury net average to respond to financial pressure then faced by the WSIB which had a $10.9 billion unfunded liability. In recent years, the WSIB's funding position has significantly improved, resulting in a payment of surplus back to employers in each of 2022 and 2025.[1]

As long as the funding position of the WSIB remains favourable, employers are unlikely to face premium rate increases to fund this benefit improvement. On the other hand, enhanced benefits may

[1] Eight other Canadian provinces and territories currently compensate injured workers at a rate of 90% of pre-injury net average earnings.

create a disincentive for workers to return to work which could negatively impact the return-to-work process and result into higher costs for each claim.

A Schedule 2 employer that pays claim costs, directly (rather than premiums), will experience an immediate 5% increase in benefit expenses for new claims after the proposed legislative changes come into effect**.**

Benefits Past the "Age of Retirement"

Although the province amended the Ontario *Human Rights Code* in 2005 to remove 65 as the mandatory age of retirement in Ontario, the workers' compensation system retained 65 as a notional retirement age for the purpose of receiving benefits. A worker under the age of 65 at the time of injury may only receive LOE benefits until age 65; and a worker 63 years or older at the time of their injury can receive benefits for a maximum of two years.

Extending payments past age 65 is intended to align with the current labour market trend in which people are choosing to stay in the workforce, longer. If enacted, a worker between the ages of 63 and 65, or within two years of an injury, may request, and the WSIB may extend, LOE benefits past the age of 65 if the worker is likely to continue to work past the age of 65. The criteria the WSIB will apply to make such a determination are unknown at this time and we anticipate further information will be set out in the WSIB's *Operational Policy Manual*. We will keep our readers posted.

Elimination of 72-Month Lock-In and Cap of Total Income

The proposed amendment would require the WSIB to reduce a worker's LOE benefit if the total amount of income the worker receives from the WSIB and other sources[2] exceeds 100% of the worker's pre-injury net average earnings, precluding double-recovery.

Under the current system, from the date of a worker's injury to 72 months post injury, the WSIB can reduce a worker's LOE benefits by the amount of Canadian Pension Plan Disability ("CPP-D") benefits the worker receives for the work-related injury. As a result, many workers wait until after the 72-month lock-in to apply for CPP-D benefits because, after that point, the WSIB cannot offset CPP-D benefits from WSIB benefits.

Details about which cohort of claims which will be captured by the elimination of the lock-in are pending, as well as information about the frequency of WSIB review after 72 months have elapsed. We will keep readers posted.

Mandatory Coverage for Employers Operating A Residential Care Facility or Group Home

At present, a publicly owned residential care facility or group home is required to have WSIB coverage for its employees. However, WSIB coverage is optional for the same facility if privately owned. The result of this difference in coverage became apparent during the COVID pandemic.

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[2] Other sources of income include payments made to a worker, by or on behalf of, an employer (*e.g.,* top-ups).

To give employers a sense of associated costs, although the WSIB's overall average premium rate decreased in 2026, the class rate for non-hospital nursing and social assistance/residential care facilities increased by 1%. This year's class rate (N2) is $2.10/$100 of insurable earnings.

The government intends to consult with sector stakeholders prior to implementing these changes. Impacted employers are encouraged to participate either directly or with the assistance of Sherrard Kuzz LLP. For assistance, please reach out to us.

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