

Office of the Worker Adviser

PRELIMINARY ANALYSIS OF BILL 187
AMENDMENTS TO THE WSIA

BACKGROUND

Bill 187, Budget Measures and Interim Appropriation Act, 2007 received First Reading on March 27, 2007. Schedule 41 of the Bill contains a number of amendments to the *Workplace Safety and Insurance Act, 1997 (WSIA)*.

The First Reading version of the bill is available on the Ontario Legislature web site at:

http://www.ontla.on.ca/bills/bills-files/38_Parliament/Session2/b187.pdf

This document provides a preliminary analysis of the proposed changes.

Please note that these amendments are not yet law and that the final version of the Bill may be different from the First Reading version discussed here.

SECTIONS 42 AND 43—ADDITION OF “AVAILABLE”

The Bill 187 amendments to the *WSIA* add the term “available” to certain subsections of the labour market re-entry (LMR) and loss of earnings (LOE) provisions of the Act. In general, the amendments appear to be intended to modify the way in which the Board “deems” workers to be earning wages from a suitable employment or business (SEB).

The following sets out the relevant subsections of sections 42 and 43 of the *WSIA* as amended. Where language has been removed from a subsection the removed language is shown as crossed out (e.g. ~~deem~~). New language is underlined (e.g. determined). Specific comments about the amendments to each section are included after each revised section.

Section 42—Labour Market Re-entry

(3) *Suitable employment or business*—In deciding whether a plan is required for a worker, the Board shall determine the employment or business that is suitable for the worker and is available.

(6) *Contents of plan*—The plan shall contain the steps necessary to enable the worker to re-enter the labour market in the employment or business that is suitable for the worker and is available.

These amendments require the Board to take into consideration the availability of any SEB when deciding whether an LMR plan is required for the worker and when deciding the contents of an LMR plan. The current language in the Act only requires that suitability be considered without regard to the actual availability of the identified SEB.

Section 43—Payments for loss of earnings

Amount

(2) *Amount*—Subject to subsections (3) and (4), the amount of the payments is 85 per cent of the difference between,

- (a) the worker’s net average earnings before the injury; and
- (b) the net average earnings that he or she earns or is likely to be able to earn in suitable and available employment or business after the injury.

Bill 187 amends the subsection that deals with how the amount of LOE is to be calculated by adding the phrase “likely to be” and “available” to s. 43(2)(b). This brings the language closer to that contained in the FEL provision for calculating benefits under the *Workers’ Compensation Act (WCA)*, which uses what the worker is “likely to be able to earn after the injury in suitable and available employment.” The addition of the term “available” should modify the extent to which workers are deemed to have jobs that are not actually available to them.

While the amendments to this part of the LOE provisions is an improvement for workers, it does not require same level of consideration of the individual worker’s circumstances as is required under the FEL provisions of the *WCA*. The FEL provisions (s.43 (7)) require the Board to consider

- the worker’s personal and vocational characteristics,
- the worker’s prospects for successful medical rehabilitation and return to work or labour market re-entry and
- what constitutes suitable and available employment for the worker.

Earnings after injury

(4) *Earnings after injury*—The Board shall ~~deem~~ determine the worker’s earnings after the injury to be the earnings that the worker is likely to be able to earn from the employment or business that is suitable for the worker under section 42 and is available and,

- (a) if the worker is provided with a labour market re-entry plan, the earnings shall be ~~deemed~~ determined as of the date the worker completes the plan; or
- (b) if the Board ~~determines~~ decides that the worker does not require a labour market re-entry plan, the earnings shall be ~~deemed~~ determined as of the date ~~this determination is made~~ the Board makes the decision.

Section 43(4) is the section used to determine workers’ LOE benefits after they have been through LMR. Bill 187 amends s. 43 (4) by adding the term available and by changing the word “deem” to the word “determine” throughout the subsection.

SECTION 44—REVIEW RE LOSS OF EARNINGS

Section 44 determines when LOE benefits can be reviewed—and therefore changed. Generally, it prohibits a review more than 72 months after the worker's date of injury. The section does, however, provide a list of exceptions when the Board can review LOE benefits beyond 72 months despite the general prohibition.

Under s. 107, the LOE review provisions also apply, with necessary modifications, to reviews of future economic loss (FEL) under the *Workers' Compensation Act*. The main modification relates to the date of the final FEL review. The final FEL review occurs 60 months from the date that a worker's FEL is first determined. The initial FEL determination is usually around 12 months after the date of injury, but may be a shorter or longer period depending on the circumstances surrounding the worker's medical recovery.

Bill 187 amends s. 44 to provide a number of new exceptions to the restriction on reviewing LOE payments. The bill also amends s. 107 to make all but the last of the new exceptions apply to FEL reviews. The last exception deals with workers who were cooperating in early and safe return to work or health care when the 72 months expires. All of the other new exceptions apply to FEL reviews.

The changes to s. 44 address a number situations where the Board's inability to adjust LOE benefits was seen as creating unfairness or injustice.

The Bill also expands when the Board can apply the existing exception for workers who have had a NEL redetermination (s. 44(2.1)(c)).

The new exceptions are not available to all workers, however. The majority of them apply only from July 1, 2007 forward. The application dates of each exception are discussed below.

Please see the accompanying chart for a detailed explanation of the changes to s. 44 and their application dates.

Extension of exception for NEL redetermination

Under s. 44(2.1)(c) of the current Act, workers can have their LOE benefits reviewed if they have their degree of permanent impairment under s. 47 redetermined. Under s. 44(2.4)(a), the Board can only review LOE within 24 months of the date of the redetermination.

Bill 187 adds a new s. 44(2.1)(a.1) that extends the time for a review beyond 24 months if the worker is in an LMR plan when the 24-month period expires. In this situation, the Board would have 30 days from the completion of the plan to review LOE benefits.

This amendment would apply only to workers whose degree of permanent impairment was redetermined on or after July 1, 2007.

Significant deterioration resulting in new NEL

Under the new s. 44(2.1)(d), the Board will be able to review a worker's LOE benefits after 72 months from the date of injury if he or she suffers a significant deterioration that results in a determination of a permanent impairment under s. 47 (i.e. NEL redetermination).

This would permit LOE benefits to be reviewed where a worker who was not receiving a NEL for an injury suffers a permanent worsening that results in a NEL being granted. Currently, LOE benefits can only be reviewed if an existing NEL is redetermined.

In this situation, the Board has 24 months from the date of the determination to review LOE benefits. This can be extended if the worker is still in an LMR plan at the 24-month mark, in which case the review must be completed within 30 days of the completion of LMR.

This new exception does not apply to all workers. To qualify, a worker must be suffering from the deterioration on or after July 1, 2007, be in LMR on that date or be provided with an LMR plan after that date. This allows benefits to be paid to workers who suffer a deterioration prior to July 1, 2007—provided it is still ongoing as of that date. Changes to LOE benefits cannot be made retroactive before July 1, 2007, however. Therefore, any benefits paid to a worker whose significant deterioration occurred before July 1, 2007 would be paid from July 1, 2007 and going forward.

Significant deterioration likely to result in NEL redetermination

The new s. 44(2.1)(e) would allow the Board to review a worker's LOE benefits if the worker has suffered a significant deterioration that, in its opinion, is likely to lead to a redetermination of his or her degree of permanent impairment under s. 47.

This will permit the Board to adjust LOE benefits and, presumably, pay increased benefits while the work awaits and receives a NEL re-assessment.

The Board may review LOE benefits during the period from when it decides that the worker's significant deterioration is likely to result in a redetermination and ends on the day that the Board either redetermines the degree of permanent impairment or decides that the worker is not entitled to a redetermination. If the worker's degree of permanent impairment is redetermined, the worker would then fall within the NEL redetermination exception, s. 44(2.1)(c), and could review the worker's benefits within the time frames set out in s. 44(2.4).

Again, the new exception does not apply to all workers. As with the previous exception, in order to qualify a worker must be suffering from the deterioration on or after July 1, 2007, be in LMR on that date or be provided with an LMR plan after that date. This allows benefits to be paid to workers who suffer a deterioration prior to July 1, 2007—provided it is still ongoing as of that date. Changes to LOE benefits cannot be made retroactive before July 1, 2007, however.

Significant temporary deterioration

This exception, set out in the new s. 44(2.1)(f), will permit the Board to adjust LOE benefits if the worker suffers a significant temporary deterioration (i.e. worsening) in his or her condition related to the injury. For example, a worker could receive increased LOE benefits for a period of recurrence.

The Board is granted the power to adjust LOE benefits at any time during the temporary period and again when the worker recovers.

This exception applies to workers who are suffering a temporary significant deterioration on or after July 1, 2007. Workers who suffered temporary significant deterioration prior to that date could have their LOE benefits reviewed, provided they were still experiencing the deterioration on July 1, 2007. Changes to LOE benefits can only be made from July 1, 2007 onward, however.

Co-operating with ESRTW or health care when 72 months expires

The new s. 44(2.1)(g) permits the Board to review LOE benefits if the worker and the employer are co-operating in early and safe return to work (s. 40) or the worker is co-operating in health care measures (s. 34) at the time the 72-month period expires. Note that while all of the exceptions discussed above apply to FEL reviews, this exception does not.

In these circumstances, the Board would have up to 24 months from the expiry of the 72-month period to review the worker's LOE benefits.

It appears this section may be intended to address situations where a worker is working in a heavily-accommodated job at the time the 72-month period expires. This becomes problematic if the worker subsequently loses his or her job and cannot find similar work in the labour market. It would also address situations where a worker was engaged in medical treatment when the 72-month period expired.

Curiously, the section appears to only apply to workers whose 72-month period expired prior to July 1, 2007. Workers whose 72-month period ends after that date would not be covered by the section. Some workers engaged in health care measures might be protected by the temporary deterioration provisions, but it does not appear that workers in ESRTW would be entitled to have their LOE benefits reviewed.

Amendments not retroactive

The Bill creates two other new subsections—ss. 44(2.11) 44(2.12)—that deal expressly with retroactivity. In effect, these subsections prohibit an adjustment of LOE under the new exceptions for any period prior to July 1, 2007.

SECTION 45—PAYMENT FOR LOSS OF RETIREMENT INCOME

Section 45(6) has been amended to require the Board to pay a worker's loss of retirement (LRI) income as a lump sum if the annual amount of the LRI payment is less than \$3,000. The previous limit for the mandatory lump sum payment was \$1,145.63.

SECTIONS 49, 51, 52—ANNUAL ADJUSTMENTS***Temporary indexing factor introduced***

Bill 187 temporarily suspends the general indexing factor for annual adjustments.* The general indexing factor in the current Act, sometimes referred to as the modified Freidland formula, is less than half of the consumer price index (i.e. full indexing). The bill introduces a "temporary indexing factor", which is fixed at 2.5 per cent and applies to all payments normally adjusted by the general indexing factor. The temporary indexing factor would be used for two years: 2008 and 2009.

The new subsection 51(6), provides that all benefits adjusted by the general indexing factor in January 1, 2007 will be adjusted by an additional 2.5% on July 1, 2007.

In 2010, the Board would revert back to its general indexing factor.

Average earnings to be adjusted for 2007 use temporary indexing formula for the following years

The new subsections 52(1.1), (1.2), (1.3), (1.4), and (1.5) direct the Board to adjust average earnings that would otherwise be subject to the general indexing factor by the amount of the temporary indexing factor and to adjust payment accordingly. This applies for 2008 and 2009.

Average earnings already adjusted on January 1, 2007, will have an additional 2.5 per cent added to them as of July 1, 2007.

SECTION 162—BOARD OF DIRECTORS

Bill 187 amends s. 162(1)(c) such that the WSIB's board of directors must have a minimum of seven members and a maximum of nine. Previously, the Board could have from three to seven members.

The bill also adds a new subsection (162(1.1)) that would prohibit the office of chair and president of the Board from being held by the same person.

* Under s. 50, the general indexing factor applies to all payments other than payments to workers with 100 per cent LOE and payments under s. 48 to survivors and those looking after surviving children. The temporary increase does not apply to workers with 100 per cent LOE as they are covered by the alternate indexing factor (s. 50) which provides for full cost of living protection.

SECTION 183—REGULATIONS

Bill 187 repeals s. 183(1)(a), which allows the Board to make regulations. The new s. 183(1)(a) would exclude the Board from making regulations related to indexing covered under section 52.1. This change would allow only the Lieutenant Governor in Council to make amendments.

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APPENDIX 1: SUMMARY OF BILL 187 AMENDMENTS TO WSIA, S. 44

Exception	Application Window	Applies to
Before the 72-month period expires, the worker fails to report MCC or engages in fraud/misrepresentation [s. 44(2.1)(a)]	The Board may review the payments at any time [s. 44(2.2)]	All workers
Worker was provided with LMR plan and the plan is not completed when the 72-month period expires [s. 44(2.1)(b)]	<p>The Board may review the payments,</p> <ul style="list-style-type: none"> • Within 30 days after the date on which the LMR plan is completed [s. 44(2.3)(a)], or • At any time if, at any time on or before the day that is 30 days after the date on which the LMR plan is completed fails to report MCC or engages in fraud/misrepresentation [s. 44(2.3)(b)] 	<ul style="list-style-type: none"> • A worker who has been provided with a LMR plan that is not completed before November 26, 2002[†] [s. 44(2.5)(a)], and • A worker who is provided with a LMR plan on or after November 26, 2002* [s. 44(2.5)(b)]
Worker suffers a significant deterioration in his or her condition that results in redetermination of the degree of permanent impairment under s. 47 (NEL) [s. 44(2.1)(c)]	<p>The Board may review the payments,</p> <ul style="list-style-type: none"> • Within the 24 months after the date on which it redetermines the degree of permanent impairment [s. 44(2.4)(a)] 	A worker whose degree of permanent impairment is redetermined by the Board on or after November 26, 2002* [s. 44(2.6)]
	<ul style="list-style-type: none"> • Within 30 days after the date on which the LMR plan is completed, where the Board redetermines the degree of permanent impairment of a worker who was provided with an LMR plan that is not completed when the 24-months period in the preceding item expires [s.44(2.4)(a.1)] 	A worker whose degree of permanent impairment is redetermined by the Board on or after July 1, 2007 [s. 44(2.7)]
	<ul style="list-style-type: none"> • At any time, if at any time on or before the day the Board reviews the payment under the preceding item, the worker fails to report MCC or engages in fraud/misrepresentation [s. 44(2.4)(b)] 	A worker whose degree of permanent impairment is redetermined by the Board on or after November 26, 2002* [s. 44(2.6)]

[†] Bill 187 amends the text of this section to state the exact date (November 26, 2002) instead referring to the date that Bill 179 came into force. The amendment has no substantive effect, but does make the section a bit easier to read.

Exception	Application Window	Applies to
<p>After the 72-month period expires, the worker suffers a significant deterioration in his or her condition that results in a determination of permanent impairment under s. 47 [s. 44(2.1)(d)]</p>	<p>The Board may review the payments,</p> <ul style="list-style-type: none"> • Within 24 months after the date on which the Board determines the degree of permanent impairment under s. 47 [s. 44(2.4.1)(a)], and • Within 30 days after the date on which the LMR plan is completed, where the Board determines the degree of permanent impairment of a worker who was provided with a LMR plan that is not completed when the 24-month period in the preceding item expires [s. 44(2.4.1)(b)] 	<ul style="list-style-type: none"> • A worker who, on or after July 1, 2007, is suffering a significant deterioration in his or her condition that began after the 72-month period expired and that: (i) results in a determination of the degree of permanent impairment under s. 47, or (ii) in the Board’s opinion, is likely to result in a redetermination of the degree of permanent impairment under section 47[s. 44 (2.8)(a)] • A worker who is provided with an LMR plan that is not completed before July 1, 2007 [s. 44(2.8)(b)] • A worker who is provided with an LMR plan on or after July 1, 2007[s. 44(2.8)(c)]
<p>After the 72-month period expires, the worker suffers a significant deterioration in his or her condition that is likely, in the Board’s opinion, to result in a redetermination of the degree of permanent impairment under section 47 [s. 44(2.1)(e)]</p>	<p>The Board may review the payments during the period that begins on the day the Board determines that the significant deterioration in the worker’s condition is likely to result in a redetermination of the degree of permanent impairment and ends on the day it makes the redetermination or determines that no redetermination shall be made. [s. 44(2.4.2)]</p>	<ul style="list-style-type: none"> • A worker who, on or after July 1, 2007, is suffering a significant deterioration in his or her condition that began after the 72-month period expired and that: (i) results in a determination of the degree of permanent impairment under s. 47, or (ii) in the Board’s opinion, is likely to result in a redetermination of the degree of permanent impairment under section 47[s. 44 (2.8)(a)] • A worker who is provided with an LMR plan that is not completed before July 1, 2007 [s. 44(2.8)(b)] • A worker who is provided with an LMR plan on or after July 1, 2007[s. 44(2.8)(c)]

Exception	Application Window	Applies to
<p>After the 72-month period expires, the worker suffers a significant temporary deterioration in his or her condition that is related to the injury [s. 44(2.1)(f)]</p>	<p>The Board may review the payments,</p> <ul style="list-style-type: none"> • At any time it considers appropriate in the period during which the worker is suffering a significant temporary deterioration in his or her condition [s. 44(2.4.3)(a)] • When it determines that the worker has recovered from the significant temporary deterioration in his or her condition. [s. 44(2.4.3)(b)] 	<p>A worker who, on or after July 1, 2007, is suffering a significant temporary deterioration in his or her condition that began after the 72-month period expired. [s. 44(2.9)]</p>
<p>When the 72-month period expires,</p> <ul style="list-style-type: none"> • The worker and the employer are co-operating in the worker's early and safe return to work in accordance with section 40, or [s. 44(2.1)(g)(i)] • The worker is co-operating in health care measures in accordance with section 34 [s. 44(2.1)(g)(ii)] 	<p>The Board may review the payments up to 24 months after the date of the expiry of the 72-month period [s. 44(2.4.4)]</p>	<p>Applies to a worker if the 72-month period expires before July 1, 2007 [s. 44 (2.10)]</p>

APPENDIX II: WSIA, S. 44 AS AMENDED BY BILL 187

Note: Deleted text is ~~struck out~~ and new text is underlined.

Review re loss of earnings

44. (1) Every year or if a material change in circumstances occurs, the Board may review payments to a worker for loss of earnings and may confirm, vary or discontinue the payments. 1997, c. 16, Sched. A, s. 44 (1).

No review after 72-month period

(2) Subject to subsection (2.1), the Board shall not review the payments more than 72 months after the date of the worker's injury. 2002, c. 18, Sched. J, s. 5 (5).

Exception

- (2.1) The Board may review the payments more than 72 months after the date of the worker's injury if,
- (a) before the 72-month period expires, the worker fails to notify the Board of a material change in circumstances or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan;
 - (b) the worker was provided with a labour market re-entry plan and the plan is not completed when the 72-month period expires; ~~or~~
 - (c) after the 72-month period expires the worker suffers a significant deterioration in his or her condition that results in a redetermination of the degree of the permanent impairment under section 47. 2002, c. 18, Sched. J, s. 5 (5).
 - (d) after the 72-month period expires, the worker suffers a significant deterioration in his or her condition that results in a determination of a permanent impairment under section 47;
 - ~~(e) after the 72-month period expires, the worker suffers a significant deterioration in his or her condition that is likely, in the Board's opinion, to result in a redetermination of the degree of permanent impairment under section 47;~~
 - ~~(f) after the 72-month period expires, the worker suffers a significant temporary deterioration in his or her condition that is related to the injury; or~~
 - ~~(g) when the 72-month period expires,~~
 - ~~(i) the worker and the employer are co-operating in the worker's early and safe return to work in accordance with section 40, or~~
 - ~~(ii) the worker is co-operating in health care measures in accordance with section 34.~~

Time for review when clause (2.1) (a) applies

(2.2) If clause (2.1) (a) applies, the Board may review the payments at any time. 2002, c. 18, Sched. J, s. 5 (5).

Time for review when clause (2.1) (b) applies

(2.3) If clause (2.1) (b) applies, the Board may review the payments,

- (a) within the 30 days after the date on which the plan is completed; and
- (b) at any time, if the worker, at any time on or before the day that is 30 days after the date on which the plan is completed, fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 2002, c. 18, Sched. J, s. 5 (5).

Time for review when clause (2.1) (c) applies

(2.4) If clause (2.1) (c) applies, the Board may review the payments,

- (a) within the 24 months after the date on which it redetermines the degree of permanent impairment; ~~and~~
- (a.1) within 30 days after the date on which the labour market re-entry plan is completed, where the Board determines the degree of permanent impairment of a worker who was provided with a labour market re-entry plan that is not completed when the 24-month period in clause (a) expires; and
- (b) at any time, if the worker, at any time on or before the day on which the Board reviews the payments under clause (a), fails to notify the Board of a material change in circumstances, or engages in fraud or

misrepresentation in connection with his or her claim for benefits under the insurance plan. 2002, c. 18, Sched. J, s. 5 (5).

Time for review when clause (2.1) (d) applies

(2.4.1) If clause (2.1) (d) applies, the Board may review the payments,

(a) within 24 months after the date on which the Board determines the degree of permanent impairment under section 47; and

(b) within 30 days after the date on which the labour market re-entry plan is completed, where the Board determines the degree of permanent impairment of a worker who was provided with a labour market re-entry plan that is not completed when the 24-month period in clause (a) expires.

Time for review when clause (2.1) (e) applies

(2.4.2) If clause (2.1) (e) applies, the Board may re-view the payments during the period that begins on the day the Board determines that the significant deterioration in the worker's condition is likely to result in a redetermination of the degree of permanent impairment and ends on the day it makes the redetermination or determines that no redetermination shall be made.

Time for review when clause (2.1) (f) applies

(2.4.3) If clause (2.1) (f) applies, the Board may re-view the payments,

(a) at any time it considers appropriate in the period during which the worker is suffering a significant temporary deterioration in his or her condition; and

(b) when it determines that the worker has recovered from the significant temporary deterioration in his or her condition.

Time for review when clause (2.1) (g) applies

(2.4.4) If clause (2.1) (g) applies, the Board may re-view the payments up to 24 months after the date of the expiry of the 72-month period.

Additional review

(2.4.5) The Board may review the payments at anytime,

(a) in a case to which clause (2.4) (a.1) or (2.4.1) (b) applies, if the worker, at any time on or before the day that is 30 days after the date on which the labour market re-entry plan is completed, fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan;

(b) in a case to which clause (2.4.1) (a) or subsection (2.4.2), (2.4.3) or (2.4.4) applies, if the worker, at any time on or before the day on which the Board reviews the payments under that clause or subsection, fails to notify the Board of a material change in circumstances, or engages in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan.

Transition

~~(2.5) Clause (2.1) (b) and subsection (2.3) apply with respect to,~~

~~(a) a worker who has been provided with a labour market re-entry plan that is not completed before the day subsection 5 (5) of Schedule J to the *Government Efficiency Act, 2002* comes into force;~~

~~(b) a worker who is provided with a labour market re-entry plan on or after the day subsection 5 (5) of Schedule J to the *Government Efficiency Act, 2002* comes into force. 2002, c. 18, Sched. J, s. 5 (5).~~

Same

~~(2.6) Clause (2.1) (e) and subsection (2.4) apply with respect to a worker whose degree of permanent impairment is redetermined by the Board on or after the day subsection 5 (5) of Schedule J to the *Government Efficiency Act, 2002* comes into force. 2002, c. 18, Sched. J, s. 5 (5).~~

Transition

(2.5) Clause (2.1) (b) and subsection (2.3) apply with respect to,

(a) a worker who has been provided with a labour market re-entry plan that is not completed before November 26, 2002;

(b) a worker who is provided with a labour market re-entry plan on or after November 26, 2002.

Same

(2.6) Clauses (2.1) (c) and (2.4) (a) and (b) apply with respect to a worker whose degree of permanent impairment is redetermined by the Board on or after November 26, 2002.

Same

(2.7) Clauses (2.1) (c) and (2.4) (a.1) apply with respect to a worker whose degree of permanent impairment is redetermined by the Board on or after July 1, 2007.

Same

(2.8) Clauses (2.1) (d) and (e) and subsections (2.4.1) and (2.4.2) apply with respect to,

(a) a worker who, on or after July 1, 2007, is suffering a significant deterioration in his or her condition that began after the 72-month period expired and that,

(i) results in a determination of the degree of permanent impairment under section 47, or

(ii) in the Board's opinion, is likely to result in a determination of the degree of permanent impairment under section 47;

(b) a worker who is provided with a labour market re-entry plan that is not completed before July 1, 2007; and

(c) a worker who is provided with a labour market re-entry plan on or after July 1, 2007.

Same

(2.9) Clause (2.1) (f) and subsection (2.4.3) apply with respect to a worker who, on or after July 1, 2007, is suffering a significant temporary deterioration in his or her condition that began after the 72-month period expired.

Same

(2.10) Clause (2.1) (g) and subsection (2.4.4) apply with respect to a worker if the 72-month period expires before July 1, 2007.

Adjustments prospective

(2.11) Nothing in this section entitles a person to claim an adjustment of a loss of earning payment made under clauses (2.1) (c) and (2.4) (a.1) in respect of a period before July 1, 2007.

Same

(2.12) Nothing in this section entitles a person to claim an adjustment of a loss of earning payment made under clause (2.1) (d), (e), (f) or (g) in respect of a period before July 1, 2007.

Same, certain older workers

(3) A worker may direct the Board not to review the payments for loss of earnings,

(a) if the worker is 55 years old or more when the Board determines that he or she is entitled to payments for loss of earnings;

(b) if he or she has reached maximum medical recovery; and

(c) if a labour market re-entry plan for the worker has been completed. 1997, c. 16, Sched. A, s. 44 (3); 2002, c. 18, Sched. J, s. 5 (6).

Same

(4) The direction must be given within 30 days after the later of,

(a) the date on which the worker reaches maximum medical recovery; and

(b) the date on which the worker's labour market re-entry plan is completed. 1997, c. 16, Sched. A, s. 44 (4); 2002, c. 18, Sched. J, s. 5 (7).

Effect of direction

(5) If the worker gives the direction to the Board, he or she is entitled to receive the payments until he or she reaches 65 years of age. The direction is irrevocable. 1997, c. 16, Sched. A, s. 44 (5).

Same

(6) If the worker gives the direction to the Board, the Board shall review payments to the worker only if, before the direction was given, the worker failed to notify the Board of a material change in circumstances or engaged in fraud or misrepresentation in connection with his or her claim for benefits under the insurance plan. 1997, c. 16, Sched. A, s. 44 (6).