

**RE: Retirement Benefits
Establishment of Amounts Set Aside
and Contributed**

ITEM: C18-116.00

BACKGROUND

1. Explanatory Notes

The *Act* as amended by the *Amendment Act, 2002* establishes the provision of a retirement benefit for an injured worker in receipt of permanent disability periodic payments. The retirement benefit is intended to compensate a worker for the impact of his or her permanent disability on his or her ability to accumulate retirement savings.

Under section 23.2 of the *Act*, the Board sets aside an amount toward the establishment of a retirement benefit. A worker may also apply to the Board to contribute a portion of their permanent disability periodic payments in addition to the amounts set aside by the Board.

2. The Act

Section 23.2:

- (1) This section applies to a worker who is receiving periodic payments under section 22(1) or 23(1) or (3).
- (2) The Board must set aside, at the time a periodic payment is made to a worker, an amount that
 - (a) is equal to 5% of the periodic payment, and
 - (b) is in addition to the periodic payment.
- (3) A worker may apply to the Board to contribute to the amount set aside or to be set aside under subsection (2) an amount that is not less than 1% and not greater than 5% of each subsequent payment made to the worker.

- (4) Subject to subsection (5), if the worker makes an application under subsection (3), the Board must, as soon as practicable, deduct the amount of the worker's contribution from each subsequent periodic payment made to the worker and add this contribution to the amount set aside under subsection (2).
- (5) The deductions made by the Board under subsection (4) may not be varied, except in response to an application by the worker to stop the deductions.
- (6) A worker may only once
 - (a) make an application under subsection (3), and
 - (b) apply to stop the deductions
- (7) An application made under subsection (3) or (5) must be in a form acceptable to the Board.
- (8) The Board must provide each worker annually with a statement containing all relevant information about the funds accumulated by the Board for payment of the worker's retirement benefit.

Section 15:

A sum payable as compensation or by way of commutation of a periodic payment in respect of it is not capable of being assigned, charged or attached, nor must it pass by operation of law except to a personal representative, and a claim must not be set off against it, except for money advanced by way of financial or other social welfare assistance owing to the Province or to a municipality, or for money owing to the accident fund.

Section 34(2):

Subject to sections 7(4.1), 22(2) and 23(4), the Board must deduct, from the amount of a periodic payment of compensation paid to a worker under section 22(1) or 23(1) or (3) for an injury, an amount equal to 50% of any disability benefit that the worker is paid in respect of the injury under the *Canada Pension Plan*.

POLICY

(1) Amounts Set Aside by the Board

A worker who is in receipt of permanent total or permanent partial disability periodic payments is entitled to have an amount set aside by the Board toward his or her retirement benefit.

Commencing the effective date of a permanent disability award, the Board will set aside an amount equal to 5% of a worker's permanent disability periodic payment. This amount is in addition to the permanent disability periodic payment. As well, the amount set aside is based on the worker's permanent disability periodic payment prior to any deductions for *Canada Pension Plan* disability benefits paid to the worker and any deductions made in accordance with section 15 of the *Act*.

The amounts set aside by the Board are deposited in a reserve in the Accident Fund.

However, where a worker's permanent disability award is totally or partially commuted, the future amounts to be set aside by the Board will also be totally or partially commuted. Please refer to policy items #45.00 to #45.61 in Chapter 6, Permanent Disability Awards for additional information regarding the commutation of the future amounts to be set aside by the Board.

(2) Voluntary Contributions

A worker may also contribute a portion of his or her permanent disability periodic payments to the amount set aside by the Board.

As part of the notification of a worker's entitlement to a permanent disability award, the Board will provide a worker with an application for voluntary contributions. A worker who wishes to contribute to the amount set aside by the Board is required to complete the application form indicating an amount that is not less than 1% and not greater than 5% of each subsequent permanent disability periodic payment made to the worker. The worker is required to return the completed application form to the Board.

Following receipt of a worker's application to contribute to the amount set aside by the Board, the Board will, as soon as practicable, deduct the indicated contribution amount from each subsequent periodic payment provided to the worker. The amount deducted is based on the worker's permanent disability periodic payment prior to any deductions for *Canada Pension Plan* disability benefits paid to the worker and any deductions made in accordance with section 15 of the *Act*.

The worker's contribution, along with the amounts set aside by the Board, are deposited in a reserve in the Accident Fund.

A worker's contribution amount may not be altered once started, except to cancel the contributions. A worker may only once make an application to the Board to stop the voluntary deductions. A request to stop the deductions must be provided to the Board on a Board prescribed application form. The Board will stop the deductions effective the month following receipt of the application by the Board.

In addition, a worker's decision to stop voluntary contributions is final and cannot later be reversed.

(3) Retroactive Permanent Disability Awards

Permanent disability awards under sections 22(1), 23(1) and 23(3) of the *Act* may be granted retroactively to a worker. The Board will set aside an amount equivalent to 5% of the retroactive award in a reserve in the Accident Fund.

If a worker has chosen to make voluntary contributions toward a retirement benefit, the Board will also deduct from the retroactive permanent disability award an amount equal to the worker's voluntary contributions. This amount will be set aside in a reserve in the Accident Fund.

Interest on the retroactive amounts will only be granted in accordance with policy item #50.00, Interest.

(4) Annual Statement

Under section 23.2(8), the Board is required to provide a worker with an annual statement containing all relevant information about the amounts set aside by the Board for payment of the worker's retirement benefit. The Board will determine the types of information provided on the annual statement. The statement will include information regarding the status of the amounts set aside, any amounts contributed and any accumulated investment income.

(5) Assignment or Attachment of Amounts Set Aside and Contributed

The amounts set aside by the Board and the worker's voluntary contributions are not subject to assignments, charges or attachments while these amounts are maintained in the retirement reserve. The retirement benefit is, however, subject to assignments, charges or attachments as set out in section 15 and policy items #48.00 to #48.50 only when the retirement benefit is payable.

PRACTICE

Any Practice Directives developed for this POLICY and subsequent policies are available on the Board's Website, under the topic of *Rehabilitation Services & Claims Manual*.

EFFECTIVE DATE:	June 30, 2002
AUTHORITY:	s.23.2, <i>Workers Compensation Act</i>
CROSS REFERENCES:	Chapter 6, Permanent Disability Awards
HISTORY:	Prior to June 30, 2002, permanent total disability awards (section 22(1)) and permanent partial disability awards assessed under the loss of function method of permanent disability assessment (section 23(1)) were payable for the lifetime of the worker. The duration of permanent partial disability benefits assessed under the projected loss of earnings method (section 23(3)) was addressed in policy item #40.20, Duration of Projected Loss of Earnings Pensions.
APPLICATION:	This policy applies to injuries occurring on or after June 30, 2002 and to a worker whose permanent disability first occurs on or after June 30, 2002. This policy also applies to recurrences occurring on or after June 30, 2002.

**RE: Retirement Benefits
Payment of Retirement Benefits****ITEM: C18-116.10**

BACKGROUND

1. Explanatory Notes

The *Act* defines “retirement benefit” as a lump sum payable under section 23.3.

This section stipulates the amount that a worker will receive as a retirement benefit following the conclusion of permanent disability periodic payments. The benefit will be provided when the worker reaches age 65, or on the date of his or her last monthly periodic payment, if after age 65.

Section 23.3(3) provides direction on the provision of the amounts set aside, and any contributions and accumulated investment income, to the worker’s designated beneficiary, or estate, if a worker dies before the retirement benefit is paid.

2. The Act

Section 23.3:

- (1) Subject to subsection (3), on the date determined under subsection (2), a worker is entitled to receive a lump sum that equals the total of
 - (a) the amounts set aside for payment to the worker under section 23.2(2),
 - (b) the contributions, if any, made by the worker under section 23.2(4), and
 - (c) the accumulated investment income earned on those amounts and contributions.
- (2) A worker’s entitlement under subsection (1) is effective
 - (a) subject to paragraph (b), on the date the worker reaches 65 years of age, or
 - (b) on the date of the last periodic payment to the worker, if that date is after the date the worker reaches 65 years of age.

- (3) Despite section 35(4), if a worker dies before receiving his or her retirement benefit under subsection (1), the Board must pay the lump sum to which the worker is entitled under that subsection to
- (a) a beneficiary designated by the worker, or
 - (b) the worker's estate, if a beneficiary is not designated.

Subsection 35(2)(a):

The Board may in its discretion

- (a) commute all or part of the future amounts that are to be set aside for the payment of a retirement benefit and the periodic payments due or payable to the worker to one or more lump sum payments, to be applied as directed by the Board, and . . .

POLICY

(1) Effective Date of Entitlement to a Retirement Benefit

The effective date of the retirement benefit will either be:

- the date the worker reaches 65 years of age; or
- the date of the last periodic payment to the worker, if that date is after the date the worker reaches 65 years of age, as determined by the Board.

(2) Payment of Retirement Benefit

On the effective date of entitlement to a retirement benefit, a lump sum award is provided to the worker equal to the following:

- the amounts set aside by the Board;
- the contributions, if any, made by the worker; and
- any accumulated investment income earned on those amounts and contributions.

A worker is guaranteed to receive the amounts set aside by the Board and any amounts the worker has contributed.

It is anticipated that investment income will be earned on the accumulated amount set aside by the Board and, if applicable, amounts contributed by the worker. However, in those cases where the accumulated investment return on the retirement reserve is negative, the loss will not be passed onto the worker.

(3) Commutation of the Amounts Set Aside by the Board

If a worker is eligible for a commutation of his or her permanent disability award, the *Act* provides that the amounts to be set aside by the Board will also be commuted.

Policy items #45.00 to #45.61 in Chapter 6, Permanent Disability Awards, which are used to determine a worker's eligibility to a permanent disability award commutation, are also applied in the commutation of the amounts set aside by the Board.

(4) Dormant Account

If the Board, at the time the retirement benefit is to be paid out as a lump sum, has no current address for a worker, and is otherwise unable to contact a worker, the reserve in the Accident Fund for the amounts set aside by the Board and the worker's contributions will be considered dormant. No further amounts will be set aside by the Board or contributed following the effective date of the retirement benefit.

(5) Worker Dies Prior to Payment of Retirement Benefit

Upon the worker receiving notice from the Board of entitlement to have amounts set aside and contributed, the Board will request that the worker provide the name of his or her designated beneficiary. A designated beneficiary is any person whom a worker designates to receive the funds deposited in the retirement reserve if the worker dies prior to receiving the retirement benefit. The Board will change the designated beneficiary, only following the receipt of a worker's written authorization.

If a worker dies prior to the payment of the retirement benefit, the Board will pay a lump sum award to the designated beneficiary equal to the total of the amounts set aside by the Board, any voluntary contributions made by a worker, and any accumulated investment income earned on the amounts set aside and the contributions.

The designated beneficiary is guaranteed to receive at least the amounts set aside by the Board and any amounts the worker has contributed, and any accumulated investment income.

If a worker fails to designate a beneficiary, the lump sum award outlined above will be paid to a worker's estate if the worker dies prior to receiving the retirement benefit.

PRACTICE

Any Practice Directives developed for this POLICY and subsequent policies are available on the Board's Website, under the topic of *Rehabilitation Services & Claims Manual*.

EFFECTIVE DATE:	June 30, 2002
AUTHORITY:	s.23.3, <i>Workers Compensation Act</i>
CROSS REFERENCES:	
HISTORY:	
APPLICATION:	This policy applies to injuries occurring on or after June 30, 2002 and to a worker whose permanent disability first occurs on or after June 30, 2002. This policy also applies to recurrences occurring on or after June 30, 2002.

**RE: Retirement Benefits
Management of Funds Set Aside
And Contributed**

ITEM: C18-116.20

BACKGROUND

1. Explanatory Notes

Section 23.4 specifies how the Board will manage the funds that are set aside for payment of a retirement benefit.

A reserve has been created under subsection 39(1)(f) to enable the Board to assess employers to cover the cost of the retirement benefit.

Section 67 of the *Act*, which provides direction regarding the investment and reinvestment of funds by the Board, will also apply to the amounts accumulated for retirement benefits.

2. The Act

Section 23.4:

- (1) The Board must establish a reserve in the accident fund into which the amounts and contributions referred to in section 23.2(2) and (4) must be deposited.
- (2) The funds deposited in the reserve must be held and invested in the name of the reserve and those investments must clearly indicate that they are held in that reserve for payment of retirement benefits under section 23.3.
- (3) If approved by the board of directors and on terms set by the Board, the Board may authorize a financial institution, as defined in the *Financial Institutions Act*, or a bank to administer the reserve referred to in subsection (1), and a financial institution or bank that is so authorized must comply with the relevant provisions of this part as if it were the Board.

WORKING TO MAKE A DIFFERENCE

Subsection 39(1)(f):

- (1) For the purpose of creating and maintaining an adequate accident fund the Board must every year assess and levy on and collect from independent operators and employers in each class, by assessment rated on the payroll, or by assessment rated on a unit of production, or in a manner the Board considers proper, sufficient funds, according to an estimate to be made by the Board ...
- (f) provide and maintain a reserve for payment of retirement benefits.

Section 67(2):

Subject to the supervision and direction of the Minister of Finance, the Board must cause all money in the accident and silicosis funds in excess of current requirements to be invested and reinvested and in doing so must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.

POLICY

Please refer to the Board's investment policies.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	June 30, 2002
AUTHORITY:	s.23.4, <i>Workers Compensation Act</i>
CROSS REFERENCES:	s.39(1)(f) and s.67(2) of the <i>Workers Compensation Act</i>
HISTORY:	Finance Division investment policy
APPLICATION:	This policy applies to injuries occurring on or after June 30, 2002 and to a worker whose permanent disability first occurs on or after June 30, 2002. This policy also applies to recurrences occurring on or after June 30, 2002.

**RE: Retirement Benefits
Retirement Services and Personal Supports**

ITEM: C18-116.30

BACKGROUND

1. Explanatory Notes

Section 23.5 of the *Act* requires that the Board assess a worker, whose permanent total disability will continue past retirement age, for rehabilitation, health care services and personal supports. Following this assessment, the Board will then provide, or continue to provide, any required services and personal supports that a permanently totally disabled worker will need for the worker's lifetime.

This provision ensures that a permanently totally disabled worker will continue to receive the services and supports required because of the worker's disabilities, in addition to a retirement benefit.

2. The Act

Section 23.5:

- (1) If a worker has a permanent total disability, the Board must assess, within the 3-month period before the retirement benefit is payable to the worker, the need or continued need of the worker for services and personal supports under sections 16 and 21.
- (2) After the assessment under subsection (1) is completed, the Board must take all actions necessary to provide to the worker, for his or her life, the services and personal supports under sections 16 and 21 that the Board considers are necessary.
- (3) This section does not limit the power of the Board to otherwise provide services and personal supports to workers at any time under sections 16 and 21.

POLICY

Within the 3-month period before a retirement benefit is payable to a worker, the Board will assess a worker who is receiving a permanent total disability award under section 22(1) of the *Act*, for rehabilitation, health care services and personal supports past retirement age.

This assessment is required to ensure that a worker has been considered for these services and personal supports prior to the conclusion of permanent total disability periodic payments and the granting of a retirement benefit. The services and supports considered are those that are normally provided to a worker as a result of a permanent total disability.

(a) Rehabilitation and Health Care Services and Personal Supports

In assessing a worker, the Board will focus on those rehabilitation, health care services and personal supports that a worker will need or continue to need after retirement. Types of services and supports include:

- physicians and qualified practitioners services (policy item #74.00);
- health care rendered by persons other than physicians or qualified practitioners (policy items #75.00 to #75.40);
- hospitals and other institutions (policy items #76.00 to #76.40);
- drugs, appliances and other supplies (policy items #77.00 to #77.30);
- clothing allowances (policy item #79.00);
- personal care allowances (policy items #80.00 to #80.40);
- independence and home maintenance allowances (policy #81.00);
- transportation allowances (policy item #82.00 to #82.50);
- subsistence allowances (policy item #83.00);
- homemaker services (policy item #84A.00); or
- rehabilitation assistance (policy items #90.00 and #90.10).

The services and supports listed above may be provided after age 65 where they are required due to the worker's permanent total disability.

WORKING TO MAKE A DIFFERENCE

(b) Excluded Rehabilitation and Health Care Services and Personal Supports

As the assessment is focussed on those services and supports a worker will need after retirement, the Board will not consider a worker's entitlement to services and assistance such as:

- vocational rehabilitation programs and services to assist in a worker's return to work efforts (policy items #88.00 to #88.60);
- vocational rehabilitation wage-loss equivalency benefits (policy item #89.11); or
- income loss benefits provided as a health care benefit (policy item #83.13).

This list is not exhaustive and the Board may alter this list as required.

(c) Reviews After Retirement

The Board may at its discretion, periodically review a worker's need or continued need for services and supports following the worker's retirement. Based on these reviews, the Board may confirm, adjust or discontinue the provision of these supports and services. For example, a change in the worker's compensable medical status may require the Board to modify the amount and type of services or supports needed by the worker.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	June 1, 2009 – Delete references to Vocational Rehabilitation Services.
AUTHORITY:	s. 23.5, <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also Establishment of Amounts Set Aside and Contributed (policy item #116.00), Chapter 6 - Permanent Disability Awards, Spinal Cord and Other Severe Injuries (policy item #90.00), Chapter 10 – Health Care Services.

WORKING TO MAKE A DIFFERENCE**HISTORY:**

June 30, 2002 - New policy that sets out how the Board will comply with section 23.5 of the *Act* which requires that the Board assess a worker's need or continued need for rehabilitation and health care services and personal supports, whose permanent total disability continues past retirement age. This policy applies to injuries occurring on or after June 30, 2002 and to a worker whose permanent disability first occurs on or after June 30, 2002. This policy also applies to recurrences occurring on or after June 30, 2002.

APPLICATION:

Applies on or after June 1, 2009