

## FTR Now

# Changes to the WSIB's Annual Indexing: Are You Prepared?

**Date:** December 27, 2017

Effective January 1, 2018, the Workplace Safety and Insurance Board (WSIB) will utilize a single indexing factor to calculate the annual adjustment to all indexed benefits and the legislated amounts as a result of recent amendments to the *Workplace Safety and Insurance Act, 1997* (WSIA). To support the implementation of these changes, the WSIB has developed a new policy (18-01-14 Annual Indexing) and revised several existing benefit payment policies. Learn more in this *FTR Now*.

## Background on Indexing Under the WSIA

Indexation is the annual upward adjustment of ongoing benefits and legislated amounts in order to allow these benefits to keep pace with inflation. If a worker or survivor is entitled to benefits as of December 31 of one calendar year and their entitlement continues into the next calendar year, their benefits will be adjusted by applying the indexing factor to the amounts payable as adjusted on the preceding January 1.

With the exception of Non Economic Loss (NEL) monthly benefits, all indexed benefits are “earnings-based benefits” and include:

- Loss of earnings (LOE)
- Non-economic loss (NEL) (periodic payments)
- Survivors' (periodic payments)
- Temporary disability
- Future loss of earnings (FEL) and supplements, and
- Permanent disability (PD) and supplements.

Prior to these amendment of the WSIA, different indexing factors were required to be used depending on the benefit type or legislated amount. Each time one of these benefits was calculated or recalculated, the starting point would be the worker's pre-injury gross earnings. In most cases, the indexing factor was applied to the worker's pre-injury gross earnings and the worker's benefit was then recalculated using the applicable statutory formula. The exceptions were the future economic loss (FEL) and non-economic loss (NEL) monthly payments, which were indexed applying the indexing factor to the actual amounts payable.

Effective January 1, 2018, a single indexing factor that reflects the Consumer Price Index (CPI) will be used for the annual indexing of all benefits and legislated amounts. The single indexing factor to be applied every January 1 for all entitlement periods on or after January 1, 2018 will reflect the Consumer Price Index (CPI) and is set at 1.5 percent for 2018.

The indexing factor is also to be used to update (i.e. escalate) pre-injury average earnings or average earnings at the time of most recent employment for the purpose of calculating or recalculating a benefit outside the earnings year. The way pre-injury gross earnings are escalated prior to calculating or re-calculating a benefit will remain the same: apply the indexing factor to the pre-injury gross earnings and then apply the applicable statutory formula.

Additionally, amendments introduced in the *Budget Measures Act, 2017*, also changed how the amount of the federal Old Age Security (OAS) benefit is used when calculating and indexing benefits paid to workers with accident dates prior to January 2, 1990.

Starting January 1, 2018, a worker's amount of federal OAS will not limit their entitlement to the supplement amount under

section 147(14) of the WSIA. Furthermore, the supplement will receive the full CPI Indexing. There will also no longer be a requirement to recalculate the s.147(4) supplement at the 24 and 60 month review dates.

## **Financial Impact of the New Indexing Scheme**

Under the current system, the indexing factor applied to most benefits is usually lower than CPI. This was different from most full wage-loss and survivors' benefits, where the CPI was applied.

For example, in 2017, individuals in receipt of full LOE benefits received a cost-of-living adjustment of 1.4 percent to reflect the CPI. However, those in receipt of partial LOE benefits received an inflation adjustment of 1.0 percent.

With the coming into force of these amendments on January 1, 2018, the WSIB will use a single indexing factor for all indexed benefit types. The indexing factor for 2018 is set at 1.5 percent, which will be applied to the payable amount of all indexed benefits to determine the new benefit amount for 2018.

Accordingly, if a worker is in receipt of a \$500 weekly benefit on December 31, 2017, their benefit will increase to \$507.5 per week as of January 1, 2018.

## **Implications for Employers**

These amendments will have a significant financial impact on all Ontario employers with ongoing WSIB claims. Furthermore, the new WSIB Indexing Policy has necessitated revisions to numerous existing policies.

Employers are encouraged to diligently monitor all ongoing benefit claims before they are locked-in, in order to avoid their maturing into a costly annually indexed benefit. In addition, it's prudent to continue to monitor older claims, given that any material change in circumstance could trigger a review of benefits. Note that after January 1, 2018, workers will also be permitted to request a recalculation of their benefit under the new indexing formula.

If you wish to discuss the potential implications of these new changes for your business, please contact any member of our Workplace Safety and Insurance Group or your regular Hicks Morley lawyer.

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