

LOSS OF EARNINGS (LOE): REVIEWS AFTER THE 72 MONTH FINAL REVIEW

When will WSIB conduct a final review of your LOE benefits?

WSIB is required to conduct a final review of your LOE benefits 72 months (six years) after the date of your injury. Usually, WSIB cannot review your benefits again after your final review. However, there are some important exceptions to this general rule.

When can WSIB review your LOE benefits after the 72-month final review?

WSIB may review your LOE benefits after 72 months from the date of your injury in several specific circumstances. These exceptions deal with situations where there has been a change in your condition or where a proper review of your LOE benefits cannot be done at the 72-month date.

Can WSIB review your LOE benefits if you fail to report a material change in circumstances or commit fraud or misrepresentation?

Yes. WSIB can review your LOE benefits if you fail to report a material change in circumstances or commit fraud or misrepresentation. In these circumstances, WSIB can review your LOE benefits at any time. See OWA Fact Sheet 7 called “Material Change in Circumstances”.

Can WSIB review your LOE benefits if you have a permanent worsening of your condition?

Yes. If you have a permanent deterioration in your condition, WSIB can review your LOE after the 72-month date in the following situations:

- If you are **granted a non-economic loss (NEL) award**, WSIB can review your LOE benefits within 24 months of the date it is granted. If you are in a labour market re-entry (LMR) plan at the end of the 24 months, WSIB can wait and review your LOE benefits up to 30 days from the date you complete the plan.
- If you **receive an increase in a NEL award** you are already receiving, WSIB can review your LOE benefits within 24 months of the date it is changed. If you are in a labour market re-entry (LMR) plan at the end of the 24 months, WSIB can wait and review your LOE benefits up to 30 days from the date you complete the plan.
- If you suffer a significant deterioration in your condition and **WSIB decides you are likely to receive a NEL award or an increase in your existing NEL award**, WSIB can review your LOE benefits at any time from that point until you receive a NEL award or an increase in your existing NEL award or WSIB decides that you are not entitled to a NEL award or an increase in your existing NEL award.

See OWA Fact Sheets 13 and 12 respectively, called “Non-Economic Loss Awards” and “Labour Market Re-entry”.

Some of these exceptions may not apply to you if you suffered a permanent deterioration before July 1, 2007. You should speak to a qualified representative for advice on your specific circumstances.

Can WSIB review your LOE benefits if you have a temporary worsening of your condition?

Yes. If you have a temporary deterioration in your condition, WSIB can review your benefits. WSIB can also review your benefits when it determines you have recovered.

WSIB cannot review your LOE benefits if you recovered from your temporary deterioration before July 1, 2007. If your deterioration began before July 1, 2007, WSIB can only review your LOE benefits from July 1, 2007.

What if I have not finished my LMR plan 72 months after my injury?

If you have been granted a labour market re-entry (LMR) plan and the plan has not been completed 72 months after your injury, WSIB can review your LOE benefits within 30 days of the date you complete the plan.

This exception does not apply if you completed your LMR plan before November 26, 2002.

What if I am participating in early and safe return to work activities 72 months after my injury?

If you and your employer are co-operating in your early and safe return to work 72 months after your injury, WSIB has an additional 24 months during which it can review your LOE benefits. If you are doing modified work for the employer where you were injured, WSIB may consider you to be co-operating in early and safe return to work. See OWA Fact Sheet 10 called “Early and Safe Return to Work”.

What if I am participating in health care measures 72 months after my injury?

If you are co-operating in health care measures 72 months after your injury, WSIB has an additional 24 months during which it can review your LOE benefits. For this exception to apply, WSIB will likely require you to be receiving or waiting for treatment to improve your condition. The exception will likely not apply to healthcare that helps keep you at your current condition, such as medications, physiotherapy or chiropractic treatment.

Can you appeal a WSIB final review of LOE benefits?

Yes. You can object to any decision that affects your LOE benefits. Generally, you must object within **six months** of the date of the decision. However, if your LOE benefits are affected because of a decision about your early and safe return to work or labour market re-entry, you must object within **30 days** of the date of the decision. If you are unsure which time limit applies, speak to a qualified representative immediately.

IMPORTANT INFORMATION

There are time limits for appealing WSIB decisions. If you wish to appeal a decision, contact a qualified representative as soon as possible. For more information on time limits, see OWA Fact Sheets 24 and 25 called “Appealing to WSIB” and “Appealing to WSIAT”.

This Fact Sheet contains general information only. It is not a legal document. To see what the law says, you should look at the Workplace Safety and Insurance Act and WSIB policies. If you require help and do not have a union to assist you, contact the Office of the Worker Adviser:

- Our toll free telephone number is 1-800-435-8980 (English) or 1-800-661-6365 (French)
- or visit our website at: <http://www.owa.gov.on.ca>

Cette feuille-info est aussi disponible en français

