

NON-ECONOMIC LOSS AWARDS

What Is a Non-economic Loss (NEL) Award?

The payment of NEL benefits means that the permanent effects of your injury on your life outside of work are recognized. The Workplace Safety and Insurance Board (WSIB) calls this your "permanent impairment." You may receive a NEL award if you were injured after January 1, 1990 and you have recovered as much as possible from your injury ("maximum medical recovery"), but still have some impairment. Permanent impairment may result from a mental disorder, as well as from physical conditions.

How Much Is a NEL Award?

The amount of your NEL benefits will depend on the seriousness of your injury ("degree of impairment") and your age at the time of your accident. First, WSIB will arrange for a medical examination ("assessment") to determine the seriousness of your injury. WSIB first sets the degree of your impairment as a percentage and then multiplies this percentage by an amount that changes according to your age. The result is the amount of your award. The rest of this fact sheet will explain what this means in greater detail.

The Medical Assessment

WSIB will ask you to select a doctor to examine you, from a list that it keeps. These doctors are not WSIB employees. They should be in your local area and are experienced in treating your type of injury. If you do not select a doctor within **30 days**, then WSIB will choose one for you.

The doctor will examine you and write a report. The examination should take into account any reports previously prepared by your treating doctor. The doctor will send the report to WSIB. WSIB will then forward a copy of the report to you and your employer. It is a good idea to bring the report to your doctor or a specialist to determine if your doctor agrees with the report. The doctor who performed the assessment may have overlooked something that can be brought to the attention of WSIB.

WSIB should use all relevant health information in your claim file, including the assessment report, to rate your permanent impairment. Only WSIB can ask for a second assessment if it disagrees with the first report. However, workers who were "referred for a NEL determination/ re-determination" before January 1, 1998 can request a second assessment. You should speak to a qualified representative if you want to request a second assessment, but are not sure if you are covered by this pre-1998 rule.

What Will Happen If WSIB Requests a Second Assessment?

WSIB will send you a list of three doctors. You and your employer must agree on a doctor who will perform the second examination. If you cannot agree within **30 days**, then WSIB will choose the doctor for you. The second report will be sent to you, WSIB and your employer. WSIB will use the second report, any health information in your claim file, and any appropriate part of the first report, to rate your permanent impairment.

How Is Your NEL Award Calculated?

- The amount depends on your age on the date of your injury and the seriousness of your injury according to the doctor's report.
- First, WSIB will use the report to decide what percentage of permanent impairment is caused by your injury. The percentage is based on the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 3rd edition (revised), (the AMA Guides). This percentage is then multiplied by your NEL "base amount" to determine the amount of your award.

- WSIB sets your "base amount" using a calculation set out in the *Workplace Safety and Insurance Act*. The dollar amounts are adjusted each year to partially account for inflation. In 2002, your base amount was determined by taking \$51,844.99 and adding \$1,152.51 for every year you were under the age of 45 at the time of the injury, or subtracting \$1,152.51 for every year you were over 45. The most that can be added or subtracted is \$23,041.76. Your "base amount" is then multiplied by the percentage of impairment to arrive at the amount of the award.
- For example, if you were 40 when you were injured in 2002, your "base amount" would be \$57,607.54 (\$51,844.99 + (5 x \$1,152.51)). If WSIB decided that your impairment is 20%, your NEL award would be \$11,521.51 (\$57,607.54 x 20%).
- If your NEL award is \$11,520.87 or less, you will receive it as a one-time lump sum. If your NEL award is greater than that amount, you will receive it in the form of a monthly payment for the rest of your life, unless you choose to receive it as a lump sum. If you want to receive your NEL award as a lump sum, you must tell WSIB within **30 days** of being notified of the amount of the award. **Your choice of a lump sum or monthly payment is permanent and cannot be changed at a later date.** If you were "referred for a NEL determination" before January 1, 1998, there is no time limit to elect a lump sum so you may change your mind at a later date.

Special rules apply if you already had another impairment before the one now being assessed by WSIB.

What Is the Effect of a 0% Permanent Impairment Rating?

If WSIB finds that your degree of impairment is zero, you will be treated as if you have no permanent impairment. This means that you will not be entitled to any NEL benefits and also, that you will not be entitled to any more LOE benefits either.

What If You Do Not Agree With the Amount Of Your NEL Award?

If you disagree with your NEL award then you can ask the decision-maker to reconsider the award. You must ask for your reconsideration within **6 months** of receiving your award. If this does not resolve your dispute, you have **6 months** to appeal your NEL award to the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

What Can You Do If Your Condition Becomes Worse?

You **cannot object** to the medical assessment for **one year**. You may request a new medical examination after one year, as long as your original impairment was rated more than zero and your doctor confirms that your condition permanently became worse ("a significant deterioration"). WSIB will "re-determine" your NEL award in much the same way as it determined your original award. Because different rules apply to workers who **requested** a "re-determination" before January 1, 1998, you should speak to a qualified representative for advice.

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

