

# Spotlight on Injured Workers



## NON-ECONOMIC LOSS (N.E.L.)

### What is a Non-Economic Loss (NEL) Benefit?

#### *Are you permanently impaired?*

When workers suffer a work-related injury or occupational disease there are various benefits that the Workplace Safety and Insurance Board (WSIB) can offer to assist in recovery. If you have an allowed claim at the WSIB you may be entitled to loss of earnings, health care benefits, (i.e. for physiotherapy) and medication coverage.

You may try physiotherapy, medication, and (in extreme cases) surgery to heal and recover. Unfortunately, when an injured worker has exhausted these options, even though they may not have fully recovered, they may reach what is called maximum medical recovery (MMR).

If you have reached this plateau, and based on the medical evidence and reports in your file you are deemed to have an impairment that is existing beyond MMR, you will be eligible for a NEL.

Permanent impairments are seen as permanent restrictions for the workplace, permanent medications and will be determined based on:

- Physical abnormality or loss
- Functional abnormality or loss
- Disfigurement
- Psychological change

Compensation for permanent impairments was historically designed to help injured/ill workers to compensate for loss of earnings and acknowledge that the work had caused a permanent impairment and loss to the worker. However, over the years the management and calculation of the NEL has dramatically changed. Before 1990, injured/ill workers would receive a Permanent Partial Disability (PPD) Award FOR LIFE. This came as monthly payments to assist with any financial hardship associated with the work-related injury or occupational disease.

Sadly, after 1990, the WSIB changed this to the NEL benefit and it is administered in a lump sum which is calculated based on a base amount and the age of the worker at the time of injury. This is a one-time payment.

**Maximum Medical Recovery (MMR)** means that a plateau in recovery has been reached and it is not likely that there will be any further significant improvement in the work-related injury/disease.

#### *How are NELs processed?*

Typically, when the case manager or nurse consultant reviews the incoming medical on an injured/ill worker claim file, they will determine that the worker has reached MMR. This generates a letter to state that a NEL is being referred. **Read this letter carefully as you will need to confirm that they have your date of birth and date of injury correct.**

Your file is then referred to a NEL Specialist that will review the medical on file and calculate your "whole person" impairment percentage.

## How is a NEL calculated?

Your functional and physical loss, abnormalities, disfigurement, and psychological changes (this can include decrease in range of motion, ability to perform activities of daily living, amputation, etc.) are compared to the American Medical Association (AMA) guide that breaks down the loss and abnormalities.



### NEL Example

**Step 1:** Identify the correct base amount and the age adjustment factor for the year the worker reached MMR.

#### Example

David's accident occurred in 2016, and he reached MMR in 2017. The base amount for workers whose MMR date is in 2017 is \$59,095.26, and the adjustment factor is \$1,313.71.

**Step 2:** Adjust the base amount according to the worker's age at the time of the accident. If the worker was under 45 when the accident occurred, the WSIB increases the base amount by the adjustment factor for each year the worker was under 45, up to a maximum of 20 years.

#### Example

David was 30 when his accident happened, i.e., 15 years under 45. As a result, the WSIB increases the base amount of \$59,095.26 by the adjustment factor of \$1,313.71 x 15, to get the new base amount.

$$\$59,095.26 + \$19,705.65 = \$78,800.91 \text{ (new base amount)}$$

If the worker was over 45 when the accident occurred, the WSIB decreases the base amount by the adjustment factor for each year over 45, up to a maximum of 20 years.

#### Example

If David had been 60 when his accident happened, i.e., 15 years over 45, the WSIB would have decreased the base amount of \$59,095.26 by the adjustment factor of \$1,313.71 x 15 to get the new base amount.

$$\$59,095.26 - \$19,705.65 = \$39,389.61 \text{ (new base amount)}$$

**Step 3:** Determine the value of the NEL benefit. The WSIB multiplies the new base amount by the worker's permanent impairment rating.

#### Example

If David's permanent impairment is rated at 10%, his NEL benefit is:

- $\$78,800.91 \times 10\% = \$7,880.09$  (NEL benefit for 30-year-old David) or,
- $\$39,389.61 \times 10\% = \$3,938.96$  (NEL benefit for 60-year-old David)

### The bottom line

Let's be clear, NEL's do not compensate for your full loss. There is no "pain and suffering" taken into account. The amount of the one-time payment will **NEVER** reflect the loss you may be experiencing, especially if you are unable to work, attend school/training, walk without assistive devices, maintain relationships, leave your home or even hold a coffee cup.

Your union is here to help guide you through the NEL process and assist with any questions. Please contact the Workers' Compensation Department at 1.800.565.8329 or [workerscomp@ufcw175.com](mailto:workerscomp@ufcw175.com).

You can also visit the WSIB website at [www.wsib.ca](http://www.wsib.ca) and research WSIB Operational Policies:

- 11-01-05, Determining Permanent Impairment
- 18-05-03, Determining Degree of Permanent Impairment
- 18-05-09, NEL Redeterminations
- 18-05-04, Calculating NEL Benefits