

Summary

Objective

Use the following guidance to help you determine eligibility, and calculate compensation, for Loss of Potential Earnings capacity (LOPE).

- 1) Eligibility criteria
- 2) Determining inability to work
- 3) Six month inability to work criterion
- 4) Calculating compensation
- 5) Definition of full-time study or training
- 6) Definition: Place of education
- 7) Definition: Qualification
- 8) Links to legislation

Owner [Name withheld]

Expert

Policy

1.0 Eligibility criteria

- a** To be eligible to receive compensation for loss of potential earning (LOPE) capacity, the client must meet all the following criteria:
- be unable to work due to that personal injury
 - is a potential earner
 - have turned 18
 - not be in full-time study or training that leads to the award of a qualification, during the period for which they are claiming support
 - not have weekly earnings over the minimum earner rate
 - have been unable to work due to the injury for more than six months

-  Eligibility to LOPE
-  Definition of a potential earner

2.0 Determining inability to work

- a** Inability to work due to the injury, in this case, is determined as 'incapacity' under Section 105 of the Accident Compensation Act 2001 by considering if the client is unable, because of their injury, to engage in work for which they are suited by reason of experience, education or training. Compensation for loss of potential earning capacity is payable to an eligible client after six months of cumulative inability to work. A client can become unable to work prior to reaching age 18.

-  Section 105 Assessment (VMS) Service Page
<https://go.promapp.com/accnz/Process/3ef695e8-be46-4506-8523-31da7af61d41#>
-  Definition of Incapacity LOPE

3.0 Six month inability to work criterion

- a** Under clause 47(3) of Schedule 1 of the Accident Compensation Act 2001, weekly compensation for LOPE is payable when a person has been unable to work due to the injury for at least six months. This means that the effective start date for support is only after the six month period of inability to work. Once the LOPE criteria are satisfied, the support is not payable, and cannot be backdated within that initial six month period of inability to work. Compensation for LOPE incapacity is payable to an eligible client after six months of cumulative inability to work. A client can become unable to work prior to reaching age 18.

NOTE Example

A child at the age of five suffers a serious car accident resulting in significant permanent brain damage. As their inability to work can be tested from a period prior to the date they turned 18, by the time the client reaches the age of 18 they are eligible to start receiving weekly compensation for loss of potential earning capacity as they have already been unable to work for six months.

4.0 Calculating compensation

- a** Any compensation payable under the Accident Compensation Act 2001, Schedule 1 Clause 47 will be calculated as if the client had weekly earnings of under minimum earner rate.

Compensation is payable at 80% and abatement applies, if the person gets earnings during the period of eligibility.

A client is not eligible for compensation for loss of potential earnings if the amount of compensation for loss of earnings they are eligible for is greater than the amount of compensation for loss of potential earnings they are eligible for under Clause 47 of Schedule 1.

Conversely, if the amount of compensation for loss of potential earnings they are eligible for under clause 47 is greater than the amount compensation for actual earnings lost from a job they are eligible for (ie eligibility for loss of earnings under the Schedule), they are not eligible to receive both, only compensation for loss of potential earnings.

-  Amount payable to a client who is both eligible for LOPE and WC-LOE Better off assessment
-  Amount of LOPE payable to client with no post incapacity earnings
-  Initial LOPE abatement excess calculation
-  LOPE entitlement post abatement calculation
-  WC LOPE abatement calculation

5.0 Definition of full-time study or training

- a** The following are all considered full-time study or training:
- a course of study, recognised as full-time by the place of education that administers it. The course leads to a qualification approved by the New Zealand Qualifications Authority and it would be likely to enhance the employment prospects or lead to an award of a qualification
 - any work-related study or training which requires an employee to undertake the study or training for an average of no less than 30 hours per week. This leads to a qualification approved by the New Zealand Qualifications Authority and it would be likely to enhance the employment prospect
 - any study undertaken overseas as part of a student's continuous and uninterrupted (up until personal injury) full-time study. This applies both to foreign students who have come to New Zealand for study who sustain an injury while in the country, and to New Zealand students who have undertaken part of their studies abroad.
- b** A client is not eligible for compensation for loss of potential earnings during periods of full-time study or training

Full-time study for potential earners does not include full-time study or training in living or social skills

ACC considers all holiday periods, eg term or semester breaks, to be part of the study, so no eligibility exists for loss of potential earnings for these periods

At a secondary place of education, the main qualification offered to students will be the National Certificate of Educational Achievement (NCEA). The NCEA is awarded to students who achieve at least 80 credits, although a student can attempt to earn more than the minimum number of credits required for the award of the qualification.

NOTE Example

At a tertiary place of education, a 120 credit course is considered equivalent to one full year of full-time study. A credit is equivalent to 10 notional learning hours, including time spent on assessment, self-directed learning, and contact with teachers. This means that a part-year course for a lower credit value can also be a full-time course

-  Engaged in full time study of training at specific date

6.0 Definition: Place of education

- a** 'Place of education' covers the following types of institutions:
- a composite school, composite private school, secondary school, or special school
 - an institution, such as a polytechnic, teachers college, university or wananga
 - a registered establishment as defined by Section 159(1) of the Education Act 1989.
-  Definition of Place of education

7.0 Definition: Qualification

- a** In the Education Act 1989, the term 'award' is defined as being a degree, diploma, certificate, or other qualification. Qualifications that have been approved by a recognised body and are delivered by an accredited education or training organisation can be found on the New Zealand Register of Quality Assured Qualifications (Kiwiquals)

There is no specific definition in New Zealand law of what a qualification is. The Education Act does not include an exhaustive list of all recognised qualifications. The New Zealand education sector, however, has developed an agreed set of definitions for qualifications. Information on these definitions can be found on Kiwiquals

-  Kiwiqual's Definitions
<https://www.nzqa.govt.nz/studying-in-new-zealand/understand-nz-quals/>
 -  Kiwiqual's
<http://www.kiwiqual's.govt.nz.>
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8.0 Links to legislation

-  Accident Compensation Act 2001, section 105 for determining incapacity of a client who had ceased to be in employment, was a potential earner, or had purchased weekly compensation
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM101462.html>
 -  Accident Compensation Act 2001, Schedule 1, Clause 47 Weekly compensation for loss of potential earnings capacity
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104891.html>
 -  Accident Compensation Act 2001, Section 6 Interpretation
<https://www.legislation.govt.nz/act/public/2001/0049/latest/DLM100103.html>
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