Deductions from Benefits (from interim order No. 8)

Exclusions from earnings

153.193 The following are to be excluded from the earnings referred to in section 35 of the *Employment Insurance Regulations*:

- **(a)** any pay or earnings referred to in subsection 36(8)[1], (9)[2] or (19)[3] of those Regulations if
    - **(i)** the claimant's benefit period begins on or after September 27, 2020, or
    - **(ii)** the pay or earnings are declared to the Commission on or after September 27, 2020 and would otherwise have been allocated under section 36 of those Regulations to a week beginning on or after September 27, 2020; and
- **(b)** any of the following portions of payments that are paid to a claimant as an insured person for the first week for which benefits are payable, if their waiting period has been waived under subsection 153.191(1):
    - **(i)** the portion of any payments referred to in subsection 37(1)[4] of those Regulations that does not exceed 95% of the claimant's normal weekly earnings from the employment to which the payments relate, and
    - **(ii)** despite paragraph 38(1)(a)[5] of those Regulations, the portion of any payments referred to in subsection 38(1) of thos Regulations that does not exceed the claimant's normal weekly earnings from the employment to which the payments relate.

[1] Vacation pay
[2] Severance
[3] Other unclassified income
[4] SUB plans
[5] Pregnancy / parental / caregiving paid leave

Referenced sections of EI regulations

36 (8): Vacation Pay

(8) Where vacation pay is paid or payable to a claimant for a reason other than a lay-off or separation from an employment, it shall be allocated as follows:

(a) where the vacation pay is paid or payable for a specific vacation period or periods, it shall be allocated

(i) to a number of weeks that begins with the first week and ends not later than the last week of the vacation period or periods, and

(ii) in such a manner that the total earnings of the claimant from that employment are, in each consecutive week, equal to the claimant's normal weekly earnings from that employment; and

(b) in any other case, the vacation pay shall, when paid, be allocated

(i) to a number of weeks that begins with the first week for which it is payable, and

(ii) in such a manner that, for each week except the last, the amount allocated under this subsection is equal to the claimant's normal weekly earnings from that employment.

36 (9): Severance

(9) Subject to subsections (10) to (11), all earnings paid or payable to a claimant by reason of a lay-off or separation from an employment shall, regardless of the period in respect of which the earnings are purported to be paid or payable, be allocated to a number of weeks that begins with the week of the lay-off or separation in such a manner that the total earnings of the claimant from that employment are, in each consecutive week except the last, equal to the claimant's normal weekly earnings from that employment.

36 (19) Other types of income.

(19) Where a claimant has earnings to which none of subsections (1) to (18) apply, those earnings shall be allocated

(a) if they arise from the performance of services, to the period in which the services are performed; and

(b) if they arise from a transaction, to the week in which the transaction occurs.

37(1) SUB plans

37 (1) Subject to the other provisions of this section, payments received by a claimant as an insured person under a supplemental unemployment benefit plan are not earnings for the purposes of section 19, subsection 21(3), section 45 or 46, subsection 152.03(3) or section 152.18 of the Act.

38 (1) Pregnancy / caregiving paid leave

38 (1) The following portion of any payments that are paid to a claimant as an insured person because of pregnancy, for the care of a child or children referred to in subsection 23(1) or 152.05(1) of the Act or for the care or support of a family member referred to in subsection 23.1(2) or 152.06(1) of the Act, of a critically ill child or of a critically ill adult, or because of any combination of those reasons, is excluded as earnings for the purposes of section 35, namely, the portion that

(a) when combined with the portion of the claimant's weekly benefit rate from that employment, does not exceed that claimant's normal weekly earnings from that employment; and

(b) does not reduce the claimant's accumulated sick leave or vacation leave credits, severance pay or any other accumulated credits from that claimant's employment.