



Loss of Earning Power

What is Earning Power?

A worker's ability to earn income as a result of labor.

- If a worker's earning power is only partly restored, loss of earning power (LEP) benefits may be payable.
- Benefits are payable only if the loss of earning power exceeds 5%.

LEP Eligibility

Workers may be eligible for LEP if:

- They return to work at a lower wage.
- They return to work at regular wages but fewer hours.
 - Includes workers working full time on light duty who were working OT prior to the DOI.
- They had more than one job on the DOI and are restricted from performing one of the jobs.

Light Duty Job Offers

- Job must be with the employer of injury.
- Job Description/Analysis sent to the AP and the worker at the same time.
- Must be approved by AP.
- Offer must be in writing with a reasonable start date.
- HCB must be reinstated to the same level as at the time of injury.

Refusal of Light Duty

- DOI **prior** to May 7, 1993:
 - If worker refuses job, **LEP is paid** based on what the worker would have earned doing the job.
- DOI **on or after** May 7, 1993:
 - If AP approves job and worker refuses it, worker is **not entitled** to LEP or time-loss.

LEP Worksheet

- Not a legal form, so not required.
 - If form is not used, calculations must still be submitted.
- Available online for employers/TPAs to use.
- If not sent previously, all worksheets must be sent when requesting closure or when a copy of the file is requested.

Timeliness of Payments

- LEP should be paid as close to TL payment cycle as possible.
 - Can be bi-weekly or semi-monthly
- Often paid on same cycle as payroll because payroll records are used for LEP wages.
- Timeliness requirements apply to provisional payments as well.

Reporting Requirements

- Loss of Earning Power must be reported to the department on an SIF-5A:
 - Within five working days of the first payment, and
 - When requesting closure from the department.
 - When requested by the department.
- Must also send complete and accurate copy of SIF-5A to worker on date of first payment.



The Calculation

4 Key Numbers

1. Updated Date of Injury Wages
2. Current Wages
3. Time-Loss Rate
4. State's Average Wage x 1½ (SAW)



Updated Date of Injury Wages

- Wages the worker would have earned if the injury or occupational disease had never occurred.
- Include any increases in hourly rate or health care benefits.
 - Break into daily rate, then multiply by number of calendar days.
Exception: If the worker has a set schedule, multiply daily hours by the number of working days in the period.
- Calculate for period being paid, not necessarily a full month.

Updated DOI Wages Example

Bill was earning \$14.30 per hour, 8 hours a day, 5 days a week on the DOI. If he was still able to do the JOI, he would have received a raise to \$14.75 per hour. His employer contributes \$230.00 per month to HCB.

For 9/1/14-9/15/14, his updated wages would be:

Wages: $\$14.75 \times 8 \times 11 \text{ working days} = \$1,298.00$

HCB: $\$230.00 \div 30 \text{ days} = \$7.67/\text{day} \times 15 \text{ days} = \115.05

Total updated wages: $\$1,298.00 + \$115.05 = \$1,413.05$

Current Wages

- Gross wages the worker earned at the light duty job.
- Usually the amount listed on the pay stub.
 - If the worker didn't work all available hours, use the amount they would have earned if they had worked all hours.
- Include all current bonuses, HCB, overtime, etc.
 - Bonuses should be divided by the number of months in the period they cover.

Current Wages Example

Bill is working light duty, earning \$12.50 per hour. He is scheduled for 6 hours a day, 5 days a week. His pay stub shows he earned \$825.00 from 9/1/14-9/15/14. His employer continues to contribute \$230.00 per month for HCB.

Pay stub earnings: \$825.00

HCB: $\$230.00 \div 30 \text{ days} = \$7.67/\text{day} \times 15 \text{ days} = \115.05

Total current wages: $\$825.00 + \$115.05 = \$940.05$

Time-Loss Rate

- The worker's time-loss entitlement for the period.
- Include all applicable minimums, maximums, and COLAs.
- Include HCB amount if employer is no longer contributing or has decreased their contribution.

Time-Loss Rate Example

Bill was injured on 5/16/13. He was earning \$14.30 per hour, 8 hours per day, 5 days per week. His employer continues to contribute \$230.00 per month to HCB. He is married with 4 dependents. The LEP period is 9/1/14-9/15/14.

GMW: $\$14.30 \times 8 \times 22 = \$2,516.80$

TL rate: $\$2,516.80 \times .73 = \$1,837.26 \times 1.02016 \text{ COLA (7/1/14)}$
 $= \$1,874.30 \div 30 = \$62.48/\text{day} \times 15 = \937.20

State's Average Wage x 1½

- 1½ x State's Average Wage in effect **at the time of the payment.**
- Back of LEP worksheet has list of monthly and daily rates.
- Multiply daily rate by calendar days in the LEP period.
- **Example (Bill)**
Payment period: 9/1/14-9/15/14
SAW x 1½ daily amount = **\$219.31 x 15 days = \$3,289.65**

Calculation Methods

- DOI/DOM prior to May 7, 1993:
 - Use **Method A**.
 - Based on percentage of TL compensation rate.
- DOI/DOM on or after May 7, 1993:
 - Calculate both **Method A** and **Method B** and pay the higher amount.
 - Method B: 80% of difference between current and updated wages.

Method B Capping

- Method B entitlement is 80% of difference between current and updated wages, UNLESS:
 - Current Wages + Method B entitlement is greater than $1\frac{1}{2}$ x the SAW for the period
- If the amount is greater than $1\frac{1}{2}$ x the SAW, it must be capped:
 - $SAW \times 1\frac{1}{2} - \text{current wages} = \text{capped amount}$

Method B Capping

- Entitlement also cannot exceed the total time-loss rate for the period.
- If entitlement is higher than TL rate, Method B must be capped by changing LEP entitlement to the time-loss rate.
- If either SAW or TL rate rule applies, double check final Method B amount against Method A for higher amount.

Dependent Portion

Based on worker's TL compensation percentage and number of dependents.



$$\frac{\text{dependent percentage}}{\text{TL rate percentage}} \times \text{LEP entitlement}$$

Dual Claim Benefits

- Workers may receive LEP under two or more claims.
 - Can be State Fund or self-insured.
- Worker is entitled to total benefits equal amount under claim with the highest compensation rate.
- Payments will be divided between claims.
- If necessary, contact SF adjudicator to determine which claim has the highest benefit amount and how much to pay under each claim.

Work No Longer Available

- If light duty ends for reasons outside the worker's control, time-loss becomes payable.
- Workers should not be penalized when lack of available work is not due to their actions.



Termination for Cause

- If worker is terminated for actions **while performing light duty work**, no TL or LEP is payable ([O'Keefe v. Dept of L&I](#) (2005)).
 - If restrictions from AP change, benefits may be payable ([In re Jennifer Soesbe](#) (2003)).
- If worker is terminated from light duty for actions **prior to** start of light duty work, TL is payable.

New Injury While on Light Duty

Injuries are addressed differently depending on the situation in which the injury occurred:

- Transitional light duty with the SIE
- Permanent light duty with the SIE
- Job with a new employer



Injury on Transitional LD with SIE

- If the worker is injured while doing transitional light duty, condition(s) should be added to the existing claim.
- Wages for the new injury are based on original DOI because injury is part of the original claim.



Permanent LD with SIE or New Employer

- If a worker sustains a new injury while working permanent light duty or working with a new employer, a new claim must be filed.
- Calculate wages under new claim based solely on light duty wages earned at the time of injury.
- Under **new claim**, worker is entitled to TL/LEP as appropriate, related to new injury.
- Under **original claim**, LEP should be paid using Method A ([*In re Karl Bean \(2006\)*](#)).

Terminating LEP Benefits

Payments should be terminated in the following situations:

- Loss of earnings is less than 5%.
- Worker is released to full duty.
- Worker is found employable.
- Legal fixity (claim closure) **only if**:
 - Worker returns to permanent light duty job with SIE.
 - Worker is in or recently completed an on-the-job training program.

Questions?



Practice

