

Loss of Earning Power Compensation Self-Insurance Claim Adjudication Guidelines

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Paying Loss of Earning Power Benefits [RCW 51.32.090](#)

Definition

Earning power is defined as the worker's ability to earn income as a result of labor.

RCW 51.32.090 requires the self-insurer to compensate a worker for loss of earning power when the worker's earning capacity has decreased as a result of the industrial injury or occupational disease.

Payment of loss of earning power (LEP) benefits should be paid as close to the worker's current time loss payment cycle as possible, either bi-weekly or semi-monthly.

Criteria

In order to be eligible for loss of earning power benefits for claims with dates of injury or occupational disease on or after May 7, 1993 the worker:

- Must have LEP exceeding 5 percent of wages at the time of injury; and
- Medical certification must indicate the worker's LEP is due to the industrial injury or occupational disease; and
- The worker must be working at any employment for income, salary, wages, or commission. Employment may include light duty, transitional, or modified duty work as well as on-the-job training in an approved vocational plan.

Note: Department's [LEP Worksheet](#) may be used to help you calculate LEP benefits.

Situations Where a Worker May be Entitled to LEP

There are several situations where a worker may be eligible for LEP after an injury or occupational disease. If the worker:

- Returns to work at a lower wage.
- Has more than one job at the time of injury and is restricted from performing one of the jobs even if it is not the job of injury.
- Returns to work but is unable to work at the premium or higher rates they normally work.
- Returns to work at regular wage but less hours, this includes workers that return to full time, i.e. 40 hours per week but prior to their injury or occupational disease were regularly working overtime.

Valid Light Duty

Certain criteria must be met for a job offer to be considered valid:

- The job description/analysis must be sent to the medical provider and the worker simultaneously.
- The job must be approved by the medical provider and the worker should not be assigned to any other work unless approved by the worker's attending provider.
- The job offer must be offered in writing and the start date must be reasonable so that the worker has sufficient time to get the offer, review it and make arrangements to report to work.
- Health care benefits must be reinstated to the level at the time of injury, unless to do so would be against the collective bargaining agreement.

Refusal of Light Duty Work

If the worker's attending medical provider approves a written light duty or transitional job description offered to the worker and the worker chooses not to accept the work, the worker is not entitled to LEP or time loss compensation.

Exceptions:

- If the employer of injury does not reinstate all health and welfare benefits (unless to do so would be against the collective bargaining agreement) and the worker refuses the job, they are entitled to time loss compensation.
- For injuries or occupational diseases prior to May 7, 1993, if the worker chooses not to accept a valid light duty job offer, the worker is entitled to LEP based on the wage they would have earned at the light duty job.

The Four Key Numbers

Four key numbers must be accurate to correctly calculate LEP. The key numbers are:

- ❶ Wages at the Date of Injury
- ❷ Current Wages
- ❸ Time Loss Rate
- ❹ State's Average Wage x 1.5

Wages at the Date of Injury

The updated wages the worker would have earned, during the LEP period, had the injury or occupational disease not occurred. Any increase in wages must be taken into consideration, *Hunter v. Dept. of L&I*, (this includes updated rates of pay, bonus amounts, health care benefit amounts, and “other” earnings used in the calculation of wages).

This should be calculated based on work days in the period for workers who have a set schedule ([SIF-5A2](#)) or who are paid hourly with varying hours per day ([SIF-5A3](#)). Workers whose schedule varies ([SIF-5A1](#), [SIF-5A4](#) or [SIF-5A5](#)), will need to be calculated based on calendar days.

Example #1:

Brittney was injured January 5, 2009. At the time of her injury she was earning \$15.00 per hour, working Monday through Friday, eight hours per day.

She was released to work by her attending provider and returned to work four hours per day, five days per week, Monday through Friday. The claim manager checked with the employer and at the time of the LEP period the job of injury wage had increased to \$16.00 per hour.

Calculate the “wages at the date of injury” for the LEP period of March 2, 2009 through March 16, 2009.

$\$16.00$ (updated hourly wage) x 8 (hours per day) = $\$128.00$

$\$128.00$ x 11 (eleven work days in the LEP period) = **$\$1,408.00$** (wages at the date of injury)

Available work days		March 2009				
Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16					

Example #2

Tom was injured February 11, 2009. At the time of his injury he was earning \$25.00 per hour, working ten hours per day, four days per week, Wednesday through Saturday.

He was released to work by his attending provider and returned to work six hours per day, four days per week, Wednesday through Saturday. His claim manager checked with his employer and his wages had not increased.

Calculate the “wages at the date of injury” for the LEP period of April 16, 2009 through April 30, 2009.

$\$25.00 \times 10 \text{ (hours per day)} = \250.00

$\$250.00 \times 9 \text{ (nine work days in the LEP period)} = \mathbf{\$2,250.00}$ (wages at the date of injury)

Available work days		April 2009				
Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Example #3:

Cory was injured January 21, 2009. At the time of his injury he was earning a monthly salary of \$4,600.00 per month, His employer was contributing \$650.25 per month towards health care benefits. As a salaried employee his hours and days varied greatly

He was released by his attending provider to reduced hours and returned to work on May 4, 2009 at half his normal salary. The claim manager checked with the employer of injury and at the time of the LEP period the job of injury was still paying \$4,600.00 per month, however the employer’s contribution to health care had increased to \$708.33 per month.

Calculate the “wages at the date of injury” for the LEP period of May 4, 2009 through May 18, 2009.

\$4,600.00 (salary)
+ \$708.33 (health care benefit contribution)
\$5,308.33 (total updated monthly wage)

$\$5,308.33 \div 30$ (to get daily wage) = \$176.94 (daily wage)

$\$176.94 \times 15$ (calendar days) = **\$2,654.10** (wages at the date of injury)

Calendar days		May 2009				
Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23

Current Wages

The wage the worker earned during the LEP period.

Time Loss Rate

The worker's time loss rate in effect at the time of the LEP entitlement period.

States Average Wage x 1.5

150 percent of the states average wage (SAW) in effect at the time of the LEP entitlement period. This can be found on the back of the [LEP Worksheet](#).

Calculating Loss of Earning Power

For injuries or occupational diseases prior to May 7, 1993, loss of earning power benefits are based on a percentage of the monthly compensation rate. The following formula, also known as Method A is used to determine LEP entitlement.

Method A

$$\begin{array}{l} (1) \quad \frac{\text{Current Wages} \text{ ②}}{\text{DOI Wages (Updated Wages/Earning Capacity)} \text{ ①}} = \frac{\text{Percent of Wages at the Time of Injury}}{\text{Percent of Wages at the Time of Injury}} \\ (2) \quad \frac{1.00}{\text{Percent of Wages at the Time of Injury}} = \frac{\text{Loss of Earning Power Percent}}{\text{Percent of Wages at the Time of Injury}} \\ (3) \quad \frac{\text{Loss of Earning Power Percent}}{\text{Loss of Earning Power Percent}} \times \frac{\text{Time Loss Compensation Rate} \text{ ③}}{\text{Time Loss Compensation Rate}} = \frac{\text{Method A LEP Entitlement}}{\text{Time Loss Compensation Rate}} \end{array}$$

Fill out the Method A section using the first three key numbers.

Example:

Forrest was earning a monthly salary of \$6,200.00 at the time of his injury on December 22, 2009 and it had not increased at the time of his LEP entitlement. Forrest is married with no dependents. After a period of recovery, the attending provider released him to work seven hours per day, five days per week, Monday through Friday. The employer made Forrest a valid job offer for \$34.50 per hour. He returned to work on March 1, 2010 and remained on the light duty job through March 31, 2010. The employer pays compensation semi-monthly.

Calculate the key four numbers for the LEP period March 1, 2010 through March 31, 2010.

- ❶ **\$6,200.00** (date of injury wages)
- ❷ $\$34.50 \times 7 \text{ (hours)} = \$241.50 \times 23 \text{ (actual work days in March)} = \mathbf{\$5,554.50}$ (current wages)

Available work days		March					
Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	
	1	2	3	4	5	6	
7	8	9	10	11	12	13	
14	15	16	17	18	19	20	
21	22	23	24	25	26	27	
28	29	30	31				

- ❸ $\$6,200.00 \times 65\% = \mathbf{\$4,030.00}$ (monthly time loss compensation rate)
- ❹ **\$5,781.99** (states average wage x 1.5)

Fill out Method A section using the key numbers.

$$\begin{array}{l}
 (1) \quad \frac{\$5,554.50 \text{ ②}}{\text{Current Wages}} \div \frac{\$6,200.00 \text{ ①}}{\text{DOI Wages (Updated Wages/Earning Capacity)}} = \frac{.90}{\text{Percent of Wages at the Time of Injury}} \\
 (2) \quad 1.00 - \frac{.90}{\text{Percent of Wages at the Time of Injury}} = \frac{.10}{\text{Loss of Earning Power Percent}} \\
 (3) \quad \frac{.10}{\text{Loss of Earning Power Percent}} \times \frac{\$4,030.00 \text{ ③}}{\text{Time Loss Compensation Rate}} = \frac{\$403.00}{\text{Method A LEP Entitlement}}
 \end{array}$$

For injuries on or after May 7, 1993 an additional formula also known as Method B must also be calculated. The formula is 80 percent of the difference between the worker’s current wages and earning power (updated wages) at the time of injury.

Method B

Fill out the Method B section using the first two key numbers.

$$\begin{array}{l}
 (4) \quad \frac{\$6,200.00 \text{ ①}}{\text{DOI Wages (Updated Wages/Earning Capacity)}} - \frac{\$5,554.50 \text{ ②}}{\text{Current Wages}} = \frac{\$645.50}{\text{"Difference"}} \\
 (5) \quad \frac{\$645.50}{\text{"Difference"}} \times .80 = \frac{\$516.40}{\text{Method B LEP Entitlement}}
 \end{array}$$

Capping

Once you have calculated Method A and Method B, if Method A is the highest pay Method A. If method B is the highest there are additional rules. The worker may not receive more than the full time loss rate for this period. If the Method B entitlement is higher than the full time loss rate for this period (line ③), then pay the time loss rate.

The injured worker’s current wages plus the Method B LEP entitlement may not exceed a “cap” of 1.5 times the SAW. Add the current wages (line ②) to the Method B entitlement.

$$(6) \quad \frac{\$5,554.50 \text{ ②}}{\text{Current Wages}} + \frac{\$516.40}{\text{Method B LEP}} = \frac{\$6,070.90}{*}$$

* If this amount does exceed 1.5 times the state’s average wage, it must be capped as follows:

If this amount is higher than 1.5 times the SAW (line ④) it must be capped by subtracting the current wages (line ②) from the SAW (line ④).

(7)

$$\frac{\$5,781.99}{\text{State's Average Wage Multiplied by 1.5}} \textcircled{1} - \frac{\$5,554.50}{\text{Current Wages}} \textcircled{2} = \frac{\$227.49}{\text{"Capped" Amount for Method B}} **$$

The worker must receive the higher benefit amount. Always compare Method A to Method B and pay the higher amount. If Method B was capped, compare the capped B to Method A and pay the higher of the two. Since Method A was higher after Method B was capped, Method A is paid.

$$\frac{\text{3/1/2010}}{\text{From}} \quad \frac{\text{3/31/2010}}{\text{Through}} \quad @ \quad \frac{\text{1 Month}}{\text{Number of Days/Months}} = \frac{\$403.00}{\text{Amount LEP Paid}}$$

Which method was used? A

LEP Examples

Example #1:

On July 14, 2008 Phillip strained his back at work. At the time of his injury he was working eight hours per day, Monday through Friday, and earned \$29.50 per hour. He was married with two dependents.

On August 15, 2008 Phillip returned to work light duty. He was working the same days and hours but was earning \$25.00 per hour. The employer continued to contribute to healthcare benefits while he was on light duty. The claim manager checked with the employer and effective August 1, 2008 his job of injury hourly wage increased to \$30.00 per hour. The employer's contribution to healthcare benefits stayed the same.

Calculate his LEP entitlement from August 15, 2008 through August 31, 2008.

① $\$30.00$ (updated hourly rate) \times 8 (hours per day) = $\$240.00$ (daily wage)

$\$240.00 \times 11$ (actual work days in LEP period) = **$\$2,640.00$** (wages at the time of injury)

Available work days		August 2008					
Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	
					1	2	
3	4	5	6	7	8	9	
10	11	12	13	14	15	16	
17	18	19	20	21	22	23	
24	25	26	27	28	29	30	
31							

② $\$25.00 \times$ (light duty hourly rate) \times 8 (hours per day) = $\$200.00$

$\$200.00 \times 11$ (actual work days in LEP period) = **$\$2,200.00$** (current wages)

⑤ $\$29.50$ (date of injury hourly rate) \times 8 (hours per day) = $\$236.00$

$\$236.00 \times 22$ (per RCW 51.08.178) = $\$5,192.00$

$\$5,192.00 \times 69\%$ (married with two dependents) = $\$3,582.48$

$\$3,582.48 \div 30$ (to get daily rate) = $\$119.42$

$\$119.42 \times 17$ (calendar days in LEP period) = **$\$2,030.14$** (time loss rate)

Calendar days		August 2008					
Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	
					1	2	
3	4	5	6	7	8	9	
10	11	12	13	14	15	16	
17	18	19	20	21	22	23	
24	25	26	27	28	29	30	
31							

④ $\$186.34$ (SAW \times 1.5 daily rate) \times 17 (calendar days in LEP period) = **$\$3,167.78$** (SAW \times 1.5)

Wages at the Date of Injury (Calculate for this Payment Period) (**actual days worked**) ❶ \$2,640.00
 Note: The date of injury wage must be updated to reflect the wages the worker would have been earning had the injury not occurred. This is referred to as earning capacity.

Current Wages (Actual wages earned this Payment Period) (**actual days worked**) ❷ \$2,200.00

Time Loss Rate (Calculate for this Payment Period) (**calendar days**) ❸ \$2,030.14

State's Average Wage x 1½ (Calculate for this Payment Period) (**calendar days**) ❹ \$3,167.78

Method A (Old Method):

(1)
$$\frac{\$2,200.00 \text{ ❷}}{\text{Current Wages}} \div \frac{\$2,640.00 \text{ ❶}}{\text{DOI Wages (Updated Wages/Earning Capacity)}} = \frac{.83}{\text{Percent of Wages at the Time of Injury}}$$

(2)
$$1.00 - \frac{.83}{\text{Percent of Wages at the Time of Injury}} = \frac{.17}{\text{Loss of Earning Power Percent}}$$

(3)
$$\frac{.17}{\text{Loss of Earning Power Percent}} \times \frac{\$2,030.14 \text{ ❸}}{\text{Time Loss Compensation Rate}} = \frac{\$345.12}{\text{Method A LEP Entitlement}}$$

Method B [New Method - Must be completed on all claims with a Date of Injury (DOI) on or after 05/07/93]:

(4)
$$\frac{\$2,640.00 \text{ ❶}}{\text{DOI Wages (Updated Wages/Earning Capacity)}} - \frac{\$2,200.00 \text{ ❷}}{\text{Current Wages}} = \frac{\$440.00}{\text{"Difference"}}$$

(5)
$$\frac{\$440.00}{\text{"Difference"}} \times .80 = \frac{\$352.00}{\text{Method B LEP Entitlement}}$$

If Method B is the higher entitlement, there are additional rules to apply:

- **The injured worker may not receive more than the full time loss rate for this period.** If the "Method B" entitlement is higher than the time loss rate for this period (as calculated on line ❸, above), then just pay the time loss rate.
- **The injured worker's current wages plus their "Method B" LEP entitlement may not exceed a "cap" of 1.5 times the state's average monthly wage.** To see if you need to apply this "cap", use the following formula:

(6)
$$\frac{\$2,200.00 \text{ ❷}}{\text{Current Wages}} + \frac{\$352.00}{\text{Method B LEP}} = \frac{\$2,552.00}{*}$$

* If this amount does exceed 1.5 times the state's average wage, it must be capped as follows:

(7)
$$\frac{\text{State's Average Wage Multiplied by 1.5} \text{ ❹}}{\text{Current Wages} \text{ ❷}} = \frac{\text{"Capped" Amount for Method B}}{**}$$

**The worker must receive the benefit amount which is higher when comparing the two methods. Be sure to again compare the Method A entitlement to the Method B entitlement that is capped and use the amount that is higher.

Compensation paid this period:

$$\frac{8/15/2008}{\text{From}} \quad \frac{8/31/2008}{\text{Through}} \quad @ \quad \frac{17}{\text{Number of Days/Months}} = \frac{\$352.00}{\text{Amount LEP Paid}}$$

Which method was used? B

Example #2

On June 19, 2009 Sherrie broke her leg while at work. At the time of her injury she was working ten hours per day, Tuesday through Friday and earned \$26.00 per hour. Her employer contributed \$450.00 per month towards her health care benefits. Sherrie was married with no dependent children.

Sherrie was released for light duty effective August 4, 2009. Her light duty schedule was Tuesday through Friday seven hours per day. She continued to be paid \$26.00 per hour. While she was on light duty her employer did not continue to contribute to health care benefits due to the union contract. The claim manager checked with the employer and her hourly wage and health care contributions had not increased.

Calculate her LEP entitlement from August 4, 2009 through August 15, 2009.

① $\$26.00$ (hourly rate) \times 10 (hours per day) = $\$260.00$ (daily wage)

$\$260.00 \times 8$ (actual work days in LEP period) = $\$2,080.00$

$\$450.00$ (HCB) \div 30 = $\$15.00$ (daily HCB wage)

$\$15.00 \times 12$ (calendar days in period) = $\$180.00$

$\$2,080.00 + \$180.00 = \mathbf{\$2,260.00}$ (wages at the time of injury)

Available Work Days		August 2009				
Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15

② $\$26.00$ (light duty hourly rate) \times 7 (hours per day) = $\$182.00$

$\$182.00 \times 8$ (actual work days in LEP period) = $\mathbf{\$1,456.00}$ (current wages)

⑤ $\$26.00$ (date of injury hourly rate) $\times 10$ (hours per day) = $\$260.00$
 $\$260.00 \times 18$ (Per RCW51.08.178) = $\$4,680.00$

$\$4,680.00 + \$450.00 = \$5,130.00$ (gross monthly wage with HCB)

$\$5,130.00 \times 65\% = \$3,334.50 \times 1.03432$ (7/1/09 COLA) = $\$3,448.94$ (monthly TL rate)

$\$3,448.94 \div 30$ (to get daily rate) = $\$114.96 \times 12$ (calendar days in period) = **$\$1,379.52$** (time loss rate)

Calendar Days		August 2009				
Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15

④ $\$192.73$ (SAW daily rate $\times 1.5$) $\times 12$ (calendar days in period) = **$\$2,312.76$** (SAW $\times 1.5$)

Wages at the Date of Injury (Calculate for this Payment Period) (actual days worked) ❶ \$2,260.00
 Note: The date of injury wage must be updated to reflect the wages the worker would have been earning had the injury not occurred. This is referred to as earning capacity.

Current Wages (Actual wages earned this Payment Period) (actual days worked) ❷ \$1,456.00

Time Loss Rate (Calculate for this Payment Period) (calendar days) ❸ \$1,379.52

State's Average Wage x 1½ (Calculate for this Payment Period) (calendar days) ❹ \$2,312.76

Method A (Old Method):

(1)
$$\frac{\$1,456.00 \text{ (Current Wages)}}{\$2,260.00 \text{ (Updated Wages/Earning Capacity)}} = .64 \text{ (Percent of Wages at the Time of Injury)}$$

(2)
$$1.00 - .64 = .36 \text{ (Loss of Earning Power Percent)}$$

(3)
$$.36 \text{ (Loss of Earning Power Percent)} \times \$1,379.52 \text{ (Time Loss Compensation Rate)} = \$496.63 \text{ (Method A LEP Entitlement)}$$

Method B [New Method - Must be completed on all claims with a Date of Injury (DOI) on or after 05/07/93]:

(4)
$$\$2,260.00 \text{ (Updated Wages/Earning Capacity)} - \$1,456.00 \text{ (Current Wages)} = \$804.00 \text{ ("Difference")}$$

(5)
$$\$804.00 \text{ ("Difference")} \times .80 = \$643.20 \text{ (Method B LEP Entitlement)}$$

If Method B is the higher entitlement, there are additional rules to apply:

- * **The injured worker may not receive more than the full time loss rate for this period.** If the "Method B" entitlement is higher than the time loss rate for this period (as calculated on line ❸, above), then just pay the time loss rate.
- * **The injured worker's current wages plus their "Method B" LEP entitlement may not exceed a "cap" of 1.5 times the state's average monthly wage.** To see if you need to apply this "cap", use the following formula:

(6)
$$\$1,456.00 \text{ (Current Wages)} + \$643.20 \text{ (Method B LEP)} = \$2,099.20 *$$

* If this amount does exceed 1.5 times the state's average wage, it must be capped as follows:

(7)
$$\frac{\$2,312.76 \text{ (State's Average Wage Multiplied by 1.5)}}{\$1,456.00 \text{ (Current Wages)}} = \text{"Capped" Amount for Method B} **$$

**The worker must receive the benefit amount which is higher when comparing the two methods. Be sure to again compare the Method A entitlement to the Method B entitlement that is capped and use the amount that is higher.

Compensation paid this period:

$$\frac{8/4/2009 \text{ (From)}}{8/15/2009 \text{ (Through)}} @ \frac{12 \text{ (Number of Days/Months)}}{1} = \$643.20 \text{ (Amount LEP Paid)}$$

Which method was used? B

Determining Dependent Portion of LEP

The dependents portion of LEP depends on the worker's percentage of time loss compensation and the number of dependents. Divide the dependents percentage by the percentage of the worker's total entitlement then multiply that number by the LEP entitlement.

Example:

Jim is single with two dependents. His total LEP entitlement is \$1,500.00.

$$\begin{array}{rcccccc} 4 & & \div & & 64 & & = & & .0625 \\ \text{(2\% for each dependent)} & & & & \text{(time loss entitlement percentage)} & & & & \end{array}$$

$$\begin{array}{rcccccc} .0625 & & \times & & \$1,500.00 & & = & & \$93.75 \\ & & & & \text{(total LEP entitlement)} & & & & \text{(dependents portion of LEP)} \end{array}$$

Health Care Contributions

The employer's contribution to a worker's health care benefits must be considered when calculating LEP if the contribution amount during the light duty period differs from the pre-injury contribution or the contribution is discontinued during the light duty period. It affects the calculations of the first three key numbers.

Calculating the Employer's Contribution to Health Care

There are two calculations for the employer's contribution to health care.

- **Employer contributes a monthly amount:** divide the monthly amount by 30 days to get a daily contribution amount then multiply the daily amount by the numbers of calendar days in the period. It must be calculated this way because the health care benefit is based on a full month and would give an incorrect figure if just work days were used to calculate this amount.
- **Employer contributes an hourly rate based on hours worked:** calculate the hourly contribution in the same way the hourly wage rate is calculated.

Employer Contributed to Health Care Benefits at Date of Injury and Reinstates Contributions During the Light Duty Period:

- ❶ Wages at the Date of Injury – do not include the health care contribution
- ❷ Current Wages – do not include the health care contribution
- ❸ Time Loss Rate – do not include the health care contribution

Employer Contributed to Health Care Benefits at the Date of Injury but does not Contribute to Health Care Benefits During the Light Duty Period

- ❶ Wages at the Date of Injury – include the health care contribution amount. Any increases in the amount of the employer’s contribution since the date of injury should be included.
- ❷ Current Wages – do not include the health care contribution amount since the employer has discontinued them during the light duty period.
- ❸ Time Loss Rate – include the health care contribution amount in the time loss calculations.

Employer Contributed to Health Care Benefits at the Date of Injury and Reinstates the Contribution at a Reduced Amount During the Light Duty Period.

- ❶ Wages at the Date of Injury – include the health care contribution amount. Any increases in the amount of the employer’s contribution since the date of injury should be included.
- ❷ Current Wages – include the health care contribution at the reduced amount (the amount of the contribution made by the employer during the light duty period).
- ❸ Time Loss Rate – include the date of injury health care benefit contribution in the time loss calculations.

Additional LEP Information

Terminated for Cause

Workers who have returned to light duty employment and are subsequently terminated for cause are not entitled to LEP; as long as the termination is for actions occurring during the light duty employment and not retroactively (i.e. the worker failed a drug test that was prior to returning to work). A worker who was terminated for cause prior to light duty employment is entitled to compensation. (See [Glacier Northwest, Inc. v. Walker](#), 151 Wash. App. 389, 212 P.3d 587 (2009).)

Worker Accepts a Light Duty Job at Lower Wage

If a worker accepts a light duty job at a lower wage after the employer offers a light duty job at a higher wage, loss of earning power is calculated using the higher wage if the worker is capable of performing the higher wage job.

Self-Employed Vocational Plan

If a worker is establishing a business through an approved self-employed vocational plan, loss of earning power is calculated by comparing the earning capacity at the date of injury to the gross earnings. Only material and labor costs may be deducted from gross earnings during self-employment ventures.

LEP When Missed Work or on Leave

When a worker misses work during the LEP period for something unrelated to the injury (sick, vacation, holiday, paid or unpaid leave), the wages the worker would have earned for the time missed should be included in the LEP calculation.

New Claim While on Light Duty

When a worker is receiving LEP and sustains a new injury, LEP is not considered when calculating gross monthly wages on the new claim. The wages for the new injury would be based on the hours worked and hourly rate at the time of the new injury.

Provisional LEP

When addressing claim validity, or a reopening decision has not been made, and the worker has returned to light or modified duty, provisional LEP compensation should be paid. Provisional LEP payments should contain notification to the worker that the LEP will be recovered if the claim is rejected or the reopening is denied.

Terminating Loss of Earning Power Benefits

Once the payment of LEP benefits has begun, the benefits must be continued until one of the following occurs:

- **Released for Full Duty** – When a worker is given a full release to the job of injury, LEP benefits may be terminated. This is true even if the worker chooses not to return to the job of injury and continues earning a lower wage.
- **Loss of Earning is Less than 5%** - If a worker's earnings have returned to within 5% of the updated wages at the time of injury, they are no longer entitled to LEP.
- **Found Employable** – When a vocational assessment is conducted and a worker is determined to be employable, LEP benefits may be terminated on the date that determination is made.
- **Legal Fixity** – Legal fixity occurs when an order is issued closing the claim (a protest to the closing order does not extend the period of payment for LEP benefits if the department later affirms the closing order).

LEP is paid until “legal fixity” in the following situations:

- The employer of injury returns the worker to a permanent light duty job.
- The worker is participating in, or has recently completed, an on-the-job training program RCW 51.32.095.