

Loss of Earning Power Compensation Self-Insurance Claims Adjudication Guidelines

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Paying Loss of Earning Power Benefits [RCW 51.32.090](#), [WAC 296-20-01002](#)

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:

- The worker must have a LEP exceeding 5 percent of wages at the time of injury; **and**
- Medical certification must indicate that 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: The department's [LEP Worksheet](#) or [LEP Calculator](#) 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.

Reporting Criteria

Since LEP is a wage replacement like time-loss compensation, it must be reported to the department on a SIF-5:

- Within 5 working days of the first payment of compensation, LEP or time-loss, ([WAC 296-15-420](#)).
- When the time-loss rate changes.
- When requesting closure from the department [WAC 296-15-450](#).

Any LEP calculations, not previously submitted should be sent when requesting department closure. Insurers may choose to use their own LEP worksheets as long as they show the calculations. The department's [LEP Worksheet](#) or prints outs from the [LEP calculator](#) can also be used for documentation.

Valid Light Duty [RCW 51.32.090](#), Policy 5.15

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

- The job must be with the employer of injury.
- 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. This includes monthly wages from all employment at the time of injury, including the employer's contribution to healthcare benefits. The wages for workers, whose schedule varies, will need to be calculated based on calendar days. These wages can be calculated based on work days in the period for workers who have a set schedule or who are paid hourly with varying hours per day (only for those with 1 rate of pay).

Any change in wages must be taken into consideration. Due to difficult economic times, some employers may reduce the working hours and in some cases the hourly wage rate for all of their employees. The intent of [RCW 51.32.090](#) and, *Hunter v. Dept. of L&I* is to ensure that the worker is compensated based on earning power, not to fluctuations in the labor market. Updated wages apply only to the wage rate and employer healthcare contribution, **not** to adjustments in the hours available to work.

Example #1

Jeff was injured on February 5, 2007. At the time of his injury he was earning \$27.00 per hour and had an established employment pattern of 10 hours per day, 5 days per week; the days in the week varied but he always worked 5 days per week. The worker is released for a valid light duty job to work 6 hours per day, 5 days per week.

Since the injury the employer has kept the hourly rate the same but has reduced the hours for all of their employees from 50 hours per week to 40 hours per week, there is no longer any overtime available.

The worker's earning capacity is still 50 hours a week regardless of the employer's actions, because that reflects the worker's capacity and pattern at the time of injury.

Calculate the "wages at the date of injury" for the LEP period from April 14, 2013 through April 30, 2013.

$$\$27.00 \times 10 \text{ (hours per day)} = \$270.00$$

$$\$270.00 \times 22 = \$5,940.00$$

$$\$5,940.00 \div 30 = \$198.00 \text{ (average gross wages per day)}$$

$$\$198.00 \times 17 \text{ (calendar days in LEP period)} = \mathbf{\$3,366.00} \text{ (wages at the date of injury)}$$

Example #2:

Brittney was injured January 9, 2013. At the time of her injury she was earning \$19.00 per hour, working Monday through Friday, 8 hours per day.

She was released to work by her attending provider and returned to work 4 hours per day, 5 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 \$19.50 per hour.

Calculate the "wages at the date of injury" for the LEP period of March 1, 2013 through March 14, 2013.

$$\$19.50 \text{ (updated hourly wage)} \times 8 \text{ (hours per day)} = \$156.00$$

$$\$156.00 \times 10 \text{ (work days in LEP period)} = \mathbf{\$1,560.00} \text{ (wages at the date of injury)}$$

Example #3

Tom was injured December 18, 2012. At the time of his injury he was earning \$26.00 per hour, he had an established pattern of averaging 180 hours per month. The employer also contributed \$400.00 per month towards healthcare benefits.

He was released to work by his attending provider and returned to work 6 hours per day, 4 days per week. His claim manager checked with his employer and due to contract negotiations the hourly wage had decreased to \$25.00 per hour. The employer had stopped their contribution to healthcare benefits effective December 31, 2012.

Calculate the "wages at the date of injury" for the LEP period of May 2, 2013 through May 15, 2013.

$$\$25.00 \text{ (updated hourly wage)} \times 180 \text{ (ave. hours per month)} = \$4,500.00$$

$\$4,500.00 + \400.00 (employer's contribution to HCB) = $\$4,900.00$ (gross monthly wage)
 $\$4,900.00 \div 30 = \163.33 (average gross wages per day)
 $\$163.33 \times 14$ (calendar days in LEP period) = **$\$2,286.62$** (wages at the date of injury)

Current Wages

The worker's earning capacity during the LEP period.

If the worker was paid overtime (OT) during the LEP period the OT should be calculated based on the subsection the date of injury wage rate was based upon ([WAC 296-14-530](#)).

- For workers whose work pattern was calculated using subsection 1, include the overtime hours worked using the "regular" rate of pay.
- For workers whose work pattern was calculated using subsection 2, the overtime pay should be included in determining the worker's wages.

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 second page of the [LEP Worksheet](#). This amount will be calculated for you if you choose to use the [LEP calculator](#).

Calculating Loss of Earning Power

The department calculates the LEP percentages at each stage going out 4 places from the decimal and rounding to 3 places from the decimal (i.e. .3475 is rounded to .348). The department's [LEP Calculator](#) does the same.

Method A

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, this formula known as Method A is the only method used to determine LEP entitlement.

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.

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 7 hours per day, 5 days per week, Monday through Friday. The employer made Forrest a valid job offer for \$38.80 per hour. He returned to work on March 1, 2012 and remained on the light duty job through March 10, 2012.

Calculate the 4 key numbers for the LEP period March 1, 2012 through March 10, 2012.

- ❶ $\$6,200.00 \div 30 = \206.67 (daily rate) $\times 10$ (calendar days) = **\$2,066.70** (date of injury wages)
- ❷ $\$38.80 \times 7$ (hours) = $\$271.60 \times 7$ (days worked) = **\$1,901.20** (current wages)
- ❸ $\$6,200.00 \times 65\% = \$4,030.00$ (monthly time-loss compensation rate)
 $\$4,030.00 \times 1.01939$ (COLA) = $\$4,108.14 \div 30 = \136.94 (daily time-loss rate)
 $\$136.94 \times 10$ (calendar days) **\$1,369.40**
- ❹ $\$200.68$ (states average wage $\times 1.5$) $\times 10$ (calendar days) = **\$2,006.80**

Fill out Method A section using the key numbers.

$$\begin{array}{l} (1) \quad \frac{\$1,901.20}{\text{Current Wages}} \text{ ❷} \div \frac{\$2,066.70}{\text{DOI Wages (Updated Wages/Earning Capacity)}} \text{ ❶} = \frac{.920}{\text{Percent of Wages at the Time of Injury}} \\ (2) \quad 1.00 - \frac{.920}{\text{Percent of Wages at the Time of Injury}} = \frac{.080}{\text{Loss of Earning Power Percent}} \\ (3) \quad \frac{.080}{\text{Loss of Earning Power Percent}} \times \frac{\$1,369.40}{\text{Time-Loss Compensation Rate}} \text{ ❸} = \frac{\$109.55}{\text{Method A LEP Entitlement}} \end{array}$$

Method B

Fill out the Method B section using the first 2 key numbers.

$$\begin{array}{l} (4) \quad \frac{\$2,066.70}{\text{DOI Wages (Updated Wages/Earning Capacity)}} \text{ ❶} - \frac{\$1,901.20}{\text{Current Wages}} \text{ ❷} = \frac{\$165.50}{\text{"Difference"}} \\ (5) \quad \frac{\$165.50}{\text{"Difference"}} \times .80 = \frac{\$132.40}{\text{Method B LEP Entitlement}} \end{array}$$

Capping

If Method A is the higher entitlement, stop and pay Method A.

If Method B is the higher entitlement, there are 3 additional rules to apply:

- **The injured worker's current wages plus the Method B LEP entitlement may not exceed 1.5 times the state's average monthly wage.** To see if this cap applies, use the following formula:

$$(6) \quad \frac{\$1,901.20}{\text{Current Wages}} \textcircled{2} + \frac{\$132.40}{\text{Method B LEP}} = \frac{\$2,033.60}{*}$$

* If this amount exceeds 1.5 times the state's average wage (see calculation ④, above), it must be capped as follows:

$$(7) \quad \frac{\$2,006.80}{\text{State's Average Wage Multiplied by 1.5}} \textcircled{4} - \frac{\$1,901.20}{\text{Current Wages}} \textcircled{2} = \frac{\$105.60}{\text{Capped Amount for Method B}}$$

- **The 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 (see calculation ③, above), it must be capped by changing the Method B LEP entitlement to the time-loss rate (see calculation ⑤, above).
- **The worker must receive the highest benefit amount between Method A and your final amount for Method B (whether capped or not).** Compare the Method A entitlement to the Method B entitlement and pay the higher amount.

Compensation paid this period:

<u>3/1/2012</u> From	<u>3/10/2012</u> Through	<u>10</u> Number of Calendar Days	<u>\$109.55</u> Amount LEP Paid
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Which method was used? _____ Method A _____

LEP Examples

Example #1:

On July 14, 2011 Chris strained his back at work. At the time of his injury he was working 8 hours per day, Monday through Friday, and earned \$29.50 per hour. His employer contributed \$420.00 per month to his family's healthcare benefits. He was married with 3 dependents.

On August 15, 2011 Chris returned to work light duty. He was working the same days and hours but was earning \$25.00 per hour. The employer discontinued their contribution

to healthcare benefits while he was on light duty. The claim manager checked with the employer and effective August 1, 2011 his job of injury hourly wage increased to \$30.00 per hour.

Calculate his LEP entitlement from August 15, 2011 through August 31, 2011.

Calendar days		August 2011				
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			

- ❶ \$30.00 (updated hourly rate) x 8 (hours per day) = \$240.00 (daily wage)
\$240.00 x 13 = \$3,120.00

\$420.00 (HCB per month) ÷ 30 (calendar days) = \$14.00 (ave. daily contribution to HCB)
\$14.00 x 17 (calendar days in the period) = \$238.00
\$3,120.00 + \$238.00 = **\$3,358.00** (updated wages at the date of injury)

- ❷ \$25.00 (light duty hourly rate) x 8 (hours per day) = \$200.00
\$200.00 x 13 (actual work days in LEP period) = **\$2,600.00** (current wages)

- ❸ \$29.50 (date of injury hourly rate) x 8 (hours per day) = \$236.00
\$236.00 x 22 (per RCW 51.08.178) = \$5,192.00
\$5,192.00 + \$420.00 (HCB per month) = \$5,612.00
\$5,612.00 x 71% (married with three dependents) = \$3,984.52
\$3,984.52 ÷ 30 (to get daily rate) = \$132.82
\$132.82 x 17 (calendar days in LEP period) = **\$2,257.94** (time-loss rate)

- ❹ \$200.68 (SAW x 1.5 daily rate) x 17 (calendar days in LEP period) = **\$3,411.56**

LOSS OF EARNING POWER (LEP) CALCULATIONS

Injured Worker Chris	Claim Number
Payment Period From 08/15/2011 Through 08/31/2011	Number of Calendar Days 17

See next page for calculation information.

Wages at the Date of Injury	①	\$3,358.00
Current Wages	②	\$2,600.00
Time-Loss Rate	③	\$2,257.94
State's Average Wage x 1½	④	\$3,411.56

Method A (Complete for all claims):

(1) $\frac{\$2,600.00}{\text{Current Wages}} \text{ ②} + \frac{\$3,358.00}{\text{DOI Wages (Updated Wages/Earning Capacity)}} \text{ ①} = \frac{.774}{\text{Percent of Wages at the Time of Injury}}$

(2) $1.00 - \frac{.774}{\text{Percent of Wages at the Time of Injury}} = \frac{.226}{\text{Loss of Earning Power Percent}}$

(3) $\frac{.226}{\text{Loss of Earning Power Percent}} \times \frac{\$2,257.94}{\text{Time-Loss Compensation Rate}} \text{ ③} = \frac{\$510.29}{\text{Method A LEP Entitlement}}$

Method B (Complete for all claims with a Date of Injury (DOI) on or after 05/07/93):

(4) $\frac{\$3,358.00}{\text{DOI Wages (Updated Wages/Earning Capacity)}} \text{ ①} - \frac{\$2,600.00}{\text{Current Wages}} \text{ ②} = \frac{\$758.00}{\text{"Difference"}}$

(5) $\frac{\$758.00}{\text{"Difference"}} \times .80 = \frac{\$606.40}{\text{Method B LEP Entitlement}}$

If Method A is the higher entitlement, stop and pay Method A.

If Method B is the higher entitlement, there are 3 additional rules to apply:

- The injured worker's current wages plus the Method B LEP entitlement may not exceed 1.5 times the state's average monthly wage. To see if this cap applies, use the following formula:

(6) $\frac{\$2,600.00}{\text{Current Wages}} \text{ ②} + \frac{\$606.40}{\text{Method B LEP}} = \frac{\$3,206.40}{*}$

* If this amount exceeds 1.5 times the state's average wage (see calculation ④, above), it must be capped as follows:

(7) $\frac{\text{State's Average Wage Multiplied by 1.5}}{\text{④}} - \frac{\text{Current Wages}}{\text{②}} = \frac{\text{Capped Amount for Method B}}{\text{⑤}}$

- The 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 (see calculation ③, above), it must be capped by changing the Method B LEP entitlement to the time-loss rate (see calculation ⑤, above).
- The worker must receive the highest benefit amount between Method A and your final amount for Method B (whether capped or not). Compare the Method A entitlement to the Method B entitlement and pay the higher amount.

Compensation paid this period:

<u>8/15/2013</u> From	<u>8/31/2013</u> Through	<u>17</u> Number of Calendar Days	<u>\$606.40</u> Amount LEP Paid
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Which method was used? B

Example #2

On June 14, 2010 Kami fell at work sustaining multiple injuries. At the time of her injury she was averaging 188 hours per month, \$26.00 per hour. Her employer contributed \$450.00 per month towards her health care benefits. Kami was married with no dependent children.

Kami was released for light duty effective August 1, 2012. Her light duty schedule was Tuesday through Friday 6 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 1, 2012 through August 15, 2012.

Calendar Days		August 2012				
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

- ❶ $\$26.00 \times 188$ (average hours per month) = \$4,888.00
 $\$4,888.00 \div 30 = \162.93
 $\$162.93 \times 15$ (calendar days in period) = \$2,443.95

$$\begin{aligned} \$450.00 \text{ (HCB)} \div 30 &= \$15.00 \\ \$15.00 \times 15 \text{ (calendar days in period)} &= \$225.00 \end{aligned}$$

$$\$2,443.95 + \$225.00 = \mathbf{\$2,668.95}$$
 (wages at the time of injury)

- ❷ $\$26.00$ (light duty hourly rate) $\times 6$ (hours per day) = \$156.00

$$\$156.00 \times 9 \text{ (actual work days in LEP period)} = \mathbf{\$1,404.00}$$
 (current wages)

Note: HCB were not added in since employer did not contribute during light duty period

⑤ $\$26.00$ (date of injury hourly rate) \times 188 (average hours per month) = $\$4,888.00$

$\$4,888.00 + \450.00 (HCB) = $\$5,338.00$ (gross monthly wage with HCB)

$\$5,338.00 \times 65\%$ (married with no dependents) = $\$3,469.70$

$\$3,469.70 \times 1.05604$ (cumulative COLA) = $\$3,664.14$ (monthly TL rate)

$\$3,664.14 \div 30$ (to get daily rate) = $\$122.14$

$\$122.14 \times 15$ (calendar days in period) = **$\$1,832.10$** (time loss rate)

④ $\$207.89$ (SAW daily rate \times 1.5) \times 15 (calendar days in period) = **$\$3,118.35$** (SAW \times 1.5)

Self-Insurance

What's New for Self-Insurance

Self-Insured Employers

Claims Management

- › Claims Adjudication Guidelines
- › ELearning: Self-Insurance Claims Management
- › **Checklists, Coversheets & Instructions**
- › Benefit Calculations
- › Helpful Information
- › Self-Insurance Medical Bill Interest Calculator

Claims Administrators & Continuing Education

Self-Insurance Forms & Publications

Self-Insurance Laws & Rules

LEP Calculator

Temporary total disability - Partial restoration of earning power - RCW 51.32.090 (leg.wa.gov).

Worker information			
Injured worker:	<input type="text" value="Kami"/>		
Claim number:	<input type="text" value="S000000"/>		
Payment period			
From date: <input type="button" value="ⓘ"/>	<input type="text" value="08/01/2012"/>	(MM/DD/YYYY)	
Through date: <input type="button" value="ⓘ"/>	<input type="text" value="08/15/2012"/>	(MM/DD/YYYY)	
Wage information			
Wages at DOI: <input type="button" value="ⓘ"/>	<input type="text" value="2668.95"/>	(1234.56)	
Current Wages: <input type="button" value="ⓘ"/>	<input type="text" value="1404.00"/>	(1234.56)	
Time-Loss Rate: <input type="button" value="ⓘ"/>	<input type="text" value="1832.10"/>	(1234.56)	
State's Average Wage			
Wage amount:	<input type="text" value="\$3,118.35"/>		
Calendar days:	<input type="text" value="15"/>		
<input type="button" value="Calculate"/> <input type="button" value="Reset"/>			

Calculations

Method A				
\$1,404.00 Current Wages	÷	\$2,668.95 DOI Wages	=	0.526 Percent of Wages at the Time of Injury
1	-	0.526 Percent of Wages at the Time of Injury	=	0.474 Loss of Earning Power Percent
0.474 Loss of Earning Power Percent	×	\$1,832.10 Time-Loss Comp. Rate	=	\$868.42 Method A LEP Entitlement
Method B				
\$2,668.95 DOI Wages	-	\$1,404.00 Current Wages	=	\$1,264.95 Difference
\$1,264.95 Difference	×	0.800	=	\$1,011.96 Method B LEP Entitlement
Additional Considerations				
Current Wages	+	Method B	=	Sum
State's Average Wage	-	Current Wages	=	Capped Amount for Method B
Results				
LEP entitlement:	<input type="text" value="\$1,011.96"/>			
Method used:	<input type="text" value="Method 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.

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

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

Health Care Contributions

The employer's contribution to a worker's health care benefits must be considered when calculating LEP.

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 calendar days in the period.
- **Employer contributes an hourly rate based on hours worked:** calculate the hourly contribution in the same way the hourly wage rate is calculated for the gross monthly wage, then divide that amount by 30 days to get a daily contribution amount then multiply by calendar days in the period.

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 employer’s 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 – don’t include the health care contribution amount since the employer has discontinued them during the light duty period.
- ❸ Time Loss Rate – include the employer’s health care contribution at the date of injury rate amount to the gross monthly wage to calculate time-loss.

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 employer’s 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 employer’s health care contribution at the date of injury rate amount to the gross monthly wage to calculate time-loss.

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. A worker who was terminated for cause prior to light duty employment is entitled to compensation (i.e. the worker failed a drug test that was conducted prior to returning to light duty work) (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 valid 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.

LEP When Missed Work or on Leave

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

Work No Longer Available [RCW 51.32.090\(4\)\(b\)](#)

If a light duty job comes to an end; no longer available due to plant shutdown, layoffs, etc., before the worker is released to full duty, the worker is entitled to time-loss compensation.

New Claim While on Light Duty

When a worker suffers a new injury while working light duty, a new claim should be filed.

If the worker was receiving LEP benefits due to their limited ability to work on the original claim, these benefits would continue on the original claim based on the light duty wage. LEP benefits would be calculated using Method A, based on what the light duty job would have paid if the worker had continued working. Method B of the LEP calculation would not apply because the worker must be working to receive Method B. (See Bean, Karl [04 19814](#) (2006))

The worker would be entitled to time-loss benefits under the second claim if certified by their attending provider. The wages for the second claim will be based solely on the light duty wage the worker was earning at the time of injury. LEP benefits are 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 or has been offered a valid light duty job, 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.

Dual Claim Benefits Policy 4.71

Workers may receive LEP compensation under 2 or more claims, State Fund and/or self-insured claims. They are entitled to benefits equal to the amount entitled under the claim with the highest compensation rate.

The payments should be divided between the claims. See Dual Claim Benefits in the [Time-Loss Compensation](#) chapter for more information and examples.

Terminating Loss of Earning Power Benefits

Using the following criteria, determine when to terminate LEP payments:

- **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](#).