

Wages and Temporary Total Disability Self-Insurance Claim Adjudication Guidelines

	Page
<u>Computing Gross Monthly Wage</u>	4
<u>Wages at the Time of Injury</u>	4
<u>Intent of the Law</u>	4
<u>RCW 51.08.178</u>	4
<u>Computing Wages under Subsection 1</u>	5
<u>Averaging Hours</u>	5
<u>Overtime Pay</u>	6
<u>Contract of Hire</u>	7
<u>Shift Differentials and/or Premium Pay</u>	7
<u>Tips and Gratuities</u>	8
<u>Computing Wages under Subsection 2</u>	8
<u>Part-time/Intermittent</u>	8
<u>Part-time</u>	8
<u>Intermittent</u>	9
<u>Seasonal</u>	9
<u>Monthly Wages</u>	9
<u>Calculating Wages under Subsection 4</u>	10
<u>“Like” Employees</u>	10
<u>“Other”</u>	11
<u>Computing Bonuses</u>	11
<u>Health Care Benefits</u>	11
<u>Time-Loss</u>	13
<u>Family Status and Dependents</u>	13
<u>Registered Domestic Partnership</u>	13
<u>Definition of Child</u>	14
<u>Time-Loss Compensation Formula</u>	16
<u>Determining the Child’s Portion</u>	16
<u>Maximum Time-Loss Compensation Rate</u>	17
<u>Determining the Child’s Portion When Worker is at Maximum Time-Loss Rate</u>	17

<u>Minimum Time-Loss Compensation Rate</u>	18
<u>Minimum Time-Loss Rate for Dates of Injury on or After July 2, 2008</u>	18
<u>Cost of Living Adjustments</u>	20
<u>Date of Injury and First Three Days</u>	22
<u>Date of First Treatment</u>	22
<u>Timely Payment of Time-Loss Benefits</u>	22
<u>Payment of Ongoing Time-Loss</u>	23
<u>Terminating Time-Loss Compensation</u>	23
<u>Kept on Salary</u>	24
<u>Payment to Minor Workers</u>	24
<u>Volunteers</u>	24
<u>Retired Workers</u>	25
<u>Incarceration</u>	25
<u>Worker Incarcerated After Date of Injury</u>	25
<u>Workers Injured While Performing Community Service or Restitution</u>	26
<u>Registered Apprentices or Trainees</u>	26
<u>Disability Benefits From Other Jurisdictions</u>	26
<u>Provisional Time-Loss Payments</u>	27
<u>Attending Providers</u>	27
<u>Worker Address Changes</u>	28
<u>Unemployment Compensation</u>	28
<u>DSHS- Division of Child Support Liens</u>	28
<u>DSHS – Office of Financial Recovery Liens</u>	28

<u>Overpayments</u>	29
<u>Deductions from Time-Loss Compensation Payments</u>	29
<u>Suspension of Benefits</u>	30
<u>Determining if Suspension is Appropriate</u>	30
<u>Requesting Claim Suspension</u>	32
<u>Partial vs. Complete suspension</u>	32
<u>Ending Claim Suspension</u>	33
<u>Social Security Offset</u>	33

Computing Gross Monthly Wage

Wages at the Time of Injury [WAC 296-14-520](#), [WAC 296-14-522](#)

Time-loss compensation calculations are based on wages the injured worker was receiving at the time of injury or manifestation of occupational disease. If the worker had a second job at the time of injury, the income from this source must also be included when computing gross monthly wage.

Intent of the Law [RCW 51.08.178](#)

The intent of [RCW 51.08.178](#) is to ensure that wages are computed in a fair and equitable manner.

When computing the gross monthly wages, you should always keep in mind [RCW 51.12.010](#) which states "...This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment".

RCW 51.08.178

Before computing the workers wage, you must first determine into which subsection of [RCW 51.08.178](#) the worker's employment pattern falls. Most employment patterns fit under subsection 1 of the statute. In order for a worker's wage to be computed under subsection 2, the worker's relationship to the employer of injury must be exclusively seasonal in nature, or the worker's current employment or relationship to employment in general be essentially part-time or intermittent.

Exclusively seasonal infers that the nature of the work is such that it can only be performed at certain times of the year. Therefore, the phrase "employment exclusively seasonal" applies when the work pattern of the worker is entirely dependent upon the seasons.

It is very rare for a worker's wages to be calculated under subsection 2 due to a designation of part-time. The claim manager should check to determine if the worker's pattern better fits under subsection 1 even though the hours worked are less than full-time.

A worker's employment is intermittent when the pattern is not regular or continuous and has definite starting and stopping points. (**Note:** Construction workers wages are computed under subsection 1 when the employment pattern is regular and continuous interrupted only by job completion and unavoidable layoffs.)

Computing Wages under Subsection 1 [RCW 51.08.178\(1\)](#)

To compute gross monthly wages in accordance with [RCW 51.08.178](#), subsection 1, it is first necessary to convert the wages at the time of the injury into a gross monthly wage figure. If the injured worker is paid hourly or daily, and works a set number of days per week, compute the daily wage and multiply it as follows:

Days Worked Per Week	Multiply Daily Wage times
7	30
6	26
5	22
4	18
3	13
2	9
1	5

Example:

Martha is a cashier who is paid \$12.95 per hour and works 8 hours per day, 5 days per week.

$$\begin{aligned} \$12.95 \times 8 \text{ hours} &= \$103.60 \text{ (daily wage)} \\ \$103.60 \times 22 &= \$2,279.20 \text{ (gross monthly wage)} \end{aligned}$$

This is also applicable for regularly scheduled employees that work more or less than 40 hours per week.

Example:

Jim is a shelf stocker who is paid \$11.85 per hour and works 6 hours per day, 3 days per week.

$$\begin{aligned} \$11.85 \times 6 \text{ hours} &= \$71.10 \text{ (daily wage)} \\ \$71.10 \times 13 &= \$924.30 \text{ (gross monthly wage)} \end{aligned}$$

Averaging Hours

Some workers work a set amount of days per week but the number of hours per day varies. In these situations, average the number of hours worked per day, and multiply that by the number of days the worker worked per month using the formula in statute, to establish the gross monthly wage.

Note: When averaging hours per day, use a period of full weeks.

Example:

Beth is a retail clerk who earns \$10.75 per hour and works 4 days per week. The number of hours she works per day varies. Review of her payroll records show that she worked 672 hours in a representative 24 week period prior to her injury.

$$\begin{aligned} 672 \text{ hours} \div 24 \text{ weeks} &= 28 \text{ (hours per week)} \\ 28 \div 4 \text{ days per week} &= 7 \text{ (average hours per day)} \\ \$10.75 \times 7 \text{ hours} &= \$75.25 \text{ (daily wage)} \\ \$75.25 \times 18 &= \$1,354.50 \text{ (gross monthly wage)} \end{aligned}$$

For workers with irregular schedules with both hours and days varying, determine the average hours worked per month and multiply the hours by the hourly rate of pay.

Note: When averaging hours per month, use a period of full months.

Example:

Simon is a retail clerk who is paid \$11.35 per hour. He works between 3 to 6 days per week. His payroll records show that he has worked 900 hours in the last six months.

$$\begin{aligned} 900 \text{ hours} \div 6 \text{ months} &= 150 \text{ (average hours worked per month)} \\ \$11.35 \text{ per hour} \times 150 \text{ hours} &= \$1,702.50 \text{ (gross monthly wage)} \end{aligned}$$

Overtime Pay [WAC 296-14-530](#)

Overtime is not included in the computation of gross monthly wages under subsection 1. However, if a worker has a consistent pattern of overtime, their gross monthly wage should take into account the overtime hours at their regular rate of pay.

Example:

Barbara is a construction worker who makes \$20.65 an hour. Her scheduled work week is 8 hours per day, 5 days per week. However, several days a month she works extra hours. She is paid time and a half for her overtime hours. A review of her payroll records show she worked 505.2 hours including overtime in the 12 week period prior to her injury.

$$\begin{aligned} 505.2 \div 12 \text{ weeks} &= 42.10 \text{ (average hours per week)} \\ 42.10 \div 5 \text{ days per week} &= 8.42 \text{ (average hours per day)} \\ \$20.65 \times 8.42 \times 22 &= \$3825.21 \text{ (gross monthly wage)} \end{aligned}$$

Contract of Hire

Compensation received as part of the contract of hire must also be included when calculating wages. A contract of hire is defined as an oral or written agreement, reached by mutual consent, between the employer and worker regarding the terms and conditions of employment. Examples could include, but are not limited to housing, meals, clothing allowance, longevity pay and commissions.

Examples:

James is a foreman for a construction company. He is paid \$22.00 an hour and works 8 hours per day, 5 days per week. He is also paid \$120.00 a month for a tool allowance.

$$\begin{aligned} \$22.00 \times 8 \times 22 &= \$3,872.00 \\ \$3,872.00 + \$120.00 \text{ for tools} &= \$3,992.00 \text{ (gross monthly wage)} \end{aligned}$$

Robert is a dishwasher. He makes \$9.25 an hour and works 7 hours per day, 4 days per week. His employer also provides him meals valued at \$8.00 per day.

$$\begin{aligned} \$9.25 \times 7 \times 18 &= \$1165.50 \\ \$8.00 \times 18 &= \$144.00 \\ \$1165.50 + \$144.00 &= \$1309.50 \text{ (gross monthly wage)} \end{aligned}$$

Shift Differentials and/or Premium Pay

In the court decision *Fred Meyer Inc. v. Shearer*, the court found that shift differential is not overtime but rather additional compensation for working undesirable hours. Shearer's wages were calculated as if she worked for two different employers.

Workers who receive an hourly rate different than the regular hourly rate of pay for working a certain shift, day of the week, or for having additional responsibilities, etc. are entitled to have that rate of pay included in their gross monthly wage.

Example:

Colton works at a retail store. On Tuesday through Friday he works eight hours per day at \$12.00 per hour. On Saturday he also works eight hours but earns \$13.00 per hour because it is a weekend shift.

$$\begin{aligned} \$12.00 \times 8 \times 18 &= \$1,728.00 \text{ (gross monthly wage for Tuesday through Friday shift)} \\ \$13.00 \times 8 \times 5 &= \$520.00 \text{ (gross monthly wage for Saturday shift)} \\ \$1,728.00 + \$520.00 &= \$2,248.00 \text{ (gross monthly wage)} \end{aligned}$$

Tips and Gratuities [WAC 296-14-522](#)

Tips are considered wages when the worker reports them to the employer for federal income tax purposes, or when they are distributed by the employer to the employee.

Gratuities are mandatory service charges added to a customer's check by management. Similar to tips they shall be considered as wages only if they are reported for federal income tax purposes or when they are distributed by the employer to the employee.

Computing Wages under Subsection 2 [RCW 51.08.178\(2\)](#)

Subsection 2 should be used to calculate wages when the worker's relationship to the employer of injury is exclusively seasonal in nature or the worker's relationship to their employment is essentially part-time or intermittent.

Part-time/Intermittent

Employers should review an injured worker's intent with regard to their work pattern in order to determine if the worker is part-time or intermittent. An employee's work pattern may appear irregular or non-continuous; however, if the employee's intent was to secure full-time employment throughout the year, i.e. they worked for several months, were on unemployment benefits due to an unavoidable layoff for a few weeks then worked again for several months, they would not be an intermittent worker and wages should be calculated using the formula under Subsection 1.

In the Supreme Court case *Dept. of L&I v. Avundes*, the Supreme Court held that Avundes was **not** an essentially part-time or intermittent employee, finding instead that he did general farm work and that such work was generally available during all seasons. Though his work history reflected an intermittent pattern (19 jobs in 14 months), Mr. Avundes was either working or looking for work and it was his intent to secure full-time employment throughout the year. The Court concluded that a worker should not be penalized because prior employment was irregular or uncontinuous. The court stated, "...There is no logical reason why a claimant should be penalized solely because his prior employment was irregular or uncontinuous. Such a rule would be unfair to an employee who had worked a series of jobs before being injured, and it would shift the analysis away from the proper focus on the injured worker's lost earning capacity..." "... Avundes intent was to work full-time and Avundes' work history showed a consistent pattern of working or looking for work..." "... We find the Court of Appeals correctly concluded subsection (1) applies to Avundes in determining his workers' compensation benefits".

Part-time

Part-time means the worker has no set schedule or discernible pattern and the hours spent at that employment are significantly less than the number of hours typically worked by employees in that industry.

Example:

Charlotte is a retired department store employee. She fills in for ill employees a few days each year. In the twelve months prior to the date of her injury she grossed a total of \$1,235.00 from all employment.

$$\$1,235.00 \div 12 \text{ (months)} = \$102.92 \text{ (gross monthly wage)}$$

Intermittent

Intermittent means the pattern is sporadic, has definite starting and stopping points and there are significant gaps in between.

Example:

Tylen is a college student who works at a retail store during spring and winter break, she has no other employment. In the twelve months prior to the date of her injury she grossed a total of \$7,356.00 from all employment.

$$\$7,356.00 \div 12 \text{ (months)} = \$613.00 \text{ (gross monthly wage)}$$

Seasonal

When determining whether a worker is seasonal, consider the worker's relationship to the employer. Exclusively seasonal means that the work the worker was hired to perform for the employer can only be carried out during a particular time of year.

Example:

Tyler was injured harvesting apples for a farm, harvesting apples was the only work he was hired to do by that farm. In the 12 months prior to the date of his injury he grossed a total of \$19,543.00 from all employment.

$$\$19,543.00 \div 12 \text{ (months)} = \$1,628.58 \text{ (gross monthly wage)}$$

Note: If Tyler would have been injured harvesting apples, yet he also worked for the farm throughout the year performing general farm labor, then his relationship to that employer would not have been seasonal and his wages would have been calculated under subsection 1. (See *Double D Hop Ranch v. Sanchez.*)

Monthly Wages

The monthly wage is determined by dividing by 12 the total wages earned, including overtime, from all employment in any 12 successive calendar months preceding the injury. Obtain a work history from the worker showing all employment for a minimum of three years prior to the date

of injury/occupational disease. The work history must include employer names, dates/periods of employment and an explanation of any significant gaps in employment. Obtain documentation of gross wages, including overtime, from all employment for the entire period covered by the work history. Select a 12 month period for averaging wages that fairly represents the worker's earning history and explain why that period was chosen.

School district employees, whose contract is for working less than year round, have their wages calculated under subsection 2 (*School District No. 401 v. Minturn*).

Example:

Philip, a school teacher grossed \$67,000.00 from all employment in the successive 12 month period prior to his injury.

$$\$67,000.00 \div 12 \text{ (months)} = \$5,583.33 \text{ (gross monthly wage)}$$

Calculating Wages under Subsection 4 [RCW 51.08.178\(4\)](#)

“Like” Employees

If a worker does not have a regular, set schedule and has not worked long enough to establish a pattern the monthly wage shall be computed on the basis of the usual wage paid other employees engaged in “like” or similar occupations where the wages are fixed.

Example:

Conner started working as a bagger for a grocery store on June 2nd. He was told he would be earning \$11.35 per hour and his days and hours would vary depending on store need. On June 10th, he slipped on a wet floor falling and breaking his leg.

To determine the gross monthly wage review the pattern of employment for other “like” employees. There are several baggers working for the same store, pick three that were hired to work schedules similar to Conner.

After reviewing payroll records it was determined that the three consecutive months prior to Conner's date of injury was a fair representation of the work pattern. In those three months;

- “Like” employee #1 worked 288 hours
- “Like” employee #2 worked 294 hours
- “Like” employee #3 worked 301 hours

Choose one of the “like” employees. In this case we will choose #2 since it appears that there was not a large discrepancy between the hours and #2 is likely a good representation of the hours Conner would be working. Set the gross wages as follows:

294 hours ÷ 3 months = 98 (average monthly hours)
98 x \$11.35 (Conner’s hourly wage) = \$1112.30 (gross monthly wage)

“Other”

There will be other situations when wages are not reported in conventional terms: wages paid by commission only, truckers paid per mile driven, piece work only, etc. Wages should be set in a fair and equitable manner.

Computing Bonuses [RCW 51.08.178\(3\)](#), [WAC 296-14-522](#)

Bonuses are included in the calculation of time-loss if they were received by the worker in the twelve months immediately preceding the date of injury or manifestation. The monthly value of the bonus is calculated by using the period the bonus covers. A yearly bonus is divided by twelve to establish the monthly value. A quarterly bonus is divided by three to establish the monthly value.

Example:

Shane works for an airplane manufacturing company. He is salaried, earning \$5,800.00 per month. He sustains an injury on January 8th. In December, Shane had received a \$7,800.00 year end production bonus.

$\$7,800.00$ (year end bonus) ÷ 12 months (period bonus covers) = $\$650.00$ (average monthly value of bonus)

$\$5,800.00$ (monthly salary) + $\$650.00$ = $\$6,450.00$ (gross monthly wage)

Health Care Benefits [WAC 296-14-524](#), [WAC 296-14-526](#), [WAC 296-14-528](#)

In the *Cockle v. Dept. of L&I* decision the Supreme Court held that the value of employer-provided health care benefits is another type of compensation which must be included when computing wages. The amount of the employer’s actual contribution on the date of injury to medical, dental, and/or vision coverage for the worker and all other persons covered on the worker’s policy must be included.

For any benefit period that the employer continues their contribution towards health care benefits at the same rate as they did on the date of injury, the contribution amount will not be included in the calculation for gross monthly wages. When the employer stops contributing towards health care benefits, the amount of the employer contribution should be included in the gross monthly

wage, even if the worker has not lost healthcare coverage due to a banked hours system, family medical leave act, etc. (*Dept. of L&I v Granger*).

Example:

Anthony, a construction worker was injured on October 21, 2010; he was off work from the date of injury through December 15, 2010. At the time of his injury he was earning \$4,800.00 per month and his employer was contributing \$620.00 per month towards his healthcare benefits. The employer did not contribute to his union healthcare benefits after the date of injury. Due to his banked hours he never lost his healthcare benefits. Since his employer stopped their contributions to his healthcare benefits immediately, his gross monthly wage for the day after the injury would be \$5,420.00.

Employers who contribute to health care benefits for their workers are required to calculate two gross monthly wages on each claim: one wage that includes the value of the employer's contribution to health care benefits, and one that does not.

Example:

Angela is a supervisor with a monthly salary of \$3,800.00. In addition to her salary, the employer contributes \$300.00 per month for medical, dental, and vision coverage for Angela and her family.

Gross monthly wage at the time of injury:

Excluding the value of health care benefits: \$3,800.00

(This is the gross monthly wage which will be used as long as the employer continues to contribute to health care benefits.)

Including the value of health care benefits: $\$3,800.00 + \$300.00 = \$4,100.00$

(This is the gross monthly wage which will be used if the employer stops contributing to health care benefits.)

If an employer stops contributing to different benefits at different times, then it will be necessary to compute more than two wages. For example, the employer stops contributing towards dental but continues their contribution for medical benefits, at that point the value of the dental contribution would be included as part of the gross monthly wage. If the employer later ceases to contribute towards medical benefits the value of that contribution would then be included into the gross monthly wage also.

Example:

Shayla is a secretary with a monthly salary of \$4,200.00. In addition to her salary, the employer contributes \$250.00 per month for medical and \$100.00 per month for dental coverage for Shayla and her family.

Gross monthly wage at the time of injury:

Excluding the value of health and dental care is \$4,200.00 (This is the gross monthly wage which will be used as long as the employer continues to contribute to health and dental benefits.)

Including the value of dental benefits: $\$4,200.00 + \$100.00 = \$4,300.00$
(This is the gross monthly wage which will be used if the employer stops contributing to dental benefits but continues to contribute to health care benefits.)

Including the value of dental and health care benefits: $\$4,200.00 + \$250.00 + 100.00 = \$4,550.00$ (This is the gross monthly wage which will be used if the employer stops contributing to dental and health benefits.)

Time-loss

Family Status and Dependents [RCW 51.32.010](#), [RCW 51.32.060](#), [RCW 1.16.100](#)

A worker receives a percentage of wages based upon family status and number of dependents at the time of injury. A worker is entitled to 60% of their gross monthly wage. An additional 5% is added for a spouse and 2% for each dependent child up to five children.

Example:

Erica is married with three dependent children on the date of injury.

She is entitled to:

60% for herself
5% for spouse
6% for children (3children x 2%)
71% total percent

Registered Domestic Partnership

For claims with dates of injury or occupational disease on or after December 3, 2009, a worker who has a registered domestic partner will have the same rights and benefits as a worker with a spouse. Per [RCW 1.16.100](#) references to spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships.

Example:

Brock was injured after December 3, 2009. He had a registered domestic partner and one dependent child on the date of injury.

He is entitled to:

- 60% for himself
- 5% for registered domestic partner
- 2% for child
- 67% total percent

Definition of Child [RCW 51.08.030](#)

“Child” means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the worker, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap.

- A child conceived prior to the date of injury but born after the date of injury entitles the worker to an additional 2% of the gross monthly wage effective the date of the child’s birth.
- Compensation for dependent children continues until 18 years or until 23 years if enrolled in a full-time accredited school. If the child is 18 years old and is a full time student at an accredited school, the child’s portion is paid directly to the child up to the age of 23.
- Compensation is continued without regard to age if the child is a “dependent invalid child”. The dependent portion in the case of an invalid child is paid directly to the legal guardian.

The following table lists the percentages of the gross monthly wage an injured worker is entitled to for each conjugal status:

Single with no dependents	60%
Single with one dependent	62%
Single with two dependents	64%
Single with three dependents	66%
Single with four dependents	68%
Single with five dependents	70%
Married with no dependents	65%
Married with one dependent	67%

Married with two dependents	69%
Married with three dependents	71%
Married with four dependents	73%
Married with five dependents	75%

The following is a list of variations in family/dependent status upon which time-loss compensation rates are based:

1. Single on date of injury – pay as single.
2. Married after date of injury – pay as single.
3. Married after date of injury and children born after injury – pay as single with no dependent
4. Married prior to date of injury – pay as married
5. Married with dependent children on date of injury – pay as married with 2% for each dependent child up to five children.
6. Legally separated but not divorced on date of injury – pay as married.
7. Divorced prior to date of injury – pay as single.
8. Divorced after date of injury – pay as married.
9. Married and spouse dies after date of injury – pay as married.
10. Married with no dependent children on date of injury, both husband and wife have compensable claims – both are paid as married.
11. Married with dependent children on date of injury, both husband and wife have compensable claims – both are paid as married, only worker with higher time-loss rate receives allowance for children’s portion.
12. Married with dependent children at the time of injury, children are given into custody pending adoption – pay as married, children’s portion paid to legal custodian until children are legally adopted.
13. Married at the time of injury, after injury adopts children – pay as married.
14. Married at the time of injury, child conceived prior to date of injury and born after date of injury – pay as married. Pay for dependents portion beginning with date of birth.
15. Married at the time of injury with one child over 18 who is an invalid and dependent on worker – pay as married with one dependent.

16. Married at time of injury with one child of any age who is an invalid who is being cared for in a state institution – married if the worker is not contributing to the institution for the child’s care. Pay as married with one child if the worker is making payment to the institution.

Time-loss Compensation Formula

For dates of injury on or after July 1, 1971, the time-loss compensation rate is based on the worker’s gross wage, family status and number of dependent children on the date of injury.

Once the worker’s gross monthly wage, family status and number of dependent children have been determined, the monthly time-loss compensation rate can be computed. The following formula is used in making this calculation.

Monthly Time-loss Compensation Rate

$$\begin{array}{rcccl} \text{Gross Monthly} & & \text{Family/Dependent} & & \text{Monthly Time-loss} \\ \text{Wage} & \times & \text{Percentage} & = & \text{Compensation Rate} \end{array}$$

Example:

Fran’s gross monthly wage is \$4,500.00; she is married with two dependents at the time of injury.

$$\begin{array}{rcccl} \$4,500.00 & & 69\% & & \$3,105.00 \\ \text{Gross Monthly} & & \text{Marital/Dependent} & & \text{Monthly Time-loss} \\ \text{Wage} & \times & \text{Percentage} & = & \text{Compensation Rate} \end{array}$$

Determining the Child’s Portion

When the identity of the custodial parent is unclear, children should still be assigned to the claim, however the claim manager should withhold the children’s portion when making payment. Once the custodial parent has been identified, the payment must be released to the custodial parent. The child’s portion is paid to the parent/guardian with legal custody.

Example:

On his SIF-2, Jim lists divorced with two dependents and indicates he does not have custody. His gross monthly wage is \$4,000.00.

$$\begin{array}{l} \$4,000.00 \times 60\% = \$2400.00 \text{ (Jim’s portion of time-loss)} \\ \$4,000.00 \times 4\% = \$160.00 \text{ (children’s portion of time-loss paid to guardian with legal custody)} \end{array}$$

Maximum Time-loss Compensation Rate

Maximum time-loss compensation rates are based on a percentage of the statewide average monthly wage for the previous calendar year. The Employment Security Department computes the statewide average wage. (See [Maximum Time-Loss Rates Chart](#))

The percentage of the statewide average monthly wage used to calculate maximum time-loss compensation rates has changed from time to time over the years, so the actual rate depends upon the date of injury.

- For injuries occurring between **7-1-71 and 6-30-88**, the maximum rate a worker can receive per month is **not greater than 75%** of the statewide average monthly wage.
- For injuries occurring between **7-1-88 and 6-30-93**, the maximum rate a worker can receive per month is **not greater than 100%** of the statewide average monthly wage.
- For injuries occurring between **7-1-93 and 6-30-94**, the maximum rate a worker can receive per month is **not greater than 105%** of the statewide average monthly wage.
- For injuries occurring between **7-1-94 and 6-30-95**, the maximum rate a worker can receive per month is **not greater than 110%** of the statewide average monthly wage.
- For injuries occurring between **7-1-95 and 6-30-96**, the maximum rate a worker can receive per month is **not greater than 115%** of the statewide average monthly wage.
- For injuries occurring **on or after 7-1-96**, the maximum rate a worker can receive per month is **not greater than 120%** of the statewide average monthly wage.

Determining the Child's Portion When Worker is at Maximum Time-loss Rate

If a worker is entitled to time-loss compensation at the maximum rate the following formula is used to determine the dependent's portion:

$(\text{children's \%}) \div (\text{total \%}) \times (\text{max. TL rate}) = \text{children's portion}$

Example:

On her SIF-2, Jessica lists single with two dependents and circles she does not have custody. She is at the maximum monthly time-loss rate of \$4,472.10.

$.04 \div .64 \times \$4,472.10 = \279.51
(children's %) \div (total %) \times (max. TL rate) = children's portion

$\$4,472.10$ (max. TL rate) - $\$279.51$ (children's portion) = $\$4,192.59$ (worker's portion)

Minimum Time-loss Compensation Rate

The [Minimum Time Rates Chart](#) shows the minimum time-loss rate workers are entitled to receive depending on the date of injury.

Minimum Time-loss Rate for Dates of Injury on or After July 2, 2008

For dates of injury on or after July 2, 2008 the minimum time-loss rate is 15 percent of the state's average monthly wage plus \$10 if the worker has a spouse and \$10 for each dependent child up to five children. If the worker's gross monthly wage is less than 15% of the state's average monthly wage then the worker is entitled to a time-loss rate equal to 100% of their gross monthly wage or the minimum rate in effect prior to July 2, 2008, whichever is higher.

Example of 15% of the States Average Monthly Wage:

Allison was injured on September 14, 2008. She was earning \$9.50 an hour and worked 3 hours per day, Monday through Friday. She was married with two dependents at the time of injury.

$$\$9.50 \times 3 = \$28.50$$

$$\$28.50 \times 22 \text{ (per RCW)} = \$627.00 \text{ (gross monthly wage)}$$

$$\$627.00 \times .69 = \$432.63 \text{ (standard time-loss formula)}$$

\$589.01 (\$559.01 State's average wage minimum for date of injury, plus \$10.00 for spouse and \$20.00 for two dependents.)

Answer: \$589.01 (minimum time-loss rate)

The standard calculation for time-loss \$432.63, is less than the minimum time-loss rate of \$589.01. Since her gross monthly wage is more than that minimum time-loss rate she is entitled to the minimum time-loss rate of \$589.01.

Alternate Recipient Calculation

In the above example if the worker's two dependents were in the custody of an alternate recipient, you would pay the dependent's portion to the alternative recipient. Pay worker 15% of the state's average monthly wage plus \$10.00 for spouse. Pay alternate recipient \$20.00 (\$10.00 for each dependent).

\$589.01	Total time-loss compensation rate
<u>-\$20.00</u>	Alternate recipient portion
\$569.01	Worker's portion

100% of Worker's Gross Monthly Wage

If the worker's gross monthly wage is less than 15% of the state's average wage then the worker is entitled to a time-loss rate equal to 100% of their gross monthly wage or the "old" minimum rate (the rate in effect prior to July 2, 2008), whichever is higher.

Example of 100% of the Worker's Gross Monthly Wage:

Amanda was injured on August 4, 2008. She was earning \$8.75 an hour and worked six hours per day on Mondays and Tuesdays. She was married with two dependents at the time of injury.

$$\$8.75 \times 6 = \$52.50$$

$$\$52.50 \times 9 \text{ (per RCW)} = \$472.50 \text{ (gross monthly wage)}$$

$$\$472.50 \times 69\% = \$326.03 \text{ (standard time-loss formula)}$$

\$589.01 (\$559.01 State's average wage minimum for date of injury, plus \$10.00 for spouse and \$20.00 for two dependents.)

\$283.00 ("old" minimum time-loss rate, prior to 7/2/08)

Answer: \$472.50 (gross monthly wage is time-loss rate)

Since Amanda's gross monthly wage, \$472.50 is less than \$589.01, the minimum time-loss rate for her date of injury, she is entitled to either her gross monthly wage as time-loss or the "old minimum time-loss rate" of \$283.00 whichever is higher. Her gross monthly wage is higher so that will be her time-loss rate.

Alternate Recipient Calculation

In the above example if the worker's two dependents were in the custody of an alternate recipient, you would pay the dependent's portion to the alternative recipient. The calculation for the alternate recipient is to subtract 2% for each dependent's portion of the worker's rate. The worker's time-loss is 100% of their gross monthly wage of \$472.50. The alternate recipient is entitled to 4% of the \$472.50.

$$\$472.50 \times 4\% = \$18.90 \quad \text{Alternate recipient portion}$$

$$\$472.50 - 18.90 = \$453.60 \quad \text{Worker's portion of time-loss}$$

Minimum Time-loss Rate in Effect Prior to July 2, 2008

If the worker's gross monthly wage is less than 15% of the state's average wage then the worker is entitled to a time-loss rate equal to 100% of their gross monthly wage or the "old" minimum time-loss rate, whichever is higher.

Example of Minimum Time-loss Rate in Effect Prior to July 2, 2008:

Aaron was injured on February 12, 2009. He was earning \$9.00 per hour and worked 4 hours every Saturday. He was single with no dependents at the time of injury.

$$\$9.00 \times 4 = \$36.00$$

$$\$36.00 \times 5 \text{ (per RCW)} = \$180.00 \text{ (gross monthly wage)}$$

$$\$180.00 \times 60\% = \$108.00 \text{ (standard time-loss formula)}$$

\$559.01 (minimum time-loss rate for single with no dependents)

\$185.00 (“old” or minimum time-loss rate prior to 7/2/08)

Answer: \$185.00 (“old” or minimum time-loss rate prior to 7/2/08)

Since Aaron’s gross monthly wage, \$180.00 is less than \$559.01, the minimum time-loss rate for his date of injury, he is entitled to either his gross monthly wage as time-loss or the “old minimum time-loss rate” of \$185.00 whichever is higher. The “old” minimum time-loss rate is higher so that will be his time-loss rate.

Alternate Recipient Calculation

The alternate recipient portion is the difference between the rate the worker is entitled to with all the dependents and the rate the worker is entitled to without the dependents in the custody of the alternate recipient.

$\$283.00 - \$215.00 = \$68.00$ Rate at married with two dependents minus rate at married with no dependents.

\$68.00 Alternate recipient portion.

\$215.00 Worker’s portion of time-loss.

Cost of Living Adjustments

Between July 1, 1971 and June 30, 2011, all workers receiving time-loss benefits were entitled to automatic cost of living adjustments (COLA) effective each July 1st. Workers receiving the minimum and maximum time-loss compensation rates are also entitled to COLA adjustments.

Effective July 1, 2011 there was a freeze on all COLAs through June 30, 2012.

Example:

Kari was injured on February 21, 2011. Her time-loss rate at the time of injury was \$2,400.00. Since there was no COLA on July 1, 2011 her time-loss rate remains \$2,400.00 until the July 1, 2012 COLA.

For workers with dates of injury or manifestation on or after July 1, 2011 no COLA adjustments shall be made until the second July 1st following the date of injury or manifestation.

Example:

Karlee was injured on August 12, 2011. She will not be entitled to a COLA until July 1, 2013.

There are two methods to calculate COLAs.

Yearly increment (inc) factors:

To use the [Cost of Living Adjustment \(COLA\) Chart](#) to compute the July 1 COLA on a year to year basis:

- Compute the monthly time-loss rate as of the date of injury.
- Multiply the time-loss rate by the increment (inc) factor for the July 1 after the date of injury.
Exception: Skip the first COLA for claims with dates of injury or manifestation on or after July 1, 2011.
- Multiply that figure by the increment (inc) factor of the next July 1st to compute the time-loss rate after the second COLA and so on until all the COLA's have been computed.

Example:

Brenda was injured on May 2, 2007. Her time-loss rate at the time of injury was \$930.00. To compute her time-loss rate as of July 1, 2007:

$$\$930.00 \times 1.05445 \text{ (7/1/07 COLA)} = \$980.64$$

To compute her time-loss rate as of July 1, 2008:

$$\$980.64 \times 1.05018 \text{ (7/1/08 COLA)} = \$1,029.85$$

Cumulative factors:

To use the [Cost of Living Adjustment \(COLA\) Chart](#) to compute the July 1 COLA from the date of injury to several years after without having to compute it year by year:

- Compute the monthly time-loss rate as of the date of injury.
- Multiply the date of injury time-loss rate by the cumulative (cum.) COLA factor of the July 1 year you are updating to.

Example:

Kay was injured on December 6, 2003. Her claim was closed on April 16, 2005. She applied for reopening of her claim and it was granted effective September 1, 2008. She was unable to work and was entitled to time-loss benefits from September 1, 2008. Her time-loss rate as of the date of injury (DOI) was \$900.00.

To compute the time-loss rate as of September 1, 2008:

$$\begin{array}{rclcl} \$900.00 & \times & 1.17870 & = & \$1,060.83 \\ \text{(DOI time-loss rate)} & & \text{(7/1/08 cum. for 12/6/03 DOI)} & & \end{array}$$

\$1,060.83 would be the September 1, 2008 monthly time-loss rate for Kay's date of injury.

Date of Injury and the First Three Days after the Date of Injury [RCW 51.32.090](#)

Injured workers are never entitled to time-loss for the date of injury.

Workers are not entitled to time-loss compensation or loss of earning power (LEP) for the first three days following the date of injury unless the worker remains disabled on the 14th day following the date of injury. If the worker remains disabled on the 14th day, either on time-loss or LEP, they are entitled to compensation for the first three days. Attempts to return to work do not break the continuity.

Date of First Treatment

If a worker seeks treatment within the first 3 days following the injury and would otherwise be entitled to time-loss benefits prior to the date of first treatment, benefits must be paid. If the worker delays seeking treatment until the 4th day or more following an injury, begin payment of time-loss compensation on the date of first treatment.

Timely Payment of Time-loss Benefits [RCW 51.32.190](#), [RCW 51.32.210](#)

Time-loss compensation resulting from an injury or occupational disease must be paid within 14 calendar days of receipt of notice of a claim. Notice of a claim is defined as written documentation of all the following:

- Description of the incident (or occupational disease).
- Worker's signed application for benefits.
- Diagnosis

- Treatment or treatment recommendations.

Continuing benefits will be based on certification from the attending provider. They are to be paid at regular semi-monthly or biweekly intervals to ensure speedy financial relief during the worker's disability. (Biweekly: Paying on a schedule of every 14 days. With this schedule, pay the daily time-loss rate. Semi-monthly: Paying on a schedule of twice a month. With this schedule, divide the monthly rate in half and pay twice a month.)

Sometimes a condition will not be disabling until surgery is performed (a hernia, for example). In these instances, time-loss compensation becomes payable effective the date of surgery unless otherwise medically justified. Payment of time-loss must be made within 14 days of the date of surgery or the date of receipt of other medical certification.

Payment of Ongoing Time-loss [RCW 51.36.060](#), [RCW 51.32.190](#), [WAC 296-20-06101](#)

When an industrial injury or occupational disease prevents a worker from returning to gainful employment on an ongoing basis, time-loss compensation must be paid at regular biweekly or semi-monthly intervals. In order to be eligible for continuing time-loss compensation, the injured worker must be receiving regular curative treatment.

The attending medical provider must certify that the worker's ongoing inability to work is the result of the accepted medical condition(s).

The attending medical provider must submit medical reports at approximately 60 day intervals to support ongoing time-loss. The certification must include the objective medical findings which support time-loss from work. A treatment plan must also indicate prognosis for recovery and the treatment plan should be curative not palliative.

If a worker is participating in formal vocational rehabilitation services they are eligible for continuing time-loss benefits. When the approved plan involves on-the-job training and earnings, the worker is eligible for loss of earning power benefits.

Terminating Time-loss Compensation

Once the payment of time-loss 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, time-loss benefits may be terminated.

Note: If a worker is released for work on the same day they see their provider, time-loss is payable through the end of that day (i.e. worker has an appointment with their provider on January 17th, at the appointment the provider signs a release for work as of January 17th, the same day as their appointment, the worker is eligible for time-loss through the 17th).

- **Found Employable** – When a vocational assessment is conducted and a worker is determined to be employable, time-loss may be terminated after the determination of employability is made.
- **Returns to Work** – When a worker returns to work, they are not eligible for time-loss benefits. If the worker’s earning capacity has decreased as a result of the injury or occupational disease they may be entitled to loss of earning power benefits.

Kept on Salary [RCW 51.32.090](#), [RCW 51.32.190](#), [WAC 296-15-420](#)

A worker is considered kept on salary (KOS) when they continue to receive their normal wages for a period of time they would have otherwise been entitled to time-loss compensation. Normal wages should reflect the worker’s pattern of employment at the time of injury.

Self-insured employers must report KOS by reporting the time-loss compensation that would have been due had the worker not been KOS. It must be reported on a SIF-5 within 5 working days of the date the first time-loss payment would have been due.

[RCW 51.32.090](#) - effective July 22, 2007 “..... (6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.”

This legislative change makes it clear sick leave is a benefit, just like vacation or holiday pay, and not a wage. A worker using holiday pay, vacation pay, sick leave or other similar benefits to continue their salary is not considered to be KOS and is also entitled to time-loss compensation. Employers cannot mandate workers use their time-loss compensation to buy back sick leave.

Payment to Minor Workers [RCW 51.04.070](#)

The law requires that any disability payments becoming due to a worker under the age of 18 years “...shall be paid to his or her parent, guardian, or other person having legal custody.” The parent or guardian can, with written authorization, allow payments to be made directly to the minor worker.

Volunteers [RCW 51.12.035](#), [RCW 51.12.170](#), [WAC 296-17-930](#)

A volunteer is defined as a person who performs any assigned or authorized duties for the state or any agency by choice, receives no wages and is registered and accepted as a volunteer. A worker could still be considered a volunteer even if they receive maintenance and reimbursement

for actual expenses necessarily incurred in performing their authorized duties. In most cases, volunteers injured in the course of employment are only entitled to medical aid benefits. Under RCW 51.12.140, volunteer law enforcement officers may be covered for all applicable death, disability and medical aid benefits under this title if the municipal corporation maintaining and operating the law enforcement department elects to cover all of its volunteer law enforcement officers and files written notice of coverage to the director.

Retired Workers [WAC 296-14-100](#)

If a worker has removed themselves from the labor market by voluntarily retiring, time-loss benefits are not payable. This is true even if the worker becomes temporarily unable to work as a result of the industrial injury or occupational disease after voluntarily retiring. However it must be documented that the retirement was voluntary, as a worker is entitled to time-loss benefits when the retirement is caused by the effects of the industrial injury or occupational disease. Voluntary retirement is most commonly encountered in reopened claims and in new claims filed for occupational diseases which have a prolonged incubation period (such as asbestosis). A worker will be considered retired and no longer attached to the work force if all the following conditions are met:

- The worker is not receiving income, salary, or wages from any gainful employment,
- The worker has provided no evidence to show a bonafide attempt to return to work after retirement, and
- The injury or occupational disease was not a proximate cause of the decision to retire.

Once it is determined that a worker has voluntarily retired from the work force, the self-insurer cannot reinstate benefits.

Exception: If following the voluntary retirement the worker was re-employed at bona fide continuous employment, the department will no longer consider the worker voluntarily retired. If the worker then becomes unable to work due to the industrial injury, the worker would be entitled to time-loss.

Incarceration [RCW 51.32.040](#)

Worker Incarcerated After Date of Injury

No time-loss is payable directly to workers incarcerated and under sentence while:

- Confined in an institution.
- On a home monitoring program and sentenced to remain at home.

Beneficiaries of workers who were incarcerated after the date of injury should receive the workers time-loss compensation benefits while the worker is confined. If no beneficiary exists, no time-loss compensation benefits are paid.

Workers may again become eligible for time-loss compensation benefits under the following circumstances, once:

- No longer confined.
- Released or paroled.
- Released to a half-way house.
- On work release unless both:
 - Their participation is canceled, and
 - The worker is returned to full confinement.

Workers Injured While Performing Community Service or Restitution [RCW 51.12.045](#)

Workers who are injured while performing community service or restitution may be eligible for time-loss.

Registered Apprentices or Trainees [RCW 51.12.130](#)

All persons registered as apprentices or trainees with the state apprenticeship council and participating in supplemental and related instruction classes conducted by a school district, a community college, a vocational school, or a local joint apprenticeship committee, shall be considered as workers of the state apprenticeship council and subject to the provisions of Title 51 RCW for the time spent in actual attendance at such supplemental and related instruction classes.

For computing time-loss compensation payments, the actual wage rate during employment should be used.

Disability Benefits From Other Jurisdictions [RCW 51.12.120](#)

It is possible for a claim to be filed for the same injury in two different jurisdictions. This is most common in cases when a worker is temporarily working in a different state. Some jurisdictions allow workers to file an industrial injury claim in their state regardless of where the injury occurred. The Washington State Industrial Insurance Laws do not preclude this. However it is appropriate under these circumstances to reduce any benefits received in Washington State by the benefits received from another jurisdiction.

Provisional Time-loss Payments [RCW 51.32.190](#), [RCW 51.32.210](#)

When a determination regarding claim allowance cannot be made immediately, usually because the employer is still investigating validity, or when a decision cannot be made immediately regarding reopening a claim, the department or self-insured employer is required to make “provisional” payments of time-loss compensation when it is otherwise appropriate. The payment of “provisional” time-loss is not considered a binding determination on the self-insurer, department or worker. Provisional payments must be made as long as appropriate until a determinative order is issued.

The department and the self-insurer have the right to recover provisional time-loss paid if the claim is rejected or the reopening application is denied. All provisional time-loss payments should contain notification to the worker that the department or self-insurer will recover any monies paid if the claim is rejected or the reopening is denied.

Occasionally a claim will be received from a worker for an injury or occupational disease which occurred months prior to filing of the claim. In many of these instances, more information will be needed prior to a determination regarding claim allowance. If the worker is contending temporary total disability from the time of injury consider payment of provisional time-loss compensation from the date notice of the claim is received. This action should only be taken on claims which a significant delay has transpired in the filing of the claim and a decision regarding allowance cannot be made immediately. If the claim is later allowed, the claims manager must then consider time-loss benefits for the previous period.

Provisional time-loss cannot be paid on open, allowed claims.

Attending Providers [RCW 51.36.010](#), [WAC 296-20-065](#), [WAC 296-20-01002](#)

[RCW 51.36.010](#) gives workers the right to choose the provider who will treat their industrial injury or occupational disease. Providers who can sign accident forms, provider initial reports and certify time-loss compensation include; medical doctors, osteopathic medicine doctors, physiatrists, chiropractors, naturopathic physicians, podiatrists, dentists, physician assistants (PAs) and advanced registered nurse practitioners (ARNPs).

An injured worker often receives initial treatment through a hospital emergency room or urgent care clinic. The injured worker will most often be referred to another provider for their follow-up care. Formal notification of a transfer of provider is not necessary in this situation.

After the worker’s attending provider has been established, all transfers from one provider to another must be approved by the insurer.

Worker Address Changes

Workers should be encouraged to notify the self-insured employer and the department of any address changes as soon as possible to prevent any delay in benefits. Any change to representation by an attorney must be made in writing.

Unemployment Compensation

The receipt of unemployment compensation does not necessarily mean that a worker is not entitled to time-loss compensation. Although effective June 11, 1986 an individual is not entitled to both time-loss and unemployment compensation, there are times an injured worker may have collected unemployment benefits when, they should actually have been collecting time-loss benefits due to an industrial injury. If a worker who has collected unemployment benefits will now be receiving time-loss benefits, it is important that Employment Security is notified so they can decide whether to issue an overpayment.

DSHS – Division of Child Support Liens [RCW 74.20A.030](#), [RCW 74.20A.100](#), [RCW 74.20A.260](#)

When a lien is received from Division of Child Support (DCS, formerly Office of Support Enforcement) it must be acted upon immediately. DCS liens are payable after the claim manager makes the following deductions: Social Security offset, overpayments and alternate recipient payments. DCS liens apply to time-loss, loss of earning power and permanent partial disability awards. A DCS lien filed against a worker's benefits requires self-insurers or the department to withhold a monthly dollar amount or up to fifty percent of time-loss or loss of earning power benefits and up to fifty percent of a permanent partial disability award.

When Office of Financial Recovery (OFR) also makes a lien, the lien for DCS is honored first.

Any lien received after claim closure still applies to any remaining permanent partial disability payments.

DSHS – Office of Financial Recovery Liens [RCW 43.20B.720](#), [RCW 43.20B.730](#), [RCW 43.20B.735](#), [RCW 43.20B.745](#)

When the Office of Financial Recovery (OFR) is advised by the department or by the worker that they are or may be receiving time-loss benefits during a period where they were also receiving public assistance benefits, OFR may file a lien.

OFR liens are payable after the claim manager makes the following deductions: Social Security offset, overpayments, alternate recipient payments and Division of Child Support liens.

OFR liens apply to time-loss, loss of earning power, and permanent partial disability benefits awards.

Overpayments [RCW 51.32.240](#), [WAC 296.14.200](#)

Self-insurers can assess overpayments in accordance with [RCW 51.32.240](#). Overpayments can be deducted from future time-loss or permanent partial disability benefits.

When an overpayment has been made, it is necessary to notify the worker of the existence of the overpayment within one year of the date of its occurrence, otherwise it will be deemed that any claim for overpayment will be waived.

A self-insurer does not need an order and notice when assessing an overpayment. However, in order to obtain a lien from the county clerk, the self-insurer must have an overpayment order from the department.

The self-insurer may request that the department include an overpayment on a closing order, rejection order, wage order, etc.

If an overpayment order is needed and it is related to a time-loss rate error, a wage order will be needed if one has not already been issued.

When a large overpayment exists and time-loss benefits continue to be paid, self-insurers may deduct partial amounts of the overpayment from ongoing benefits. In considering the amount to deduct from ongoing benefits several factors should be considered. Of primary concern is that the amount deducted from each payment should not be so large as to place a hardship upon the injured worker.

An overpayment which exists at the time of closure can be deducted from a permanent partial disability award.

If a recovery of an overpayment causes a hardship to the worker, the worker may request a waiver of the overpayment. The director may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

Deductions from Time-Loss Compensation Payments

Except as provided in [RCW 43.20B.720](#), [RCW 72.09.111](#), [RCW 74.20A.260](#), [RCW 51.32.240](#) and [RCW 51.32.380](#), no other deductions may be made from time-loss or LEP compensation.

[RCW 51.32.040](#) prohibits any other creditors from garnishing workers' disability benefits and prohibits workers from voluntarily assigning their benefits to any other creditors.

Deductions cannot be taken from time-loss or LEP compensation benefits for car payments, disability insurance, healthcare insurance, etc.

Suspension of Benefits [RCW 51.32.110](#), [WAC 296-14-410](#)

Self-insurers may, under certain circumstances, request that the department reduce or suspend an injured worker's benefits. The self-insurer must request **and receive** a suspension order from the department **before** actually reducing or suspending benefits.

[RCW 51.32.110](#) limits the reasons for suspending benefits to the following actions:

- **Persistence of the worker in unsanitary or injurious practices which tend to imperil or retard his/her recovery.**

This could include, not keeping wounds clean, taking actions that their physician has recommended against i.e. worker with a lifting limit of 10 lbs lifting much heavier objects.

- **Refusal to submit to medical or surgical treatment “as is reasonably essential to his/her recovery”.**

This can include among other things missing regular medical appointments, physical therapy appointments, or surgery, etc.

- **Refusal or obstruction of vocational evaluation or rehabilitation or failure to cooperate in “reasonable efforts” at such rehabilitation.**

This can include not showing up for appointments with their vocational counselor, not showing up for vocational testing, if worker is in plan not getting acceptable grades at school, etc.

- **Refusal to submit to, or obstruction of, a medical examination requested by the department or self-insurer “at a place reasonably convenient for the worker”.**

This includes not showing up for appointments scheduled by the department or self-insurer.

Determining if Suspension is Appropriate

Suspending or reducing benefits should not be casually considered or implemented and is to be used only after proper warning has been given to the worker of the potential consequences of their actions. When it becomes known that a worker is not cooperating with medical or vocational assistance a letter should be sent immediately letting the worker know that they are expected to cooperate, i.e. show up for physical therapy appointments, vocational appointments, etc. If the non-cooperative behavior persists, certain procedures must be followed. At least one letter must have been sent by the claim manager, to the worker that included the following:

- An explanation of the non-cooperative behavior, including the specifics of what is expected of the worker, i.e. start attending physical therapy appointments.
- Informed the worker that benefits could be suspended as a result of their non-cooperation (Recommend attaching a copy of WAC and/or RCW).
- Asked the worker their reasons for the non-cooperation.
- Informed the worker they have 30 days from the date of the letter to respond in writing.

For suspension requests relating to independent medical exams (IMEs) or other exams scheduled by the insurer additional specific criteria must be met. If **all** the following criteria have not been met, the claim should not be suspended. When setting up the exam, the insurer must have complied with the following:

- Given the worker written notice at least 14 days but not exceeding 60 days, prior to the exam.
Note: If the worker has representation, send one notice directly to the worker and one copy in care of their representative.
- Provided the date, time and location of the examination.

When the worker responds in writing regarding their reasons for non-cooperation, or has had 30 days to respond and has not responded, the self-insurer will review to determine if they believe “good cause” for the non-cooperation exists. “Good cause” for non-attendance at the exams includes, but is not limited to the following:

- The worker did not receive written notice of the examination within the timeframes.
- The worker arrived within 30 minutes after the scheduled appointment time and could not be seen.
- The worker waited more than one hour for the medical examination and then left.
- An unforeseen event occurred prior to the examination that could not be avoided.
- The self-insurer did not assist with travel arrangements if necessary, i.e. purchase plane tickets.

For suspension requests relating to vocational services additional specific criteria must be met. If all of the following criteria are not met, the claim will not be suspended.

- The warning letter must come from the claim manager.
Note: Warning letters from the vocational counselor are useful in documenting the non-cooperative behavior but not sufficient notification in and of themselves.

- Vocational services should remain open during the suspension.

The vocational counselor is the point of contact for the injured worker who decides to cooperate. If benefits continue to be suspended, the self-insurer may submit for closure of vocational services with claim closure.

Requesting Claim Suspension

If the self-insurer after their review believes that the claim should be suspended, they should send in a request for suspension to the department along with all the documentation: copies of non-cooperation letters, notes from medical or vocational providers, etc.

The department adjudicators will review and issue an order suspending the claim if they agree. If they disagree with the request they will write a letter to the self-insurer explaining why the claim should not be suspended.

Remember:

- Suspensions cannot be back dated. The department can only suspend a claim from the date of the suspension order.
- Once a claim is suspended, the suspension will not end until the worker begins to cooperate or the closure becomes final and binding.
- Send the department all your documentation showing why you are requesting claim suspension.

Partial vs. Complete Suspension

One thing to consider when contemplating suspending a claim is what you wish to bring about by suspending the claim. Consider suspending partial versus all benefits.

Example:

Joe is still in need of medical treatment but is not attending vocational appointments. Consider suspending time-loss only. Suspending medical treatment for a worker who is cooperating with medical treatment may actually delay resolution of the claim. Suspending only time-loss may persuade the worker to cooperate with vocational services while ensuring he receives curative medical treatment.

Ending Claim Suspension

When the worker begins to cooperate, send notice to L&I along with the date the worker began cooperating i.e. Mr. Smith attended an IME on March 3, 2009. The department adjudicator will issue an order ending the suspension.

If the suspension continues and the worker has not indicated a willingness to cooperate, submit the claim for closure. The claim suspension will end with the closure of the claim.

Social Security Offset [RCW 51.32.220](#), [RCW 51.32.225](#), [RCW 51.32.230](#)

If a worker receiving monthly compensation benefits also begins receiving Social Security Benefits, the worker or self-insurer should immediately notify the Social Security Offset Section. Future benefits may be reduced depending on the effective date of the offset. The total amount from both agencies will not be less than the worker would be entitled to receive from L&I alone.

Social Security Offset Benefit Specialists determine the amount of any reduction, correlating state industrial insurance laws with federal laws. Then, they apply the reduction to the workers monthly compensation benefits and monitor state and federal rates for any necessary adjustments.

Self-insurers are to provide the following in their request for a Social Security offset review:

- We received acknowledgment of the worker's application for and/or receipt of Social Security benefits, on __/__/__ (include the referenced documentation).
- The current ongoing monthly compensation benefits began __/__/__ and continue. Submit printout of the claims benefit payment history, i.e. time-loss, LEP and permanent partial disability. Include the beginning and ending dates of each payment, the date of the payment, and the payment amount.
- The self-insured employer intends to instate monthly compensation benefits for the period beginning __/__/__ through __/__/__, and continue payments.
- This claim is currently in litigation, with a possibility of payment of compensation benefits. The self-insured employer has been advised of the worker's application and/or receipt of Social Security benefits. Please verify worker's approval of Social Security benefits.

A wage order was issued on __/__/__. The self-insured employer's monthly contribution to health care benefits continues. (Or) The self-insured employer's monthly contribution to health care benefits has been terminated. **Note:** List the date the self-employer's contribution to health care benefits ended and the end date of each coverage type (medical, dental, vision).

No wage order has been issued. **Note:** Provide completed SIF wage forms for worker's work pattern and earnings, along with documentation required in accordance with the SIF wage forms submitted. List the date the employer's contribution to health care benefits ended and the end date of each coverage type (medical, dental, vision).