

AMENDATORY SECTION (Amending WSR 03-11-035, filed 5/15/03, effective 6/15/03)

WAC 296-14-522 What does the term "wages" mean? The term "wages" is defined as:

(1) The gross cash wages paid by the employer for services performed. "Cash wages" means payment in cash, by check, by electronic transfer or by other means made directly to the worker before any mandatory deductions required by state or federal law. Tips are also considered wages but only to the extent they are reported to the employer for federal income tax purposes.

(2) Bonuses paid by the employer of record as part of the employment contract in the twelve months immediately preceding the injury or date of occupational disease manifestation.

(3) The reasonable value of board, housing, fuel and other consideration of like nature received from the employer at the time of injury or on the date of occupational disease manifestation that are part of the contract of hire.

(4) The payment or contribution made by the employer for health care benefits at the time of injury or on the date of occupational disease manifestation. Health care benefits include medical, dental and vision insurance.

Exception: Payments or contributions for items other than board, housing, fuel or other consideration of like nature made by the employer to a trust fund or other entity for fringe benefits do not constitute wages.

AMENDATORY SECTION (Amending WSR 03-11-035, filed 5/15/03, effective 6/15/03)

WAC 296-14-524 How do I determine whether an employer provided benefit qualifies as "consideration of like nature" to board, housing and fuel? To qualify as "consideration of like nature" the employer provided benefit must meet all of the following elements:

(1) The benefit must be objectively critical to protecting the worker's basic health and survival at the time of injury or date of occupational disease manifestation.

(a) The benefit must be one that provides a necessity of life at the time of injury or date of occupational disease manifestation without which employees cannot survive a period of even temporary disability.

(b) This is not a subjective determination. The benefit must be one that virtually all employees in all employment typically use

to protect their immediate health and survival while employed.

(c) The benefit itself must be critical to protecting the employee's immediate health and survival. The fact that a benefit has a cash value that can be assigned, transferred, or "cashed out" by an employee and used to meet one or more of the employee's basic needs is not sufficient to satisfy this element.

(2) The benefit must be readily identifiable. The general terms and extent of the benefit must be established through the employer's written policies, or the written or verbal employment contract between the employer and worker (~~((for example, a collective bargaining agreement that requires the employer to pay a certain sum for the employee's health insurance))~~).

(3) The monthly amount paid by the employer for the benefit must be reasonably calculable (~~((for example, as part of the employment contract, the employer agrees to pay three dollars for each hour worked by the employee for that person's health insurance))~~).

Examples of benefits that qualify as "consideration of like nature" are medical, dental and vision insurance provided by the employer.

Examples of benefits that do **not** qualify as "consideration of like nature" are retirement benefits or payments or contributions into a retirement plan or stock option, union dues and life insurance provided by the employer.

AMENDATORY SECTION (Amending WSR 03-11-035, filed 5/15/03, effective 6/15/03)

WAC 296-14-526 Is the value of "consideration of like nature" always included in the worker's wages used in determining the ((worker's)) rate of time-loss or pension compensation? (1) No. The value of other consideration of like nature is ~~((only))~~ included in the worker's monthly wage ~~((if))~~ when:

(a) The employer ~~((, through its full or partial payment, provided))~~ paid or contributed to the benefit ~~((to the worker))~~ at the time of injury or on the date of occupational disease manifestation; and

(b) ~~((The worker received the benefit at the time of injury or on the date of disease manifestation.~~

~~This section is satisfied if, at the time of injury or on the date of disease manifestation:~~

~~(i) The employer made payments to a union trust fund or other entity for the identified benefit; and~~

~~(ii) The worker was actually eligible to receive the benefit.~~

Example: ~~At the time of the worker's industrial injury, the employer paid two dollars and fifty cents for each hour worked by the employee to a union trust fund for medical insurance on behalf of the employee and her family. If the employee was able to use~~

~~the medical insurance at the time of her injury, the employer's monthly payment for this benefit is included in the worker's monthly wage, in accordance with (d) of this subsection. This is true even where the worker's eligibility for this medical insurance is based primarily or solely on payments to the trust fund from past employers.~~

~~(c) The worker or beneficiary no longer receives the benefit and the department or self-insurer has knowledge of this change.~~

~~If the worker continues to receive the benefit from a union trust fund or other entity for which the employer made a financial contribution at the time of injury or on the date of disease manifestation, the employer's monthly payment for the benefit is **not** included in the worker's monthly wage.~~

~~**Example:** An employer contributes two dollars and fifty cents for each hour an employee works into a union trust fund that provides the employee and her family with medical insurance. If the employer stops contributing to this fund, but the worker continues to receive this benefit, the employer's monthly payment for the medical insurance is not included in the worker's monthly wage.) The employer no longer pays or contributes to the benefit and, for claims insured through the state fund, the department has knowledge of this change.~~

(2) This rule does not permit the department or self-insurer to alter, change or modify a final order establishing the worker's monthly wage except as provided under RCW 51.28.040.

NEW SECTION

WAC 296-14-527 Is the value of "health care benefits" always included in the worker's wages used in determining the rate of time-loss or pension compensation? No. The value of health care benefits is included in the worker's monthly wage when:

(1) The employer paid or contributed to the benefit at the time of injury or on the date of occupational disease manifestation; and

(2) The employer does not continue the payment or contribution for benefits at the same level as made at the time of injury or on the date of occupational disease manifestation and, for claims insured through the state fund, the department has knowledge of this change.

Example: An employer contributes two dollars and fifty cents into a union trust fund or hour bank on behalf of the worker for each hour an employee works. The union trust fund or hour bank uses the employer's contribution to provide medical insurance for the employee and his family. When the employer stops contributing for the worker, the employer's payment for the medical insurance is included in the worker's monthly wage. The employer's payment is included in the worker's wage even if the worker did not have

enough hours in the hour bank to be entitled to the medical insurance.

Example: An employer contributes five hundred dollars on the last day of each month to provide medical insurance for an employee and her family. The employer contributes this amount on June 30 for July medical insurance coverage. The employee is hurt on July 2 and the employer does not contribute for the medical insurance on July 31 (the next contribution date). The employer's monthly payment or contribution for the medical insurance is included in the worker's monthly wage effective August 1.