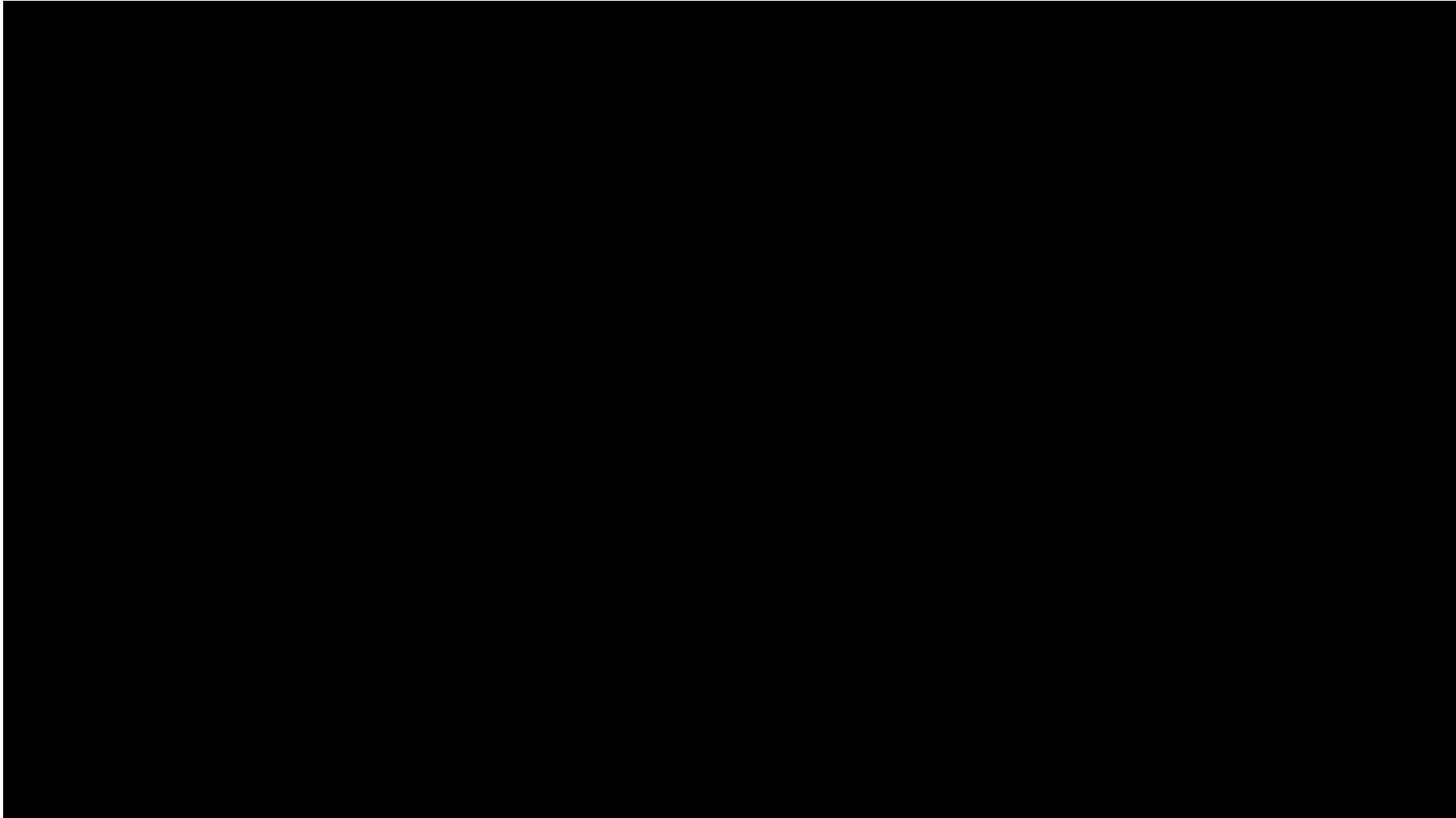




Loss of Earning Power

Safety Video



What is Loss of Earning Power?

A worker's inability to earn full income as a result of their injury or occupational disease.

- If a worker is unable to work their regular schedule, LEP benefits may be payable.
- LEP benefits are payable only if the loss of earning exceeds 5%.

Eligibility for LEP Benefits

Workers may be eligible for LEP if:

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

LEP Worksheet

- While not a legal form, it is recommended to use.
 - If the SIE does not use the form, they must submit documentation of their benefit calculations.
- Available online for use.
- If documentation has not been sent in previously, all worksheets must be sent when requesting claim closure.

Timeliness of Payments

- LEP should be paid as close to the TL payment cycle as possible.
- LEP is often paid on the same cycle as payroll, since the payroll records are used to determine the LEP wages.
- Timeliness requirements apply to provisional payments as well.

Reporting Requirements

- Within 5 days of starting LEP, the SIE must send the Start, Stop or Deny Compensation Benefits template to the worker.
- Copy must be sent to the department with the SIF-2.
- LEP calculations are part of the claim file and should be supplied to the department.
- Statement of benefits must be included with each payment.

Valid Light Duty Job Offers

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

Refusal of Valid Light Duty

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

Knowledge Check



Sam was injured at PS Gaming. He makes \$30 an hour, 40 hours per week. He was unable to perform his job of injury and started working light duty for a different company making \$25 an hour, 32 hours per week. **Is he entitled to Loss of Earning Power (LEP)?**

Yes

Bill was working 40 hours at time of injury. He returned to work light duty and overtime is being offered.

Is he eligible for LEP for not being able to work the newly offered overtime?

No, he was not working regular overtime at the time of injury (not part of his regular wage calculation).

When should LEP payments be made?

As close to regular pay date as possible

What needs to be included in a valid light duty job offer?

All of the above



Washington State Department of
Labor & Industries

The Calculation

4 Key Numbers

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

Updated DOI Wages

- Wages the worker would have earned if the injury or occupational disease had never occurred.
- Include any increases in the hourly rate or salary.
- Calculate for the period being paid, not necessarily a full month.
 - Set schedule: Hourly rate x hours per day x working days
 - Varied schedule: Monthly wage ÷ 30 x calendar days

Updated DOI Wages

Health care benefits:

- If employer was contributing to HCB on DOI and contributions have ended, include in calculation.
- If HCB contributions continue, do not include HCB.

Updated DOI Wages Example

Connor was earning \$19.30 per hour, 8 hours a day, 5 days a week on the DOI. The SIE stated if he was still able to do the JOI, he would have received a raise to \$21.00 per hour. The SIE contributes \$350.00 per month to health care benefits.

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

Wages: $\$21.00 \times 8 \times 11 \text{ working days} = \$1,848.00$

HCB: $\$0.00$ (SIE still contributing to HCB)

Total updated wages: $\$1,848.00$

Current Wages

- Actual gross wages the worker earned at the light duty job.
- Usually the amount listed on the pay stub.
 - If the worker didn't work all available hours, use the amount they would have earned if they had worked all hours.
- Include all current bonuses, overtime, etc.
 - Bonuses should be averaged the period they cover.

Current Wages Example

Connor is working light duty earning \$18.50 per hour. He is scheduled for 6 hours a day, 5 days a week. His pay stub shows he earned \$1,240 from 9/1/14 through 9/15/14. The SIE continues to contribute \$450.00 per month for HCB. He received no bonuses during this period.

Pay stub earnings: \$1,240.00

HCB: \$0.00 (SIE continuing to pay HCB)

Total current wages: \$1,240.00

Time-Loss Rate

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

TL Rate Example

Connor was injured on 5/16/13. He was earning \$19.30 per hour, 8 hours per day, 5 days per week. The SIE was contributing \$350.00 per month to HCB and continues to do so. He is married with 4 dependents. The LEP period is 9/1/14 - 9/15/14.

TL rate:

$$\text{\$19.30} \times 8 \times 22 = \text{\$3,396.80 GMW}$$

$$\text{\$3,396.80} \times 73\% = \text{\$2,479.66} \times 1.02016 \text{ COLA (7/1/14)} =$$

$$\text{\$2,529.65} \div 30 = \text{\$84.32/day} \times 15 = \text{\$1,264.80}$$

State's Average Wage x 1½

- 1½ x State's Average Wage in effect **at the time of the LEP payment.**
- Back of LEP worksheet has a list of monthly and daily rates.
- Multiply daily rate by calendar days in the LEP period.

Example (Connor): Payment period 9/1/14 - 9/15/14

SAW x 1½ daily amount = **\$219.31 x 15 days = \$3,289.65**

Calculation Methods

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

Method B Capping

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

Dependent Portion

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

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

Knowledge Check



Silas was injured on 3/20/21 while working as a truck driver. At the time of his injury, he was working 6 hours per day, 4 days per week (Wednesday through Saturday) and was earning \$39.00 per hour. His employer contributed \$600.00 per month toward health care benefits. He is married with 2 dependent children.

He sought treatment on 3/21/21, and his doctor took him off work the same day. On 6/5/21, he was released to work light duty and returned to work as a dispatcher earning \$32.00 per hour, 4 hours per day, Wednesday through Saturday.

Effective 6/13/21, Silas returned to his job of injury at his regular wages and hours. His health care benefits were never terminated.

Compute Silas' LEP benefits for 6/5/21 – 6/12/21.

Silas

1. Updated Wages:

$\$39.00 \times 6 \text{ hrs} \times 5 \text{ (working days)} =$
 $\$1,170$

2. Current Wages:

$\$32.00 \times 4 \text{ hrs} \times 5 \text{ (working days)} =$
 $\$640.00$

3. TL Rate:

$\$39.00 \times 6 \times 18 = \$4,212.00$
 $\$4,212.00 \times .69 = \$2,906.28$
 $\$2,906.28 \div 30 = \96.88
 $\$96.88 \times 8 \text{ calendar days} =$ **$\$775.04$**

4. SAW x 1 ½:

$\$290.41 \times 8 \text{ calendar days} =$
 $\$2,323.28$

LEP entitlement: **$\$424.00$**

Method Used: **B**

Dual Claim Benefits

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

Work No Longer Available

- If light duty ends for reasons outside the worker's control, time-loss becomes payable.
- Reasons may include:
 - Layoffs
 - Plant shutdown
 - No longer able to accommodate light duty

Termination for Cause

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

New Injury While on Light Duty

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

- Transitional light duty with the employer of injury
- Permanent light duty with employer of injury
- Job with a new employer

Injury on Transitional LD with SIE

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

Permanent LD with SIE or New Employer

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

Terminating LEP Benefits

Payments should be terminated when:

- Worker is released to full duty.
- Worker is found employable.
- Claim reaches legal fixity (closure) only if:
 - Worker returns to permanent light duty job with SIE.
 - Worker is in or recently completed on-the-job training program.

Documentation

- SIF-5A
- Payroll records
 - These should include explanations of any pay codes
- [Loss of Earning Power Worksheet](#)

Resources

- L&I self-insured section – self-insured main-page
<https://lni.wa.gov/insurance/self-insurance/about-self-insurance/>
- Claims Adjudication Guidelines (CAG) – LEP
 - https://lni.wa.gov/insurance/_docs/CAGLossOfEarningPower.pdf
- [Forms and Templates – SIF 5A](#)
- [Benefit calculations page](#)
- [Loss of Earning Power \(LEP\) Calculator](#)



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