



Washington State Department of
Labor & Industries

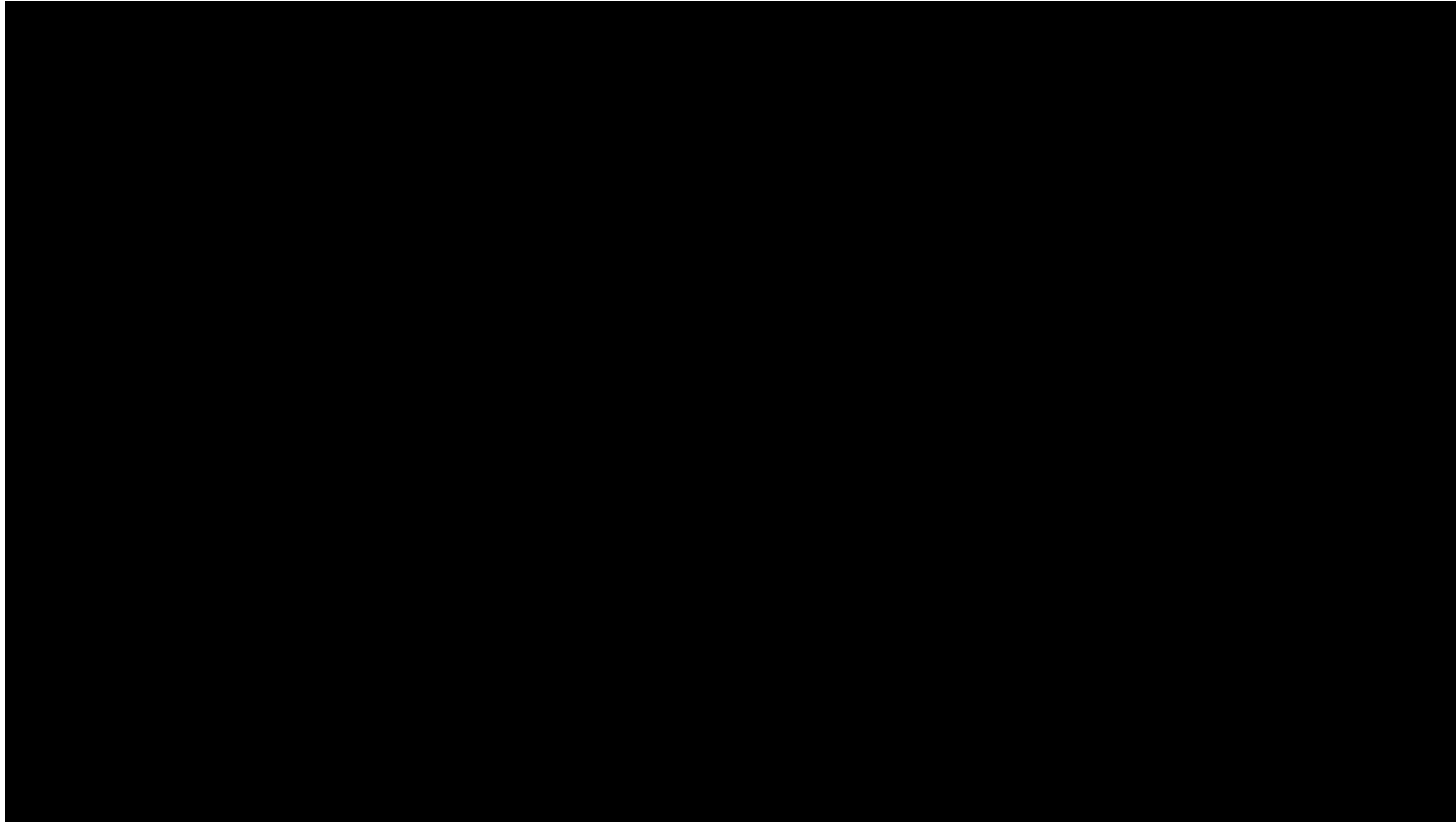
Self-Insurance

Basic Wages

March 2023



Safety Topic



RCW 51.12.010

- 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

- Intent is to ensure that wages are computed in a fair and equitable manner.
- Contains instructions for how to calculate wages.
 - Outlines when and how to include overtime in calculations.
 - Defines other types of compensation included in wages (housing/board, tips, etc.)
- Employer's contribution to health care benefits is also considered wages.

Wages at the Time of Injury

- Time-Loss compensation calculations are based on the wages the injured worker was receiving at the time of injury. These wages must include all employment and represent the wage the worker was earning when injured.

Other Compensation

- Wages may include types of compensation beyond those listed in RCW 51.08.178 and WAC 296-14-522.
 - Commissions
 - Longevity pay
 - Clothing/food allowance
- Benefits not essential to worker's life are not included (contributions to retirement, trust fund, etc.)

Other Compensation (continued)

- Compensation that is not taxable should not be included
- Housing, fuel, and food may be included if they are taxable
- Food and lodging during travel are not included

Subsection 1

- Also known as “regular and continuous” employment.
- Most workers fit under subsection (1).
- Applies to workers who:
 - Are paid a monthly salary, or
 - Have a regular and continuous work schedule.
- Under Sub (1), overtime is included at base rate of pay.

Monthly Salary

- If the worker has fixed monthly salary, use this amount for the gross monthly wage.
- If the worker is eligible for overtime, calculate separately using averaging hours per day or per month.

Regularly Scheduled

- Calculate wages based on hours worked per day and days worked per week.
- Use formula given in the statute:
 - $\$15.50 \text{ per hour} \times 8 \text{ hours per day} \times 22 \text{ days per month} = \$2,728 \text{ per month.}$

Regularly Scheduled

Number of days worked per week:

	x		x	=	
<u>Hourly Rate</u>		<u>Hours per day</u>			<u>\$0.00</u>
			<i>*Days per month</i>		<i>Monthly Wage</i>

**Days per month are defined by law and are based on the number of days worked per week.*

Days worked per week	Days per month
1	5
2	9
3	13
4	18
5	22
6	26
7	30

Representative Period and Averaging Hours

- When the worker's schedule varies, average the worker's hours, not the wages.
- Hours paid for vacation, sick leave, holidays, etc. should be included in total hours.
- Overtime hours are only included if there is a pattern of overtime worked.

Representative Period & Averaging Hours

- Default representative period is 3 months prior to DOI.
 - One month is considered a **consecutive calendar month**
 - Example: February 14 – March 13 = 28 days
 - March 18 – April 17 = 31 days
- Determine how the worker is paid:
 - Monthly: use 3 months
 - Semi-monthly: use 6 pay periods
 - Bi-Weekly: use 6.5 pay periods
 - Weekly: use 13 pay periods

Averaging Hours Per Day

- Use if the worker has a set number of days per week, but daily hours vary.
- Use total hours in representative period and divide by the number of days worked.
- Multiply daily wage by appropriate number of days per month.

Averaging Hours Per Month

- Use when the worker doesn't work a set number of days **OR** hours.
- Use total hours in representative period and divide by the number of months.
- Multiply monthly hours by hourly pay rate.

Multiple Rate of Pay

- Average hours per month for each rate of pay, then multiply by the applicable hourly rate.
- Add totals from each rate of pay to find total gross monthly wage.
- Include overtime in each rate separately, not combined.

Dairy And Agriculture Workers

- Dairy workers became entitled to overtime wages 07/25/2021 per case law.
- Extends overtime rights to all agricultural workers by removing the agricultural exemption.
- Agricultural workers, including piece-rate workers, must earn at least the state minimum wage.
- Currently and moving forward, overtime pay must be at least 1.5 times the employee's regular rate of pay.

Agriculture Workers

- Wage changes for Agriculture, or non-dairy, workers will become effective January 1, 2022
- RCW 49.46.130 (6) incrementally reduces the number of hours employees need to work in a week before they're entitled to overtime.
- Beginning:
 - Jan. 1, 2023, the threshold will be 48 hours
 - Jan. 1, 2024, the threshold will be 40 hours

Fred Meyer Inc. v. Shearer (2000)

- Shift differential is **not** overtime, even if paid at the same rate.
 - Considered additional compensation for working undesirable hours.
 - May still be listed as overtime (OT) on payroll records.
- Hours should be calculated at the full rate of pay.

Bundling

- If any rate of pay does not equal at least 8 hours per month, the hours can be rolled (bundled) into the next highest rate.
 - Rates are considered “minimally worked hours.”
- If you choose to bundle one rate, you **must** bundle them all.

Minor Variations

- 10% or less variation between hours worked and hours scheduled.
- BIIA Significant decision: In re Maggie Stedman (2010)
 - “Minor variations in hours worked should be considered self-correcting rather than representative of a change in full-time status.”
- Used for regularly-scheduled employees if has a set schedule but does not always work all scheduled hours.

Minor Variation Worksheet

Calculation of Minor Variation for a Regularly Scheduled Employee - One Rate of Pay			
<p><i>If the variation is less than 10%, use regularly scheduled with a minor variation to calculate the monthly wage.</i></p> <p><i>Paid Vacation and Sick Leave should be included in the Actual Hours worked.</i></p> <p><i>Do not include overtime hours in the "Actual hours worked."</i></p> <p><i>If the variation is greater than 10%, use averaging to calculate the monthly wage.</i></p>	Scheduled Hours:	0.01	
	Actual Hours Worked:		
	$\frac{0.00}{\text{Actual Hours}} \div \frac{0.01}{\text{Scheduled Hours}} = \frac{0}{\text{Variation}}$		
	$\frac{1.00}{\text{Actual Hours}} - \frac{0}{\text{Variation}} \times \frac{100}{\text{Variation}} = \frac{100.00}{\% \text{ Variation}}$		

Multiple Employers

- If worker has another job, the SIE must attempt to obtain wage info for other employers.
 - Letter to worker is sufficient.
- Each job must be calculated separately on SIF-5A.

Knowledge Check



What RCW governs wages?

RCW 51.08.178

Rebecca worked as a barista in a small coffee stand when she was injured. Should the tips be included in her wage calculation?

Only if they are taxed

Under subsection 1, overtime hours are:

Included only when there is a pattern of overtime

If a worker has more than one paying job, the additional job(s) wages are:

Always included

Mia stated on the SIF-2 she works 8 hours per day 5 days per week earning \$18.00 per hour. The employer provided an SIF-5A indicating total hours worked were 486 hours in a 3-month period. Payroll records show that the worker worked consistent hours and days per week.

How many hours should she have worked in the 3-month period? 528

8 hours per day x 22 days per month x 3 months = 528

How many actual hours did she work in the 3-month period? **486**

% of Minor Variation? 8% **486 ÷ 528 = .92** **1.00 - .92 = .08**

Regularly scheduled or average hours? **regularly scheduled**

What is her gross monthly wage? \$3,168.00

\$18.00 x 8 x 22 = \$3,168 gross monthly wage

Rip indicated on the SIF-2 that he works 6 hours per day 4 days per week earning \$22.00 per hour. The employer provides an SIF-5A indicating total hours worked were 250 hours in a 13-week period. Payroll records show that he worked consistent hours and days per week.

How many hours should he have worked in the 13-week period? 312
6 hours x 4 days x 13 weeks = 312

How many actual hours did he work in the 13-week period? **250**

% of Minor Variation? 20% **250 ÷ 312 = .80** **1.00 - .80 = .20**

Regularly scheduled or average hours? **average hours**

What is his gross monthly wage? \$1,833.26

250 hours ÷ 3 months = 83.33 hours/mo. x \$22.00 = \$1,833.26

Subsection 2

Part-Time, Seasonal, and Intermittent workers

- Part-time: No set schedule or discernable pattern, and hours spent at employment are significantly less than the number of hours typically worked by employees in that industry.
- Seasonal: Work activities performed during a particular time of year.
- Intermittent: Pattern is sporadic with definite start and stop points and significant gaps in between.

Intent To Work

- Beyond job of injury work pattern, Dept. of L&I v. Avundes (2000) requires us to consider worker's **intent** to work.
- First, consider worker's relationship to employer of injury.
- Then, consider worker's relationship to that type of employment in general.

School District Employees

- Most school district employees are Sub 2 because they have specific start and stop dates.
- Include wages from **ALL** other employment and all wages from the school district (coaching, stipends, etc.)
- Watch for specific jobs – some employees work year-round and are regular & continuous.

Calculating Subsection (2) Wages

- Total wages from all employment in any 12 consecutive months prior to the date of injury, then divide by 12.
- SIE/TPA must review payroll records for all worker's employment for at least 1 year prior to DOI.
 - If unable to get records, must provide documentation of attempt (letter to worker).
- 12 months immediately prior to DOI are default.

Subsection 3 - Bonuses

- Always applies, regardless of whether worker is Sub (1) or (2).
- Add all bonuses paid in 12 months immediately preceding DOI, then divide by 12.
- Only applies to employer of injury.

Subsection 4 – Like Wages

- Use when the wage is not fixed or cannot be fairly determined. (no contract of hire)
- Typically used when worker has worked less than one month and was not hired with a regular schedule.
- SIE should review payroll documents for 3 “like” employees, choose one, and explain why.

Knowledge Check



What Subsection?

Stacey was a stay-at-home mom who was hired to work at Round Up Coffee Corral from 7:00 am through 10:00 am three days a week (M-W). Those are the only hours she is available to work outside the home.

- Sub 1
- Sub 2
- Sub 3
- Sub 4

Junior was hired to work for Sunrise Farms from August through October doing various tasks. He was injured while picking apples for the employer when he fell from a ladder. When he is not harvesting apples, the remainder of his time is working as a general farm laborer for the same employer. After receiving a work history, it shows that Junior did work for other farms throughout the year prior to his date of injury.

- Sub 1
- Sub 2
- Sub 3
- Sub 4

Teddy was hired by Red Berry Farms during the height of harvest to pick strawberries. Based on his job history, he typically works during harvest season. Based on your interview with him he doesn't work during the remainder of the year. He was injured after two weeks on the job.

- Sub 1
- Sub 2
- Sub 3
- Sub 4

Ricky works as a 7th grade History teacher for Columbia Junior Valley High School from September through June. In the summertime, he works at a box store. He is assaulted by a student in the hallway in December.

- Sub 1
- Sub 2
- Sub 3
- Sub 4

Kayce was hired as a salesperson for a shoe store during the summer when business is at its peak. In October, his hours were cut in half so he picked up another job. He was injured at the shoe store in December. Which subsection should we use to calculate his wages?

- Sub 1
- Sub 2
- Sub 3
- Sub 4

Why? Even though he was working less than full time, he was working on a regular and continuous basis.

Willa, a high school student was hired to clean stalls at the local fairground. There are three week-long events each year and she works all three. She has done this for the last two years. Based on her job history, this is her only employment. A discussion with her confirmed that this is the only job she currently chooses to do.

- Sub 1
- Sub 2
- Sub 3
- Sub 4

Why? Her job is intermittent with specific start and stop dates. Since this is the only job she chooses to do, her relationship to employment is intermittent.

Non-Standard Wages

- Regular and continuous employment pattern, but no hourly rate.
- Typically applies to workers paid by the mile, trip, or piecework.
- Average earnings over a period of 3-12 months prior to the injury.

Non-Standard Example

The worker is a truck driver who is paid \$0.655 per mile. In the last 3 months, he drove 39,200 miles.

What is his total earnings for the 3 months?

$39,200 \times \$0.655 = \$25,676.00$ total earnings

What is his gross monthly wage?

$\$25,676.00 \div 3 \text{ months} = \$8,558.67$ gross monthly wage

Cockle v. Dept. of L&I (2001)

- Actual cost of employer-provided health care benefits must be included in wages.
 - Includes medical, dental, and vision
- Do not have to address whether the worker was “eligible” to access benefits at that time.

Gross Monthly Wage

Total Monthly Wage - (this is the basis for worker's compensation payment; it is not the benefit amount.)												
<u>\$0.00</u>	+	<u>\$0.00</u>	+	<u>\$0.00</u>	+	<u>\$0.00</u>	=	<u>\$0.00</u>	+	<u>\$0.00</u>	=	<u>\$0.00</u>
Monthly Wage for Job of Injury		Monthly Value of Bonuses		Monthly Value of Other Compensation		Monthly Wage for All Additional Jobs		Sub - Total of Monthly Wage		Monthly Value of Health Care Benefits		TOTAL MONTHLY WAGE

Knowledge Check



Gross Monthly Wage

Trevor says he earns \$16.50 an hour and he works 8 hours a day, 5 days a week. What is his GMW?

$$\text{\$16.50} \times 8 = \text{\$132} \times 22 = \text{\$2,904}$$

Hetty indicates that at the time of injury she was earning \$1,500 a week and worked an 8/5 schedule. What is her GMW?

$$\text{\$1,500} \div 5 = \text{\$300} \times 22 = \text{\$6600}$$

Mr. Higgins says he earns \$15.80 an hour and works 8 hours a day, 5 days a week. His employer provides health care coverage in the amount of \$600.00 per month. What is his GMW?

$$\text{\$15.80} \times 8 = \text{\$126.40} \times 22 = \text{\$2,780.80} + \text{\$600} = \text{\$3380.80}$$

Ms. Long's employer says she earns \$21.00 an hour and works 8 hours per day, 5 days per week and has employer-provided health care coverage in the amount of \$775.00 per month. What is her GMW?

$$\text{\$21.00} \times 8 = \text{\$168} \times 22 = \text{\$3696} + \text{\$775} = \text{\$4471}$$

Moe, who owns Moe's Tavern was injured on 6/15/2021 after slipping on spilled beer behind the bar. Moe submitted payroll and tax records that support he pays himself 42.86 per hour working 10 hours a day, 6 days a week. Moe reports 1000.00 per month in tips. What is his GMW?

$$\begin{aligned} \$42.86 \times 10\text{hr} &= \$4,286.00 \times 26\text{days} = \$11,143.60 + \\ \$1,000.00 \text{ (tips)} &= \mathbf{\$12,143.60} \end{aligned}$$

Top 5 *Method* Errors Found In Audit

1. Multiple Rates of Pay
2. Health Care Benefits
3. Bonuses
4. Other Compensation
5. Representative Period



Documentation

- SIF-5A
- Payroll records
 - These should include explanations of any pay codes
- Calculation of Monthly Wage as a Basis for Time-Loss Compensation (F207-227-000)

Resources

- L&I self-insured section – self-insured main-page
<https://lni.wa.gov/insurance/self-insurance/about-self-insurance/>
- Claims Adjudication Guidelines (CAG) – Wages
https://lni.wa.gov/insurance/_docs/CAGWages.pdf
- Forms and Templates – SIF 5A
<https://www.lni.wa.gov/insurance/self-insurance/about-self-insurance/forms-publications>

Questions?

- Claim-specific questions: Call 360-902-6901 and ask for the claim adjudicator assigned to the claim.
- General claim questions: email us at SITrainerquestions@lni.wa.gov