



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

JOE MANCHIN III
Governor

JANE L. CLINE
Insurance Commissioner

AUGUST 2008

WEST VIRGINIA INFORMATIONAL LETTER

NO. 162

TO: All Insurance Companies Doing Business in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications and Other Interested Persons

RE: Procedures for Calculating Workers' Compensation Benefits Based on Average Weekly Wage

The purpose of this Informational letter is to provide insurance companies, those employers that have received authorization from the West Virginia Offices of the Insurance Commissioner ("OIC") to self-insure their workers' compensation risk, and third party administrators, guidance relating to the calculation of workers' compensation indemnity benefits.

The "average weekly wage earnings, wherever earned, of the injured employee, at the date of injury" and the "average weekly wage in West Virginia" are used as the basis for computing certain workers' compensation indemnity benefits for employees who have sustained a compensable injury in West Virginia.

The "average weekly wage in West Virginia" is certified for use in calculation of workers' compensation benefits each fiscal year by Work Force West Virginia. The current certification of the average weekly wage for use during fiscal year 2009 (July 1, 2008 - June 30, 2009) is attached to this informational letter as Exhibit A.

Attached to this informational letter as Exhibit B is the Daily Benefit Rate Computation Sheet, which is used for benefits awarded on or after July 1, 2003. Any injury sustained on or after July 1, 2008, is considered an injury to have taken place in Fiscal Year 2009.

Also attached to this informational letter is Exhibit C, which is the Procedural Guidelines for Calculating the Average Weekly Wage ("AWW") for an injured worker on the date of his or her injury. Finally, attached as Exhibit D is the Procedural Guidelines for Calculating Temporary Total Disability ("TTD") Benefits.

Insurers, third party administrators, and self-insuring self-administering employers are directed to these documents for guidance in complying with the statutory requirements relating to the calculation of workers' compensation indemnity benefits for claims in West Virginia.

Questions relating to this informational letter should be addressed to Richard Crynock, Associate Counsel, Offices of the Insurance Commissioner, Legal Division, P.O. Box 50540, Charleston, West Virginia 25325-0540 or by e-mail at Richard.Crynock@wvinsurance.gov.

ss://Jane L. Cline
Jane L. Cline
Insurance Commissioner



WORK FORCE West Virginia USA

Joe Manchin III
Governor

Ronald E. Radcliff
Executive Director

May 29, 2008

Jane L. Cline
Commissioner
West Virginia Insurance Commission
1124 Smith Street
Charleston, WV 25301

Dear Ms. Cline:

The following figures are certified for use in calculation of Workers' Compensation benefits:

1. Average covered employment in West Virginia (Calendar Year 2007).....	685,768
2. Total wages paid in covered employment (Calendar Year 2007).....	\$ 22,713,172,551
3. Average annual wage (CY2007) (Item 2/Item 1).....	\$ 33,120.78
4. Average weekly wage (CY2007) (Item 3/52).....	\$ 636.94
5. Average covered private sector employment in West Virginia (Calendar Year 2007).....	569,818
6. Total wages paid in private sector covered employment (Calendar Year 2007).....	\$ 18,980,181,909
7. Private sector average annual wage (CY2007) (Item 6/Item 5).....	\$ 33,309.20
8. Private sector average weekly wage (CY2007) (Item 7/52).....	\$ 640.56

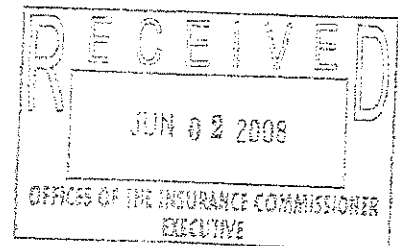
If you would like additional information or assistance, please let me know.

Sincerely,



Benny L. Parker, Director
Research, Information and Research

cc: Melinda Ashworth Kiss
Tammy Hypes
Mike Riley
Amy Rhodes



Research, Information and Analysis Division
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EXHIBIT A

An equal opportunity/affirmative action employer and agency of the Department of Commerce
Kelley Goes, Cabinet Secretary

DAILY BENEFIT RATE COMPUTATION SHEET

For Fiscal Year 2009 - (July 1, 2008- June 30, 2009)

State Average Weekly Wage (SAWW) -- Effective July 1, 2008 \$ 640.56

**BENEFITS AWARDED ON OR AFTER 7/01/03, NOT TO EXCEED THE
MAXIMUM/MINIMUM BENEFIT RATE PER THE DOI**

100% of SAWW is maximum benefit rate for TTD, PTD, and Fatal awards.
 70% of SAWW is maximum benefit rate for PPD awards
 Injured worker entitled to 66 2/3% of weekly earnings for ALL TYPES OF BENEFITS, not to exceed maximum rate
 Minimum rate is 33 1/3% of SAWW (Effective 7/1/94, cannot exceed Federal Minimum)
 Effective July 24, 2008: Federal Minimum Calculated: \$6.56 (X) 8 hrs (X) 5 days Divided by 7 (X) 66 2/3% = \$ 24.95 per day
 The injured worker will receive the same rate for the entire span of all benefits, whether it be at maximum/minimum or an odd rate.

MAXIMUM Benefit Rate Payable	TTD/PTD, Fatal	PPD
Weekly Rate	640.56	448.39
Daily Rate	91.51	64.06

MINIMUM Benefit Rate Payable	Effective 7/1/08	Effective 7/24/08
Weekly Rate	156.00	174.67
Daily Rate	22.29	24.95

WORKERS COMP RATE OF PAY	MAXIMUM			MINIMUM		
	TTD/PTD, Fatal	PPD	Effective 7/1/08	Effective 7/1/08	Effective 7/24/08	Effective 7/24/08
1 Day	81.51	84.06	22.29	24.95		
2 Days	163.02	129.11	44.57	49.90		
3 Days	274.53	192.17	66.86	74.86		
4 Days	366.03	256.22	89.14	99.81		
5 Days	457.54	320.28	111.43	124.76		
6 Days	549.05	384.34	133.71	149.71		
Weekly	640.56	448.39	156.00	174.67		
Monthly	2,783.39	1,948.37	677.85	768.97		

WAGES IN NEEDS TO EARN IN ORDER TO RECEIVE MAXIMUM BENEFIT RATE
 (Based on a five day work week)

	TTD/PTD, Fatal	PPD
Daily	192.16	134.51
Weekly	960.79	672.55
Annual	50,098.44	35,080.91



Average Weekly Wage

The "average weekly wage earnings, wherever earned, of an injured person at the date of injury" is a term used to calculate certain workers' compensation indemnity benefit levels. W. Va. Code §23-4-1 *et seq.* A claimant's "average weekly wage earnings, wherever earned . . . on the date of injury" ("AWW") is the *higher* of the following amounts:

- (1) the claimant's *daily rate of pay* at the time of the injury relevant to the claim; or
- (2) the weekly average derived from the best quarter of wages out of the preceding four quarters

W. Va. Code §23-4-14(b)(2).

This policy clarification is necessary because inconsistencies in how the "daily rate of pay" is calculated by employers can result in an inaccurate level of benefits. In particular, employees who work shifts in excess of eight (8) hours per day but work less than five (5) days per week may receive benefits in excess of those to which they are entitled.

Employers should use the following calculation process that can be applied to all claimants:

Full-time Employees

Full-time employees, for workers' compensation purposes, are those employees working twenty-six (26) or more hours per week, as well as employees in the construction trade and certain employees working at more than one job on a part time basis. (For more details on determining full-time/part-time status, see Exhibit D, the OIC's Procedural Guidelines for Workers' Compensation, Calculating TTD Benefits – Various Topics).

The first step for calculating the AWW for full-time employees is calculating the daily rate of pay. This is the hourly rate of pay *multiplied* by the number of hours worked per week *divided* by 5 *equals* the daily rate of pay.

Example Calculation of Daily Rate of Pay, Full-time Employees (all regular hours):

$$\begin{array}{r}
 \$ 10.00 \text{ (hourly rate of pay)} \\
 \times \quad 30 \text{ (# of hours worked for a normal work week)} \\
 \hline
 \$ 300.00 \text{ (weekly rate of pay)} \\
 \div \quad 5 \text{ (days)} \\
 \hline
 \$ 60.00 \text{ (daily rate of pay)}
 \end{array}$$

In this example, \$60.00 would be the daily rate of pay for the employee.

If the employee routinely works overtime and is paid a higher rate of pay during the overtime hours, then this must be reflected in the calculation by segregating the regular pay rate and hours from the overtime pay rate and hours. Then use the sum of both regular and overtime pay for the daily rate.

Example Calculation of Daily Rate of Pay, Full-time Employees (regular and overtime hours):

$$\begin{array}{r} \$ 10.00 \text{ (hourly rate of regular pay)} \\ \times \quad 40 \text{ (# of regular hours worked for a normal work week)} \\ \hline \$ 400.00 \text{ (weekly rate of pay)} \\ + \\ \$ 15.00 \text{ (hourly rate of overtime pay)} \\ \times \quad 10 \text{ (# of overtime hours worked for a normal work week)} \\ \hline \$ 150.00 \text{ (overtime weekly rate of pay)} \\ = \\ \$ 550.00 \text{ (\$400 regular pay plus \$150 overtime pay)} \\ \div \quad 5 \text{ (days)} \\ \hline \$ 110.00 \text{ (daily rate of pay)} \end{array}$$

In this example, \$110 would be the daily rate of pay.

Finally, the daily rate of pay on the date of the injury should be compared to the daily rate of pay based upon the weekly rate of pay average of each of the preceding four (4) quarters, and then whichever of the five (5) daily rates of pay is highest shall be used as the AWW in calculating the indemnity benefits for the claimant.

Example Calculation of Average Weekly Wage Earnings for Full-time Employees

Daily rate of pay on date of injury = \$60
Daily rate of pay from first preceding quarter = \$55
Daily rate of pay from second preceding quarter = \$65
Daily rate of pay from third preceding quarter = \$50
Daily rate of pay from fourth preceding quarter = \$63

Applicable daily rate of pay = \$65 (because this was the highest of the five amounts).

The \$65 daily rate of pay would then be multiplied by 5 (days in work week) to calculate the average weekly wage earnings applicable to indemnity benefits in the claims. In this example, the average weekly wage earnings would be \$325 (5 x \$65).

If the employee has worked less than four (4) quarters, then the highest daily rate of pay from each of the available quarters (whether 1, 2 or 3) would be used. Partial quarters may be used as well (i.e., if the fourth preceding quarter only included the first month that the employee had begun working for the employer, the daily rate of pay could be calculated just for that month).

Part-time Employees

Part-time employees, for workers' compensation purposes, are those employees who, on a regular basis, work twenty-five (25) hours or less, with the exception of employees in the construction trade and certain employees working at more than one job on a part-time basis. (For more details on determining full-time/part-time status, see Exhibit D, the OIC's Procedural Guidelines for Workers' Compensation, Calculating TTD Benefits – Various Topics).

There are three categories of part-time employees for workers' compensation purposes: (1) those that have worked for at least two (2) months; (2) those that have worked for less than two (2) months, but more than one (1) week; and (3) those that have been employed for less than one (1) week. W. Va. Code § 23-4-6d(b) directs, that for the purposes of establishing temporary total disability ("TTD") weekly benefits pursuant to W. Va. Code § 23-4-6(b), the "average weekly wage earnings, wherever earned, of the injured person at the date of the injury," shall be computed based on one of these three categories. W. Va. Code § 23-4-6d(b) also directs that no part-time employee shall receive TTD benefits greater than his or her average weekly wage earnings as calculated.

To calculate the AWW for the first category, part-time employees that have been employed for at least two months, the average weekly gross pay, out of the best gross pay from each of the last four (4) quarters, is used.

Example Calculation of Average Weekly Wage Earnings for Part-time Employees of at Least Two Months

Determine the gross pay for the employee for each of the past four (4) quarters. Then, in the quarter in which the employee received the highest gross wages, the average weekly pay for that quarter is the AWW for that employee. Further illustration is provided below.

Total gross wages from first quarter = \$1,300
Total gross wages from second quarter = \$1,500
Total gross wages from third quarter = \$1,200
Total gross wages from fourth quarter = \$1,800

The gross wages for the fourth preceding quarter, \$1,800, would apply, since they were the highest of the last four (4) quarters. This amount would then be divided by the number of days in the quarter (usually, 90 or 91, depending on the employer's accounting system), to calculate the daily rate of pay, then multiplied by seven (7) to calculate the AWW, as follows:

\$1,800.00	(best quarter of wages out of the preceding four (4) quarters)
÷ 90	(days in the quarter)
\$ 20.00	(daily rate of pay)
x 7	(number of days in week)
\$ 140.00	(average weekly rate, or "AWW")

If the employee has worked less than four (4) quarters, then the gross wages from each of the available quarters (whether 1, 2 or 3) would be used. Partial quarters may be used as well. If a partial quarter is used, to calculate the daily rate of pay for that quarter, divide the gross wages by the number of days in the partial quarter.

For example, if a part-time employee had only worked for an employer for sixty-five (65) days, then the gross wages for that period would be divided by sixty-five to calculate the daily rate of pay for the sole quarter.

Example Calculation of Average Weekly Wage Earnings for Part-time Employees of at Least One (1) Week but Less than Two (2) Months

Determine the gross pay for the employee since the employee began working for the employer. Then divide this amount by the number of days the employee has worked for the employer, to calculate the daily rate of pay. Finally, multiply this by seven (7) to calculate the AWW. Below is a detailed example:

\$ 1,000.00	(total gross pay during employee's employment with employer)
÷ 50	(number of days worked for employer)
\$ 20.00	(daily rate of pay)
x 7	(number of days in week)
\$ 140.00	(average weekly rate, or "AWW")

Example of Average Weekly Wage Earnings for Part-time Employees of Less than One (1) Week

The average weekly wage earnings shall be calculated based upon the average weekly wage prevailing for the same or similar part-time employment at the time of the injury. However, when an employer has agreed to pay a certain hourly wage to a part-time employee, the average weekly wage shall be computed by multiplying the hourly wage by the regular numbers of hours contracted to be worked each week.

Part-time Employees and Permanent Disability

Pursuant to W. Va. Code § 23-4-6d(c), notwithstanding any other provisions of Article 4 of Chapter 23 of the West Virginia Code to the contrary, benefits payable to a part-time injured employee for any permanent disability, shall be computed and paid on the same basis as if the injured employee is not a part-time employee within the meaning of W. Va. Code § 23-4-6d. For example, if a part-time employee sustains a 5% impairment, and is granted a 5% PPD award, that would be equivalent, pursuant to W. Va. Code § 23-4-6(e)(1), 20 weeks' of compensation, regardless of whether the employee was a part-time employee or a full-time employee.



Average Weekly Wage

The “average weekly wage earnings, wherever earned, of the injured employee, at the date of injury” (“AWW”), is used as a basis for computing West Virginia workers’ compensation indemnity benefits for full-time employees. W. Va. Code § 23-4-1 et seq. The process to be used in calculating the AWW is found in the OIC’s Procedural Guidelines for Workers’ Compensation, “Calculating the Average Weekly Wage” (see Exhibit C).

Full-time/Part-time Employees

A full-time employee for WV workers’ compensation purposes is an employee who, at the date of injury, worked twenty-six (26) or more hours per week. A part-time employee for WV workers’ compensation purposes is an employee who: (1) at the date of injury, worked twenty-five (25) hours or less on a regular basis; and (2) is classified by the employer as a part-time employee. There are two exceptions to this definition of part-time employee, however:

- (1) An employee in the constructions industry *is always deemed to be full-time employee;* and
- (2) An employee who regularly works for more than one employer and whose regular combined working hours total more than twenty-five (25) hours per week, when that employee is rendered unable to perform the duties of his or her employment as a result of the injury, *is always deemed to be a full-time employee.*

Statutory Authority: W. Va. Code § 23-4-6d(a).

Wages

The term “wages” for WV workers’ compensation purposes means *gross* wages, before deductions. “Wages” include, but are not limited to, hourly pay, salary, tips, commission, bonus, profit sharing, designated wages and any other compensation paid to an employee.

Minimum and Maximum Benefit Amounts

The minimum and maximum indemnity benefit rates for temporary total disability (“TTD”) are as follows:

Minimum rate. A claimant’s TTD weekly benefits must equal at least thirty-three and one-third percent (33 1/3 %) of the average weekly wage in West Virginia; *however, in no event shall the minimum weekly benefits be in an amount that exceeds the benefits determined by the federal minimum hourly wage on the date of injury.*

Maximum rate. A claimant's TTD weekly benefits are not to exceed one hundred percent (100%) of the average weekly wage in West Virginia.

Statutory Authority: W. Va. Code § 23-4-6(b).

Average Weekly WV Wage

The average weekly wage in West Virginia for fiscal year 2009 is \$640.56 (see Exhibit B). This figure is subject to change each fiscal year. The current (as well as previous) average weekly wage in West Virginia is posted on the Offices of the Insurance Commissioner's web site, wvinsurance.gov.

Calculation of Weekly TTD Benefit Rates for Employees

Temporary total disability benefits are calculated at 66 2/3% of the claimant's AWW on the date of injury.

To calculate the daily and weekly workers' compensation benefit rate, take the daily rate multiplied by 5, divided by 7, and multiply by 66 2/3% (for the daily rate), then multiply again by 7 (for the weekly rate). For example:

\$ 60.00	(daily rate of pay)
x 5	(days in work week)
\$ 300.00	(AWW)
÷ 7	(number of days in a week)
\$ 42.857	(average daily rate)
x .66667	(percentage by statute)
\$ 28.57	(daily comp rate)
x 7	(days)
\$ 199.99	(weekly comp rate)

Turning to Exhibit B, the Daily Benefit Rate Computation Sheet, it is apparent that the weekly comp rate of \$199.99 is less than the Maximum Weekly Benefit Rate of \$640.56 for TTD benefits, and it is more than the Minimum Weekly Benefit Rate of \$174.67 for TTD benefits (for injuries on or after July 24, 2008). As a result, the claimant would receive \$199.99 in weekly TTD benefits.

Now let's say that the claimant's daily rate of pay is \$194.00. Turning to this example:

\$ 194.00	(daily rate of pay)
x 5	(days in work week)
\$ 970.00	(AWW)
÷ 7	(number of days in a week)
\$ 138.571	(average daily rate)
x .66667	(percentage by statute)
\$ 92.38	(daily comp rate)
x 7	(days)
\$ 646.66	(weekly comp rate)

Turning back to Exhibit B, the claimant's weekly comp rate of \$646.66 is more than the Maximum Weekly TTD Benefit Rate of \$640.56 (also, the daily comp rate of \$92.38 is more than the Maximum Daily TTD Benefit Rate of \$91.51). Given that, pursuant to W. Va. Code § 23-4-6(b), a claimant's weekly TTD benefits are not to exceed one hundred percent (100%) of the average weekly wage in West Virginia, the claimant, in this example, would be paid \$640.56 in weekly TTD benefits.

Statutory Authority: W. Va. Code § 23-4-6(b).

Calculation of Weekly Permanent Partial Disability Benefit Rates for Employees

Pursuant to W. Va. Code § 23-4-6(e)(1), permanent partial disability (PPD) rates are paid at 66 and 2/3% of the average weekly wage earnings, wherever earned, of the injured employee at the date of injury, not to exceed 70% of the average weekly wage in West Virginia. The minimum rate is the same rate for minimum TTD benefits.

Using the mathematical models above as examples, if a claimant's daily rate of pay is \$60.00, he or she would have a weekly comp rate of \$199.99. As this number is less than \$448.39 (see Exhibit B, the Maximum Weekly PPD Benefit Rate), the claimant would receive \$199.99 in weekly PPD benefits. On the other hand, if the claimant's daily rate of pay is \$194.00, then the weekly comp rate would be \$646.66, which is far more than the Maximum Weekly PPD Benefit Rate of \$448.39. In this example, the claimant would receive \$448.39 in weekly PPD benefits.

Statutory Authority: W. Va. Code § 23-4-6(e)(1).