SULLIVAN ON COMP

# AVERAGE WEEKLY WAGE CALCULATION GUIDE




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# Average Weekly Wage Calculation Guide


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# Introduction

"Average weekly earnings" is a term of art in the law of workers' compensation. It refers to the earnings base or earning capacity used to compute indemnity payments. It is frequently abbreviated as AWE or AWW (average weekly wage). Average weekly earnings are used to calculate benefits such as temporary disability indemnity, permanent disability indemnity, an employee's life pension and death benefits. Subject to statutory minimum and maximum amounts established in Labor Code § 4453, temporary disability indemnity and permanent disability indemnity rates are taken at two-thirds of an employee's average weekly earnings.

Most of the time, the employee's earnings are calculated by determining the total amount the worker earned in the year before an injury, and dividing by 52 weeks. Often, the employer provides a wage statement to calculate the sum. But that typical formula is not always the legally correct way to determine the AWE, and adjusters must be aware of and ready to implement required alternative methods.

Within the statutory minimum and maximum amounts, LC 4453 specifies four methods of calculating an employee's average weekly earnings for the purposes of temporary and permanent disability indemnity. Under § 4453(c)(4), however, the employee's earning capacity at the time of an injury generally controls the benefit rates. Evaluating that capacity might require adjusters to review several factors other than just the employee's actual earnings at the time of injury.

# Benefits Used to Calculate Average Weekly Earnings

Before calculating an employee's AWE, it's important to review the benefits that must be included. Labor Code § 4454 states that an employee's AWE includes "overtime and the market value of board, lodging, fuel, and other advantages received by the injured employee as part of his remuneration, which can be estimated in money." But an employee's AWE does not include "any sum which the employer pays to or for the injured employee to cover any special expenses entailed on the employee by the nature of his employment, ..." So, although benefits received as remuneration should be included, special expenses are not.

Determining whether benefits are remuneration or special expenses requires analysis of several factors. They include whether funds: (1) were provided in exchange for services; (2) are an advantage to the employee and; (3) are provided to employees only while they are performing employment duties.

For example, if the employer provides housing rent-free or at a reduced cost as part of an employee's payment, it's remuneration. The market value of the housing, or reduced cost, could be included as part of the employee's average weekly earnings. But if the employer pays for a hotel as part of a business trip, it would be considered a special expense. The employee is not receiving the hotel as a part of compensation — it's simply an expense to be reimbursed. The use of the hotel would not have been available to the employee unless he or she was working. So its cost would be excluded from the employee's earnings.

Overtime and work bonuses should be included when calculating an employee's AWE. When a worker accepts vacation pay instead of taking time off, the amount received also should be included in the calculation of earnings.

Labor Code § 4454, however, directs that an employee's AWE does not include "the cost or market value of any savings, wage continuation, wage replacement, or stock acquisition program ..." It also does not include "any employee benefits program for which the employer pays or contributes to persons other than the employee or his family." So contributions by an employer to a savings plan, health insurance and life insurance are excluded from the computation of AWE.

Unless the employee is paid at the maximum temporary disability (TD) rate, a claims administrator must document whether the worker received these earnings, and if so, the amount or fair market value of each: tips, commissions, bonuses, overtime and the market value of board, lodging, fuel or other advantages as part of the worker's remuneration (California Code of Regulations, Title 8, § 10101.1(j)(1)).

## Statutory Limitations on Average Weekly Earnings

Labor Code § 4453 establishes the statutory minimum and maximum amounts of an employee's average weekly earnings for the purposes of calculating disability benefits. In some cases, employees might receive more in workers' compensation benefits than they received from the employment. Much more common is when the earnings are limited by a statutory maximum. Any earnings higher than such maximum average weekly earnings amount are ignored.

For injuries in 2026, the minimum temporary total disability (TTD) rate is $264.31 a week; the maximum TTD rate is $1,764.11. The statutory maximum and minimum rates for permanent partial disability (PPD) are lower than the TD rates. For injuries on or after Jan. 1, 2014, the minimum PD rate is $160 a week, and the maximum rate is $290.

## Time for Calculating Average Weekly Earnings

Normally, an employee's AWE is calculated using the earnings at the time of injury. Labor Code § 4661.5 explains an exception to that rule: When TTD payments are made two years or more from the date of the injury, the amount of the payment must be computed in accordance with the temporary disability indemnity average weekly earnings amount in effect on the date each payment is made, unless computing such amount produces a lower payment.

If the statutory minimum and maximum TTD rates have increased two years after the date of injury, an employee can be entitled to TTD benefits at the higher rate for payments made two years or more from the date of the injury. So, the employee's compensation rate must be re-evaluated two years after the date of injury. But the employee's rate is not automatically increased if the statutory maximum has gone up — the employee's average weekly earnings must justify the increase.

## Methods for Calculating Average Weekly Earnings

Within statutory minimum and maximum amounts, Labor Code § 4453 enumerates four methods of calculating an employee's average weekly earnings.

Section 4453(c)(1) applies when an employee works 30 hours or more a week and five or more days a week for one employer on a regular basis. The employee's average weekly earnings are calculated by multiplying the number of working days a week times the daily earnings at the time of injury.

Section 4453(c)(2) applies when the worker is employed by two or more employers at or about the time of injury. It must consider the employee's earnings from all employers to calculate the AWE.

Section 4453(c)(3) applies when the employee is paid at an irregular rate, such as piecework or via commission. The employee's actual weekly earnings are added, then averaged for as long as one year preceding the date of injury.

For all practical purposes, however, an employee's AWE earnings generally are calculated using § 4453(c)(4), which is a catchall provision that applies "where for any reason [the other methods] of arriving at the average weekly earnings cannot reasonably and fairly be applied." Section 4453(c)(4) requires an employee's AWE to be taken at "100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury." Because § 4453(c)(4) applies when the other methods cannot reasonably and fairly be applied, they are valid only to the extent they reflect an employee's earning capacity at the time of injury.

"Earning capacity" is used to estimate the financial impact of a disability on future earnings. An estimate of earning capacity is a prediction of what an employee's earnings would have been had the individual not been injured. An assessment of earning capacity must consider the employee's age and health, ability to work, willingness and opportunities to work, skill and education, general condition of the labor market and employment opportunities for persons similarly situated.

The Court of Appeal has explained: "The essence of the employer's analysis is to determine whether there are factors that within the anticipated duration of the temporary disability would increase or decrease the earnings the worker would have received absent the injury. If such factors exist and their impact is significant enough that it is unreasonable or unfair to use actual earnings at the time of injury to calculate temporary disability benefits, earning capacity should be used to calculate benefits" (*Grossmont Hospital v. WCAB (Kyllonen)* (1997) 59 Cal. App. 4th 1348, 1362-1363.)

Determining an employee's AWE under § 4453(c)(4) is not locked into any mechanical formula. "The employer's obligation, however, is only to take into consideration factors that may affect earning capacity and to make reasonable determinations based on those factors" (*Grossmont Hospital v. WCAB (Kyllonen)* (1997) 59 Cal. App. 4th 1348, 1363).

The courts have instructed how to pay temporary disability benefits several ways under § 4453(c)(4).

## Pre-Injury Wage Increases and Decreases

When an employee has received a pay increase or a decrease before incurring an injury, the AWE should be calculated based on the current earnings rather than the earnings before the change.

For example, if an employee received a raise within the last year, the AWE should be calculated using the earnings after the raise, rather than the full year. If the employee was demoted or received a permanent reduction in hours within the last year, it's permissible to calculate the AWE based on the decrease in pay. Any effort to calculate the AWE based on a reduction in hours must be clearly documented.

# Post-Injury Wage Increases and Decreases

A post-injury wage increase or decrease is not applied automatically when calculating an employee's AWE. The Court of Appeal has held that "Where a wage increase or decrease is scheduled or would be reasonably anticipated during the anticipated duration of the disability, that increase or decrease is a factor that should be taken into account in calculating earning capacity under section 4453, subdivision (c)(4)" (*Grossmont Hospital v. WCAB (Kyllonen)* (1997) 59 Cal. App. 4th 1348, 1362).

The courts are instructed to consider only factors extant at the time of injury or those that could reasonably be anticipated at that time. Post-injury wage increases or decreases are applied only when there is specific, demonstrable evidence that such factors exist that would have affected an injured worker's earning capacity.

For example, a scheduled post-injury salary increase provided under a collective bargaining agreement would be considered specific, demonstrable evidence that the injured employee, but for the injury, would have received increased earnings. If the employee's wages were scheduled to increase following a training period or probationary period, the AWE should reflect the increased earnings. A post-injury raise that was unscheduled or based on performance evaluations, however, needn't be included.

When an employee's earnings are calculated at less than the statutory maximum, a claims administrator must document the worker's earning capacity, including documentation of increases in earnings likely to have occurred but for the injury (such as periodic salary increases or those on completion of training), or document reasonable attempts to determine the information. (California Code of Regulations, Title 8, § 10101.1(j)(4).)

# Part-Time Employment

Employees who work fewer than 30 hours a week are part-time workers, and their AWE is determined based on earning capacity under Labor Code § 4453(c)(4). When initial reports indicate that an employee was working fewer than 30 hours a week at the time of injury, the employer may not calculate benefits on the basis of actual earnings at the time of injury until it has investigated further to determine the rate appropriate under LC 4453(c)(4). That's because a part-time employee's earning capacity may not, and probably will not, be reflected by prior part-time earnings.

Post-injury earnings of a part-time employee must be considered in all cases, not just those in which there was specific evidence of actual steps the worker took to improve himself or herself before the injury (*Goytia v. WCAB* (1972) 6 Cal. 3d 660). Consideration should be given to whether the injury prevented the employee from obtaining another job. Consideration also should be given to whether the worker was promised a full-time job.

As discussed, earning capacity considers multiple factors. There are no bright lines establishing when indemnity benefits must be advanced beyond the employee's actual earnings at the part-time work. So it's difficult to predict whether the courts will find that a part-time employee's earning capacity exceeds the actual earnings at the time of injury. The decisions must be made on a case-by-case basis after examining the circumstances.

Regardless of the decision, claims examiners have a duty to document the basis for their decisions. If the earnings at the time of injury were irregular, the examiner must document earnings from all sources of employment for one year before the injury, or document reasonable attempts to determine that information. (California Code of Regulations, Title 8, § 10101.1(j)(3).) So, in cases of part-time employment, it's necessary to ask employees if they worked for any other employers in the year before the injury, and make a reasoned determination as to whether the earnings at the time of injury adequately reflect their earning capacity.

## Concurrent Employment

Per Labor Code § 4453(c)(2), "Where the employee is working for two or more employers at or about the time of the injury, the average weekly earnings shall be taken as the aggregate of these earnings from all employments computed in terms of one week." Section 4453(c)(2) adds that "[T]he earnings from employments other than the employment in which the injury occurred shall not be taken at a higher rate than the hourly rate paid at the time of the injury."

So if the employee is injured while working for the employer that pays the highest rate, the earnings will be taken as an aggregate of the earnings from all other employers. But if the employee is injured while working for the employer that pays a lower rate, the average weekly earnings are determined by multiplying the total number of hours worked a week with all employers by the rate of pay from the employer for whom the employee worked when injured. So in cases of concurrent employment, not all of the employee's earnings from all employers are considered.

An employee's AWE can be lower if the injury occurred at the lower-earning job. The Court of Appeal has concluded that "subdivision (c)(4) does not apply in a dual or multiple employment situation simply because determination of average weekly earnings under subdivision (c)(2) would reduce an applicant's rate of disability from the statutory maximum to the statutory minimum" (*Leeth v. WCAB* (1986) 186 Cal. App. 3d 1550, 1557). But the court added that "[T]here will be situations in which subdivision (c)(4) should be applied when a worker with two or more jobs is injured in lesser-paying part-time employment."

On learning of an industrial injury, particularly for a part-time employee, claims adjusters must document whether the worker had concurrent employment and concurrent earnings from other employment, or document reasonable attempts to determine that information. (California Code of Regulations, Title 8, § 10101.1(j)(2).) Information regarding concurrent employment and earnings should be requested from the employee.

## Seasonal Workers

When employees are engaged in seasonal employment, their earnings at any point during a calendar year form part of an intermittent pattern — periods of earnings followed regularly by periods of reduced earnings or no earnings at all. Such employees have a regular occupation only during its "season," or the portion of the year when that type of work is offered by employers. For seasonal employees, earnings in the employment in which an injury occurs are part of an ongoing earnings cycle, but they do not represent an employee's long-term continued earnings. So, it might not be appropriate to pay the injured employee temporary disability based on the seasonal earnings for the entire disability period.

The Court of Appeal has held that temporary disability indemnity for seasonal employees should be paid at an in-season and off-season rate. But it added that if an employee had no off-season earnings, the worker

would not be entitled to any TD and would not be entitled to the statutory minimum. The court stated, "A system that rewards a seasonal employee for sustaining an industrial injury likely would create an economic incentive for employees to exaggerate their level of disability and encourage them to malinger on temporary disability. We cannot condone this type of windfall to an injured employee where the Legislature has specifically mandated that an employee's ability to compete in the open market must be considered in calculating temporary disability" (*Signature Fruit Co. v. WCAB (Ochoa)* (2006) 142 Cal. App. 4th 790, 802).

So, seasonal employees are paid TD at two rates — in season and off season. The in-season rate is based on in-season earnings. If a seasonal employee has no off-season earnings, the worker is entitled to no TD during the off season.

If substantial evidence shows that an employee intended to remain in the labor market during the off season, TD will be paid during that period based on the worker's off-season earning capacity. If an employee has some earnings during the off season, but they are less than the statutory minimum, the TD rate is the statutory minimum.

In cases involving seasonal workers, claims administrators should document the start and end dates of the season. They should also request information/documentation from the employee regarding off-season earnings.

# Salary Continuation

After an injury, when an employee receives a salary pursuant to a salary continuation plan, temporary disability benefits are not payable. But, per Labor Code § 4650(g), a "salary continuation plan" must meet both of these requirements:

1. The plan is paid for by the employer pursuant to statute, collective bargaining agreement, memorandum of understanding or established employer policy.
2. The salary is provided on the employee's regular payday, is not less than the amount the employee is entitled to per the statute, collective bargaining agreement, memorandum of understanding or established employer policy, and is not less than the amount the employee would otherwise receive in indemnity payments.

If an employer provides salary or other payments in lieu of or in excess of temporary disability indemnity, the claims administrator still must comply with the TD notification requirements. The claims administrator must include a full explanation of the salary continuation plan with the initial notice. (California Code of Regulations, Title 8, § 9814.)

If the employer pays full wages following an industrial injury, but there was no agreement that any part of those payments constituted disability payments, the WCAB may exercise its discretion to award credit against TD (*Herrera v. WCAB* (1969) 71 Cal. 2d 254). But credit against TD in that situation is discretionary, per Labor Code § 4909.

# Return to Work on Reduced Hours/Pay

Many times, an employee will be returned to work with work restrictions before being declared permanent and stationary. A physician can release the employee to return to "modified duty," "light duty" or other restrictions. That's commonly referred to as temporary partial disability.

Modified work could involve being temporarily relieved from performing specific duties required in the employee's usual and customary occupation. Light work could involve a temporary assignment to a position with less physically demanding duties, or possibly a return to work in the employee's usual occupation for fewer hours than a full workday.

If the employer is unable to accommodate work restrictions imposed on an employee, the worker is entitled to indemnity as if she or he had a temporary total disability. That's because the employer has the burden to show that work within the capabilities of the partially disabled employee is available. If the employer cannot meet that burden, the employee's disability will be considered a temporary total one as far as wage loss is concerned.

If the employer is able to accommodate the work restrictions and there's no loss in wages, the employee is not entitled to any TD. If the employer is able to able to accommodate the restrictions, but the return to work results in reduced hours or reduced pay, the employee is entitled to wage-loss payments.

Under Labor Code § 4654, if the injury causes temporary partial disability, the disability payment is two-thirds of the weekly loss in wages during the period of such disability. Per § 4657, "weekly loss in wages" means "the difference between the average weekly earnings of the injured employee and the weekly amount that the injured employee will probably be able to earn during the disability." So, to calculate the amount payable to an employee during a period of wage loss, a claims adjuster must take the difference between an employee's AWE and the amount paid during the wage-loss period, and multiply that figure by two-thirds.

Note: Part or all of the employee's actual wage loss while partially disabled might be a noncompensable loss. That's because an employee's earnings during the period of partial disability are subject to the statutory maximums established in § 4453. Earnings in excess of the statutory maximum are not used in any step of a wage-loss formula. Also, if the employee's actual earnings while partially disabled exceed the statutory maximum amount, the entire wage loss is noncompensable. That is, if a partially disabled employee is performing modified or alternate work and suffers some wage loss from pre-injury work, but continues to earn more than the maximum average weekly amount, the WCAB has no authority to award indemnity for the wage loss.

To properly calculate an employee's wage loss, a claims administrator must routinely follow up with the employer during the period of temporary partial disability. The claims administrator must ensure that any wage loss is timely, and properly paid to the employee. If the employee has no wage loss during the period of temporary partial disability, it should be documented in the file.

Finally, note that temporary partial disability payments are counted toward the 104-week limit for TD. An employee is not entitled to the value of 104 weeks of temporary total disability. Under Labor Code § 4656(c), an employee is entitled only to 104 weeks of temporary disability, whether total or partial.

# Terminated Employees

Following an industrial injury, an employee may be terminated for misconduct or laid off for reasons unrelated to an industrial injury. If the injury is compensable, the employee would be entitled to temporary disability benefits during periods of temporary total disability. Even though the employee has been terminated, because the temporary disability is total, the individual would not be able to work for any employer during the disability period.

If a terminated employee is reported to be temporarily partially disabled, however, the employer may dispute payment of TD benefits if it could show that: (1) the termination was for good cause; and (2) it offered or would have offered work within the employee's restrictions but for the termination. The reasoning is that it was the employee's termination, not the employee's injury, that was responsible for the loss in wages.

Efforts to cease the temporary disability of a terminated employee during a period of temporary partial disability are very contentious. So claims adjusters must document that both of the conditions for nonpayment of TD have been established.

# Refusal to Return to Work

If an employer offers an employee modified or alternate work within the worker's abilities during the period of temporary partial disability, but the worker unreasonably refuses to accept it, the employer may deny TD payments. At that point, any loss in earnings would not be the result of a medical disability and therefore would not be compensable. Employers must be careful to document the offer of work if they want to avoid payment of TD benefits on that ground.

# Retired Employees

It's not uncommon for an employee to retire after sustaining an industrial injury, or to file a workers' compensation claim after retiring. The time of injury for calculating a retired employee's AWE is the date on which the compensable disability occurred, irrespective of the time of exposure or knowledge (*Van Voorhis v. WCAB* (1974) 37 Cal. App. 3d 81). Furthermore, although temporary disability benefits are intended to replace an employee's wages during the period of disability, retired employees are not automatically barred from receiving TD payments.

The Court of Appeal has held that an employer's liability for TD following retirement depends on the employee's "willingness to work." That is, it depends on whether the employee is retired for all purposes, or only from the particular employment. If the employee is retired for all purposes, he or she cannot be said to be willing to work, and would not be entitled to any temporary disability (*Gonzales v. WCAB* (1998) 68 Cal. App. 4th 843).

Employees, however, would be entitled to temporary disability if they retired from the particular employment and continued or planned to continue other employment. Furthermore, if an industrial injury causes an employee to retire for all purposes or interferes with plans to continue working elsewhere, the worker would be entitled to temporary disability benefits. That's because the employee cannot be said to

be unwilling to work, and his or her earning capacity would be diminished by the injury (*Gonzales v. WCAB* (1998) 68 Cal. App. 4th 843).

So, temporary disability is commonly payable even after employees retire. Generally, the WCAB will accept an employee's testimony that he or she retired as a result of the industrial injury. Cases barring TD following such retirement have relied on stipulations or demonstrable evidence that the retirement was unrelated to the injury. Any refusal to pay TD, or any effort to terminate TD, based on an employee's retirement should be supported by specific, demonstrable evidence that the worker's retirement was unrelated to an industrial injury.

# Conclusion

A variety of factors must be considered when calculating an employee's AWE and/or determining whether to pay temporary disability. Such calculation is not locked into an inflexible formula. Accordingly, it's impossible to predict with certainty whether the Audit Unit will accept an adjuster's AWE calculations. In fact, the Audit Unit will certainly disagree with some calculations.

But that doesn't mean an employee's AWE should be calculated casually or without considering the facts of the case. Claims administrators have a duty to administer claims in good faith, and should strive to accurately calculate an employee's AWE. Audit penalties may be imposed only when benefits are incorrectly paid "without a factual, medical or legal basis." (California Code of Regulations, Title 8, § 10111.2(a)(2).)

So it's important to document the basis for any AWE calculation and to justify why benefits are being paid in a particular manner. The requirement to document the employee's AWE is established in the regulations — California Code of Regulations, Title 8, § 10101.1(j) requires a claim file to include "[d]ocumentation sufficient to determine the injured worker's average weekly earning." Unless the employee is paid at the maximum TD rate, a claims administrator is required to document all benefits received as part of the employee's remuneration, concurrent earnings, earnings within the past year and the employee's earning capacity, or document attempts to obtain such information.

The Audit Unit may impose penalties for failure to document average weekly earnings if TD is being paid at less than the maximum rate. (California Code of Regulations, Title 8, § 10111.2(b)(7).) Also, it may impose penalties for failure to include in the claim file a copy of documentation sufficient to determine the worker's average weekly earnings, or to document attempts to obtain it. (California Code of Regulations, Title 8, § 10111.2(b)(8)(E).)

Ultimately, there's no way to ensure that the Audit Unit will agree with an AWE calculation. But claims adjusters must request all of the appropriate information necessary to make their decision. They can protect themselves by documenting attempts to obtain the information, and documenting the basis for the calculations. So even if the Audit Unit later disagrees with a decision, practitioners can argue persuasively that there was a factual or legal basis for it.

# Worksheet

Here are step-by-step instructions for using the provided materials to calculate an employee's average weekly earnings (AWE) and determine temporary disability (TD) benefits:

1. Gather necessary information:
    a. employee's earnings at the time of injury
    b. benefits received as part of remuneration (overtime, board, lodging, fuel, etc.)
    c. special expenses entailed by the nature of employment
    d. concurrent earnings from other employers
    e. earnings within the past year (if paid at an irregular rate)
    f. scheduled wage increases or decreases
2. Determine the appropriate method for calculating AWE under Labor Code § 4453:
    a. **§ 4453(c)(1)** if employee regularly works 30+ hours/week and 5+ days/week for one employer
    b. **§ 4453(c)(2)** if employee is employed by 2+ employers at or about the time of injury
    c. **§ 4453(c)(3)** if employee is paid at an irregular rate (piecework, commission)
    d. **§ 4453(c)(4)** if other methods cannot be reasonably and fairly applied (Audit Unit heavily favors this method of calculation in most situations)
3. Calculate the employee's AWE using the appropriate method. Exclude special expenses. Include benefits received as remuneration such as:
    a. tips
    b. commissions
    c. bonuses
    d. overtime
    e. market value of board
    f. market value of lodging
    g. market value of fuel
    h. market value of other advantages
4. Consider additional factors:
    a. pre-injury wage increases and decreases
    b. post-injury wage increases and decreases (only if scheduled or reasonably anticipated)
    c. part-time employment (consider post-injury earnings, potential for obtaining another job, promises of full-time work)
    d. concurrent employment (aggregate earnings from all employments, but not at a higher rate than hourly rate at time of injury)
    e. seasonal workers (paid at in-season and off-season rates, no TD during off season if no earnings)
    f. salary continuation (TD not payable if salary continuation plan meets requirements)
    g. return to work on reduced hours/pay (entitled to wage-loss payments, subject to statutory maximums)
    h. terminated employees (may dispute TD if terminated for good cause and work within restrictions offered)
    i. refusal to return to work (may deny TD if employee unreasonably refuses modified/alternate work)
    j. retired employees (entitled to TD if retired from particular employment and willing to work elsewhere, or if injury caused retirement)

5. Calculate TD benefits:
    a. TD rate is two-thirds of employee's AWE, subject to statutory minimum and maximum amounts
    b. for injuries in 2026, the minimum temporary total disability rate is $264.31/week; maximum is $1,764.11/week
    c. for injuries on or after Jan. 1, 2014, minimum PD rate is $160/week, maximum is $290/week
    d. if TD payments are made 2+ years from the injury date, compute based on TTD AWE amount in effect on payment date, unless it results in a lower payment
6. Document the basis for AWE calculation and justify payment of benefits:
    a. all benefits received as remuneration, concurrent earnings, earnings within the past year and earning capacity (or attempts to obtain such information); see the following table for a complete list of situations that require documentation
    b. failure to document may result in Audit Unit penalties

# Documentation Requirements

Claims examiners must document each item listed below to ensure compliance with legal standards, support the accuracy of benefit calculations and provide a defensible record in case of disputes or audits.

| Situation | Documentation Required | Explanation |
|---|---|---|
| **General AWE Calculation** | Document all methods used to calculate AWE. | To ensure compliance with Labor Code requirements and to provide a clear rationale for the AWE used in benefit calculations, should the decision be audited or disputed. |
| **Choice of Calculation Method** | Document the selected method and reasons for its selection. | To justify the selection of a particular calculation method out of the available options in § 4453, providing context on why this method best represents the employee's earnings circumstances at the time of injury. |
| **Temporary Disability (TD) Rates** | Document earnings considered, including tips, commissions and bonuses. | To confirm that the calculations consider all remuneration aspects that could affect the AWE, ensuring the employee receives fair and adequate compensation based on actual earning capacity. |
| **Concurrent Employment** | Document earnings from all employers at the time of injury. | Required when an employee is working for multiple employers to accurately reflect the total earnings and compute AWE accordingly. Ensures that benefits are calculated based on the complete income scenario. |

# Documentation Requirements (cont.)

| | | |
|---|---|---|
| **Earning Capacity Adjustments** | Document any factors affecting earning capacity for § 4453(c)(4) use. | When standard methods do not reasonably apply, the catchall provision requires documentation of all factors that justify using the employee's earning capacity as a basis for AWE, such as market conditions, part-time status or irregular earnings. |
| **Part-Time Employees** | Document investigation into full-time equivalent earning capacity. | To ascertain if the part-time earnings reflect the true earning capacity of the employee, potentially leading to higher benefit calculations under § 4453(c)(4). |
| **Post-Injury Wage Increases or Decreases** | Document any scheduled or anticipated changes in earnings post-injury. | Adjustments must be made if there is demonstrable evidence that wages would have increased or decreased during the disability period, affecting the AWE calculations. |
| **Seasonal Workers** | Document season start and end dates, and off-season earnings capacity. | For accurate computation of benefits that reflect the cyclical earning pattern of seasonal workers, ensuring they are not overcompensated during off-season periods when they would not normally be earning. |
| **Salary Continuation** | Include a full explanation of the salary continuation plan with initial notice. | To clarify the arrangement for salary continuation and its impact on TD payments, ensuring transparency and compliance with regulations that might otherwise adjust TD benefits. |
| **Permanent and Stationary Status** | Document any changes in the employee's work status or restrictions. | Necessary when an employee returns to work with restrictions or modified duties, impacting the wage-loss benefits. Documentation helps in adjusting benefits appropriately and defending the decision if disputed. |
| **Modified or Alternate Work Offers** | Document the offer of work and the employee's acceptance or refusal. | To justify nonpayment of TD benefits if an employee unreasonably refuses work that he/she is capable of performing within the medical restrictions, affecting the wage-loss compensation eligibility. |
| **Refusal to Return to Work** | Document the offer of modified or alternate work within the employee's abilities, and the employee's response. | Necessary to establish that the employer provided suitable work options within the medical restrictions and to justify the denial of temporary disability payments if the employee unreasonably refuses to accept. |

# Documentation Requirements (cont.)

| | | |
|---|---|---|
| **Termination of Employment** | Document reasons for termination and any offers of work within restrictions. | Critical for cases in which an employee is terminated post-injury; documentation must show whether the termination affects eligibility for ongoing TD payments, particularly if the termination was for cause unrelated to the injury. |
| **Employee Retirement** | Document the employee's reason for retiring and any plans to continue working post-retirement. | Critical to determine whether the retirement was due to the injury or other reasons. It affects whether the employee is eligible for temporary disability, especially if he/she would have continued working but for the injury. |

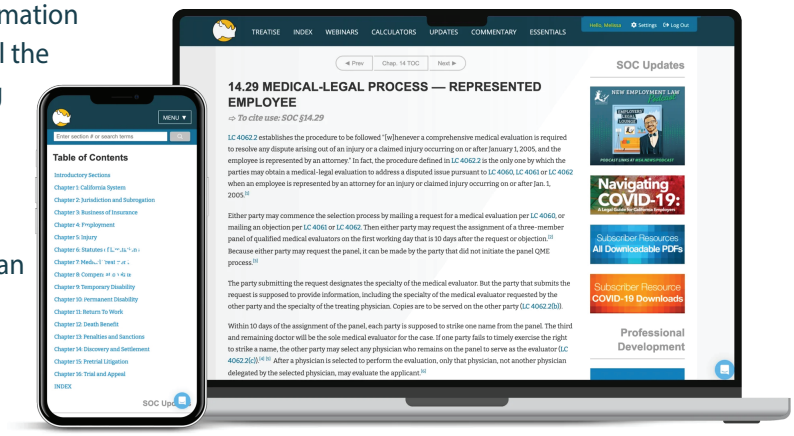
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