

This document has been created to provide guidance for the public and agency staff. It is “intended solely as advice to assist persons in determining, exercising, or complying with their legal rights, duties or privileges . . .” Downeast Energy Corp. v. Fund Ins. Review Bd., 2000 ME 151, ¶¶ 23-24, n.7. The guidance provided in this document does not have the force and effect of law and is not judicially enforceable. Downeast Energy Corp., 2000 ME 151, ¶ 23.

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Q&A

Q: What is the latest version of the wage statement?

A: Please refer to our website [WCB Forms](#).

Q: Are concurrent earnings used in AWW calculation if weeks are excluded?

A: Section 102.4.E states, “When the employee is employed regularly in any week concurrently by 2 or more employers, for one of whom the employee works at one time and for another of whom the employee works at another time, the employee's average weekly wages are computed as if the wages, earnings or salary received by the employee from all such employers were wages, earnings or salary earned in the employment of the employer for whom the employee was working at the time of the injury.”

Q: Would Method C be used for anything other than agricultural work?

A: Method C applies to all employees that fall under the definition of “seasonal worker”.

Q: If the employee was injured within a week or 2 of date of hire (DOH) can we use “like wages based on a similar employee?”

A: A Wage Statement is required regardless of the number of weeks worked prior to the injury. If methods A, B, and C cannot be fairly and reasonably applied, the claim administrator must move to method D and provide comparables.

Q: Regarding Method C: If there are not earnings for the prior year, would that meet the requirement to obtain a comparable?

A: If method C cannot be reasonably and fairly applied, the claim administrator must move to method D and provide comparables.

Q: Regarding total gross box: if there are excluded wages, should you include and explain in the comment box or indicate in the total gross box with exclusions?

A: This must be the total of all earnings for the 52 week period, even if not all are used in calculating the AWW.

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Q: What is the best way to calculate wages for “temporary employees?” While we can use similar wages from another employee, that employee is also seasonal or temporary so they do not have 52 weeks of wages.

A: The methods in Section 102.4 must be applied sequentially. If the AWW calculated per Method A can not reasonably and fairly be applied, you would continue to method B, and so on.

Q: Would you please clarify how housing should be considered as a fringe if this isn't covered in the later slides?

A: Please refer to Board Rules Chapter 1, Section 5.

Q: What if an employer only hired temporary employees and there are no similar employees who have worked greater than 26 weeks?

A: Comparable wages do not need to be from the same employer. Per Method D you must consider the wages, earnings or salary of “other employees of the same or most similar class working in the same or most similar employment in the same or a neighboring locality, that reasonably represents the weekly earning capacity of the injured employee in the employment in which the employee at the time of the injury was working.

Q: What should be placed in the comment box on the wage form?

A: You must include an explanation of how you arrived at the Gross Average Weekly Wage in Box 24. If the Claims Management Unit is unable to determine the calculation, the form will be flagged as an issue.

Q: When speaking of pre-injury earnings from the employer, the adjustor should also ask the employer to complete the Fringe Benefits Worksheet. Is this accurate?

A: Yes.

Q: Is the Fringe Benefit form required on all claims?

A: The form is required within 30 days of notice/knowledge of a claim for compensation.

Q: A FROI is filed even if there is no lost time, correct?

A: Per §303, a FROI is required for “any injury arising out of and in the course of the employee's employment that has caused the employee to lose a day's work” (see Board Rules Chapter 3, Section 1).

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Q: Does a FROI copy need to be sent to the employer and employee?

A: Per Board Rules, Form WCB-1 shall be mailed to the employee and the employer within 24 hours after the First Report of Injury is transmitted to the Board.

Q: Many employees in my experience believe they do not need to report lost time when they provide salary continuation. Can we confirm they still need to report the lost time even when paying their injured worker?

A: The standard workers' compensation contract requires the insured to report any injury "that may be covered" by the policy.

Q: Are there penalties for late submissions on SOW/Fringe forms?

A: Per Section §360 The board may assess a civil penalty not to exceed \$100 for the failure to "file or complete a report or form within the time limits specified in this Act or rules adopted under this Act".

Q: What is a WCB-8?

A: Certificate of Discontinuance or Reduction of Compensation Pursuant to 39-A M.R.S.A. §205(9)(B)(1)

Q: What is the difference between the WCB-4D and WCB-8?

A: The WCB-4D is a unilateral discontinuance. The WCB-8 provides the employee with 21 days notice of a discontinuance or reduction pursuant to 39-A M.R.S.A. §205(9)(B)(1).

Q: How much can we reduce for overpayment? What happens with overpayment?

A: Per Workers' Compensation Board Decision No. 96-0: Donald C. Pritchard, Jr. V. S.D. Warren Company And Sedgwick James Of Northern New England, "The present Act provides this employer with no mechanism to recover what the employer regards as an overpayment of compensation."

Q: For incapacity; should it be start of a compensable outage? Not necessarily what is on the FROI.

A: For the filing of a MOP, the date of incapacity must be the first day the employee lost any time or wages as a result of the injury for the period of incapacity being reported (even if it is not compensable, i.e. the initial incapacity did not continue for more than 14 days).

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Exception: When an employee is paid 1/2 day or more wages on the date of injury, the date of injury will not be considered a day of incapacity (see Board Rules Chapter 8, Section 3).

Q: What does the State consider fair reasonable for provisional MOPS?

A: A fair and reasonable estimated AWW is based on earnings information (phone call, email) from the employer and/or employee. If no information is available from the employer and/or employee, the Maine Department of Labor's website provides "wage estimates for more than 600 occupations".

Q: When can you take SS retirement out?

A: Please refer to Section §221 Coordination of benefits.

Q: Specific loss is only if the injured worker loses a body part, is this true?

A: Please refer to Section §212, Subsection 3 Specific loss benefits.

Q: Is the date of incapacity the date of any lost time or date of the first full day of disability?

A: For the filing of a FROI, the date of incapacity is the date that meets the definition of a day under § 303 (see Board Rules Chapter 3, Section 1). For the filing of a MOP, the date of incapacity must be the first day the employee lost any time or wages as a result of the injury for the period of incapacity being reported (even if it is not compensable, i.e. the initial incapacity did not continue for more than 14 days).

Exception: When an employee is paid 1/2 day or more wages on the date of injury, the date of injury will not be considered a day of incapacity (see Board Rules Chapter 8, Section 3).

Q: Can you explain how day 8 is calculated when there is a loss of earnings?

A: The Board has historically recommended either the AWW Method (an employee loses wages because of the injury which cumulatively equals or exceeds the employee's pre-injury AWW), or the Comp Rate Method (an employee loses wages because of the injury that would otherwise require the insurer to pay one week of benefits).

Q: If someone returns to work within the waiting period (unsupported) and then goes back out (supported), the MOP incapacity would be the later compensable period not necessarily what is on the FROI?

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A: It sounds like the claim administrator is denying the initial period of incapacity. If that is the case, the date of incapacity on the MOP must be the first day the employee lost any time or wages as a result of the injury for the period of incapacity being reported.

Q: Is there a calculator on the Maine Workers Compensation website adjustors can use to calculate when the WP (waiting period) is met?

A: The Board has historically recommended either the AWW Method (an employee loses wages because of the injury which cumulatively equals or exceeds the employee's pre-injury AWW), or the Comp Rate Method (an employee loses wages because of the injury that would otherwise require the insurer to pay one week of benefits). Each of these methods work extremely well with Microsoft Excel:

AWW Method

	Pre-injury AWW	Post-injury AWW	Lost Earnings	Cumulative Lost Earnings	Weekly Benefits Due
Week 1	\$650.00	\$450.00	\$200.00	\$200.00	
Week 2	\$650.00	\$450.00	\$200.00	\$400.00	
Week 3	\$650.00	\$450.00	\$200.00	\$600.00	
Week 4	\$650.00	\$450.00	\$200.00	\$800.00	\$114.48
Week 5	\$650.00	\$450.00	\$200.00	\$1,000.00	\$114.48
Week 6	\$650.00	\$450.00	\$200.00	\$1,200.00	\$114.48
Week 7	\$650.00	\$450.00	\$200.00	\$1,400.00	\$457.92
Week 8	\$650.00	\$450.00	\$200.00	\$1,600.00	\$114.48
Week 9	\$650.00	\$450.00	\$200.00	\$1,800.00	\$114.48
Week 10	\$650.00	\$450.00	\$200.00	\$2,000.00	\$114.48
Total					\$1,144.80

Comp Rate Method

	Partial Weekly Benefit Rate	Cumulative Partial Weekly Benefit Rate	Weekly Benefits Due
Week 1	\$114.48		
Week 2	\$114.48	\$228.96	
Week 3	\$114.48	\$343.44	
Week 4	\$114.48	\$457.92	\$40.92
Week 5	\$114.48	\$572.40	\$114.48
Week 6	\$114.48	\$686.88	\$114.48
Week 7	\$114.48	\$801.36	\$114.48
Week 8	\$114.48	\$915.84	\$531.48
Week 9	\$114.48	\$1,030.32	\$114.48
Week 10	\$114.48	\$1,144.80	\$114.48
Total		\$1,144.80	\$1,144.80

Q: Within 45 days of paying can we file a NOC if something is "off", does the 21 day have to be taken into consideration when we file this? If yes, can you explain the process?

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A: An employer may cease payments and file a notice of controversy with the board no later than 45 days after the employer has notice or knowledge of the injury or death. A WCB-4D must be filed to document the discontinuance of benefits.

Q: Are the WCB-8 and WCB-4D filed simultaneously?

A: No; file one or the other, whichever is appropriate for the situation.

Q: Should a SOC be filed even if salary continuation was paid (comp paid would be \$0)?

A: There is no requirement to file the Statement of Compensation Paid on claims when payments are made for medical only services and no indemnity was ever paid on the claim.

Q: UPS is not considered certified mail?

A: Per the USPS website, "Certified Mail is a numbered Extra Service that:

- *Can be purchased at the time of mailing at a Post Office™*
- *Provides the sender with a mailing receipt as confirmation an item was sent (see [Form 3800 / Receipt for Certified Mail](#))*
- *Requires a signature from the addressee*
- *May be combined with [Return Receipt Service](#) to provide the sender proof of signature, with the option of receiving the return receipt by [mail](#) or [electronically](#)*
- *If requested, provides electronic verification that an item was delivered or that a delivery attempt was made. Delivery status can be retrieved in three ways:*
 - *Online at www.usps.com by entering the certified mail extra service number shown on the mailing receipt*
 - *[By telephone](#) using the item's extra service number*
 - *By bulk electronic file transfer for mailers who provide an electronic manifest to the USPS"*

Q: Is there a further process to appeal if the rebuttal is not accepted?

A: If the claim administrator's rebuttal is not accepted by the Audit Division, the matter would be referred to the Board's Abuse Investigation Unit for a decision by an

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Administrative Law Judge (ALJ). The ALJ decision can be appealed to the Board's Appellate Division and the Law Court.