

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.

Adjustor 201 Training
Q&A

Q1: What is the opinion when a salaried employee receives routine performance bonuses or commissions?

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.

Q2: If there are different methods used, do we need to send two different wage statements for the injured worker?

A: A Wage Statement must be completed for each employer. Each Wage Statement is calculated in accordance with Section 102.4.

Q3: Is the 26 weeks just for the seasonal job, or once all employment weeks are added in?

A: Per Section 102.4.C, "The term 'seasonal worker' does not include any employee who is customarily employed, full time or part time, for more than 26 weeks in a calendar year. The employee need not be employed by the same employer during this period to fall within this exclusion."

Q4: If the IW has concurrent employment, aren't we using section E?

A: Section E must be applied "when the employee is employed regularly in any week concurrently by 2 or more employers."

Q5: Sometimes % is given especially for 401k or 403B accounts and that can change from pay to pay period. How should adjusters consider that and determine the \$ amount?

A: Apply the percentage to the AWW to arrive at a dollar amount.

Q6: Fringe benefits - if the employer offers one of the benefits but contributes \$0. Do we put that or should we check "no" for offered?

A: If a fringe benefit is provided at no cost to the employer, "No" may be selected.

Q7: Are there any tools developed by the Maine WCB to help assist a claim professional on tracking the waiting period to ensure consistency?

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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

Q8: With regard to Hypothetical Scenario #1, is this only because it was a new position? If this was just a pay raise would it still apply?

A: A pay raise does not on its own qualify as a change of employment/occupation. It can be a factor in the analysis of whether a change of employment/occupation occurred.

Q9: With regard to Fowler, do you need to provide comps to show the increase if it's under 12 weeks of "new wages"?

A: Per Fowler v. First Nat. Stores, "Method B excludes wages earned and weeks worked in a former occupation even if this occupation was with the same employer." Under Method B,

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there is neither a standard number of weeks required to arrive at a fair and reasonable average weekly wage nor is there a requirement to provide comparable Wage Statements.

Q10: In a similar situation, when there is a seasonal differential (example-they will receive \$2.00 more per hour June-Sept) then they drop back down), do you include all 52 weeks or use the pay at the time of injury to figure their AWW? This would be for a full time employee that has been with the company 3 years.

A: Pursuant to 102.4.B, “average weekly wages, earnings, or salary is determined by dividing the entire amount of wages or salary earned by the injured employee during the immediately preceding year by the total number of weeks, any part of which the employee worked during the same period.”

Q11: With regard to Hypothetical Scenario #2, how should the retroactive raise be reflected on the Wage Statement?

A: A revised Wage Statement is not required. After recalculating the employee’s average weekly wage to include the retroactive increase, a revised Memorandum of Payment must be filed.

Q12: Would you use 6/1 forward to figure the AWW OR use the full 52 weeks?

A: Pursuant to 102.4.B, “average weekly wages, earnings, or salary is determined by dividing the entire amount of wages or salary earned by the injured employee during the immediately preceding year by the total number of weeks, any part of which the employee worked during the same period.”

Q13: With regard to Hypothetical Scenario #3, what if the seasonal job was not worked in the prior year? Since there would be no prior year W2 to use and since current year wages cannot be used under the seasonal calc, would prior year W2 comparables be needed?

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

Q14: What if the associate gets a temporary seasonal raise (normally earning \$17/hr but earns \$20/hr Sept.-December) but is expected to lose the raise come January? Would we include those increase in wages or exclude them since it was an expected drop?

A: Please refer to Q10.

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Q15: How to handle concurrent employment, when the employee is hired for a "seasonal" job i.e. like LLBean or other retail stores that are open year around but hire for holiday season due to increase sales/customers.

A: Retail stores are not seasonal employers. Per Harrigan v. Maine Veterans' Home: "Employment within the meaning of seasonal employment set out in section C does not refer to a generalized, theoretical vocation, such as "cashier", but to the employee's actual employment within a specific industry. Employment must both be seasonal in nature and not continue more than 26 weeks per year.

Q: With regard to Hypothetical Scenario #4, how does the voluntary status change affect the employee's Average Weekly Wage?

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