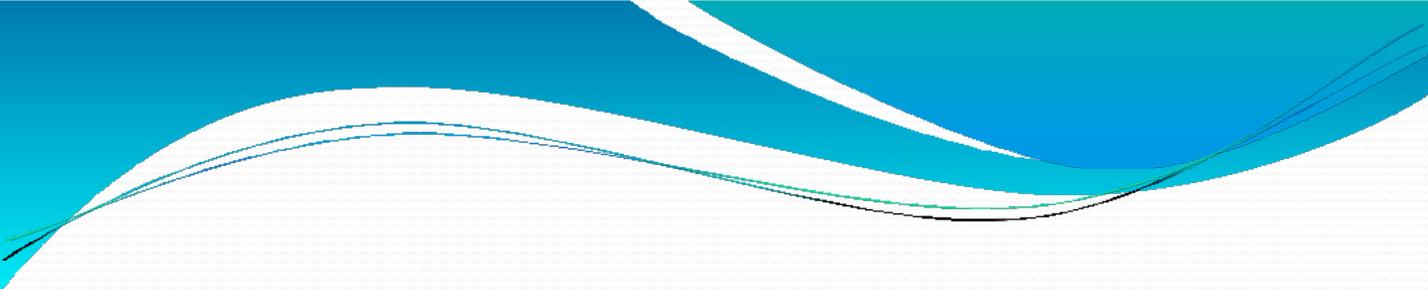


Impairment and Wage Loss



Training Objectives & Purpose

- Discuss impairment & wage loss provisions under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).
- Provide a better understanding of the evidence needed to file a claim for impairment and/or wage loss.



What is an Impairment?

The American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA's Guides), 5th Edition, defines impairment as:

“a loss, loss of use or derangement of any body part, organ system or organ function.”

Who Can File for an Impairment Award?

Employee:

- A covered Part E employee found to have contracted a covered illness through exposure to a toxic substance at a Department of Energy (DOE) facility or Radiation Exposure Compensation Act (RECA) section 5 facility.

Survivor:

- If a survivor is not entitled to the lump sum \$125,000 entitlement payment, he/she may elect to receive compensation that otherwise would have been paid to the covered employee, also known as Election of Benefits.

Note: For Election of Benefits, the employee must have filed a claim under Part E and then died from a non-covered condition prior to receiving compensation.

What are the Impairment Benefits?

- Benefits provided to employees with accepted covered illnesses that have reached maximum medical improvement (MMI) or if the employee is terminal
- Established by use of current medical evidence (within last 12 months)
- Performed by a qualified physician using the 5th Edition of the AMA's *Guides*
- As a result of an impairment rating, the claimant may receive \$2,500 per percentage point. Ex: If the impairment rating is 10% you receive (\$2,500 x 10) \$25,000.
 - Impairment benefits are subject to Tort Offset/State Workers' Compensation (SWC) Coordination.
- Maximum payable compensation under Part E, excluding medical benefits, is \$250,000.00.

How Do You File for an Impairment Award?

Initially:

- After the Final Adjudication Branch (FAB) issues a Part E final decision to an employee accepting the claimed illness(es), the Claims Examiner (CE) sends Form EE-11A/EN-11A to solicit impairment claims from employees who are potentially eligible for impairment benefits.

Can an employee claim impairment without submitting the Form EE-11A/EN-11A?

- Yes, a claimant can submit “Words of Claim” for an impairment award. However, the CE will be required to obtain a signed Form EN-11A prior to the issuance of the recommended decision. The impairment forms must be signed by the employee/claimant, the authorized representative, or the employee’s Power of Attorney.

Can You File for More Than One Impairment Claim?

- Yes, a claimant who has a previously awarded impairment may file for additional benefits:
 - Based on an increased rating for accepted covered illness(es).
 - Not earlier than two years from the date of the previous impairment award (date of Final Decision).*
 - For such a claim, the claimant must file using Form EN-10, Claim For Additional Wage Loss and/or Impairment Benefits, Form EN-11A, or submit “Words of Claim.” However, the CE will be required to obtain a signed EN-11A to allow the claimant to communicate his or her choice of physician to perform the rating.

Are There Any Exceptions to the 2-Year Rule?

Yes,

- If there is a final decision or letter decision to accept a new condition and the condition relates to an organ system not covered in the previous award (Final Decision), i.e. – new accepted illness(es) or new consequential illness
- If, after the employee receives an impairment award, the medical evidence or other information clearly establishes that the employee is terminal then he/she does not have to wait 2 years
- Employee may request a waiver of the 2-year rule and submit medical evidence documenting the accepted condition(s) caused a substantial detrimental effect to the claimant's living circumstances, ADLs, or medical status since the last rating.
- Employee received an impairment rating of 0% and subsequently obtains a new impairment rating greater than 0%

Impairment Ratings for Certain Conditions

- Mental Disorders
 - Does the claimed impairment originate from a documented physical dysfunction of the nervous system?
 - If yes, an impairment evaluation can be obtained based on Table 13-8 of Chapter 13 in the 5th Edition of the *AMA's Guides*.
 - If no, it cannot be assigned a numerical percentage using the *AMA Guides*.
 - The CE sends a letter to the physician asking if the impairment originates from a documented physical dysfunction of the nervous system.

Who Can Perform Impairment Ratings?

- The employee can choose a qualified physician of his/her choice or request that a Contract Medical Consultant (M) perform the impairment.
- If the employee opts to use the CMC, there are certain tests/records that must be submitted, i.e., PFTs, ADLs, etc.

What are the Qualifications for a Physician?

1. Physicians who perform impairment evaluations must hold a valid medical license and Board certification/eligibility in their field of expertise (e.g., toxicology, pulmonary, neurology, occupational medicine, etc.).
2. The physician must also meet at least **one** of the following criteria:
 - Be certified by the American Board of Independent Medical Examiners (ABIME)
 - Be certified by the International Academy of Independent Medical Examiners (IAIME)
 - Possess knowledge and experience in using the AMA's *Guides*
 - Possesses the requisite professional background and work experience to conduct such ratings

Determining Percentage of Impairment

- The Department of Labor (DOL) pays for evaluation by a qualified physician (board-certified in a medical specialty and experienced in performing impairment ratings).
- The physician considers:
 - The AMA's *Guides to the Evaluation of Permanent Impairment*, 5th Edition
 - Whether the employee's covered condition has reached MMI (the condition is well-stabilized and unlikely to improve with medical treatment. *Exception*: illness in a terminal stage)
 - Loss of (whole person) function
 - Cannot apportion impairment to same organ

Impairment Recommended Decision

- The Recommended Decision (RD) must contain the CE's discussion of relevant impairment evidence submitted in deciding the claim. The CE must explain the sufficiency (or insufficiency) of the evidence justifying the decision outcome.
- The RD must thoroughly explain the calculation(s) determination, to include Tort Offset/SWC Coordination (if necessary).
- The RD is forwarded to the FAB for an independent review:
 - The employee may submit new medical evidence and/or additional impairment evaluations to challenge the impairment determination discussed in the RD.

Election of Benefits

- If a covered Part E employee dies after submitting a Part E claim, but before that claim is paid, and death is solely related to a non-covered illness or illnesses, the survivor may elect to receive the compensation that would have been payable to the employee.
- The survivor must file a written confirmation that he/she is seeking an Election of Benefits.
- All required diagnostic and medical evidence, based on the AMA's *Guides*, 5th Edition, must be submitted to perform an impairment evaluation/rating.

Are There Any Benefits to Choosing a CMC?

- The physicians meet the qualifications required to perform an impairment rating.
- If all appropriate medical evidence is received/submitted, the District Office receives a rating from the CMC typically within twenty-one (21) days of referral submission.
- The impairment evaluations from the CMCs contain all required information; therefore, the District Office is able to issue a recommended decision sooner.

Tools/Links

EEOICPA Procedure Manual

<https://www.dol.gov/agencies/owcp/energy/regs/compliance/PolicyandProcedures/ConsolidatedProcedureManual>

How Do I Qualify for an Impairment Award?

https://www.dol.gov/owcp/energy/regs/compliance/brochure/How_do_I_qualify.pdf

How Does a Tort Action Affect My Right to EEOICPA Benefits?

<https://www.dol.gov/owcp/energy/regs/compliance/brochure/tortaction.pdf>

Physician/Provider Billing Form: OWCP-1500

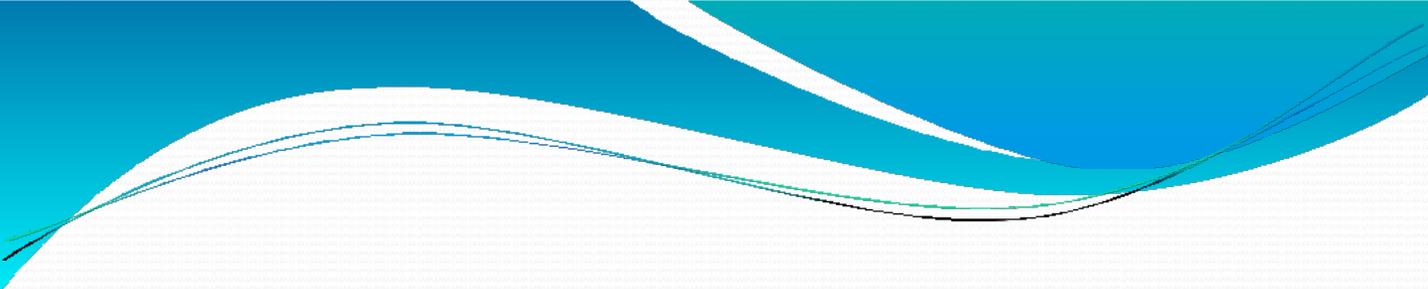
<https://www.dol.gov/owcp/dfec/regs/compliance/OWCP-1500.pdf>

Resource Centers

<https://www.dol.gov/agencies/owcp/energy/regs/compliance/ResourceMeetings/ResourceCenters>

What Can You Do to Make Things Easier?

- File for an Impairment Claim using the correct forms.
- Assist in getting current medical and Activity of Daily Living (ADL) information.
- Assist in getting the impairment report completed quickly.
- Assist in submitting all requested information quickly, i.e., completion of EN-16, Tort Offset/SWC Coordination documentation.



Wage Loss

What is Wage Loss?

Benefits provided under Part E of the EEOICPA to employees or eligible survivors for lost wages the employee incurred, prior to his or her normal Social Security Administration (SSA) retirement age, due to a covered illness contracted through exposure to a toxic substance at a covered DOE or RECA Section 5 facility.

Who Can File a Claim for Wage Loss Benefits?

Employee:

- A covered Part E employee found to have contracted a covered illness through exposure to a toxic substance at a covered DOE facility or RECA section 5 facility.

Survivor:

- An eligible survivor of a covered Part E employee found to have contracted a covered illness through exposure to a toxic substance at a covered DOE facility or RECA section 5 facility, and
- The employee's death was a result of the covered illness.
- Maximum payable compensation under Part E, excluding medical benefits, is \$250,000.00.

General Requirements for Wage Loss

- **Covered Part E Employee** – The employee is, or was, an employee of a covered DOE contractor or subcontractor.
- **Covered Illness** – The employee developed a covered illness as a result of exposure to a toxic substance at a covered DOE facility or RECA section 5 facility.
- **Trigger Month** – A specific month and year that the employee's wage loss commenced prior to his or her normal SSA retirement age.
- **Causal Relationship** – the employee's loss of wages must be related to a covered illness.
- **Wage Loss** – Wage loss determinations are based upon the calendar years of wage loss occurring up to and including the calendar year the employee reaches normal SSA retirement age.

How Do You File for Wage Loss Benefits?

Initially:

- After the FAB issues a Part E final decision to an employee accepting the illness(es), the CE sends Form EE-11B/EN-11B to solicit wage loss claims from employees who are potentially eligible for wage loss benefits.

Can an employee claim wage loss without submitting the Form EE-11B/EN-11B?

- Yes, a claimant can submit “Words of Claim” for wage loss benefits. However, the CE will be required to obtain a signed Form EN-11B prior to the issuance of the recommended decision. The wage loss forms must be signed by the employee/claimant, the authorized representative, or the employee’s Power of Attorney.

Case ID Number.
Employee Name:

Wage-Loss Benefits Response Form

YES, I wish to pursue a claim for wage-loss benefits for my accepted illness(es).

- The initial wage-loss due to my illness(es) began: _____ / _____
(Month/Year)
- I am claiming wage-loss due to my accepted illness(es) for the following period:
From: _____ / _____ (Month/Year) To: _____ / _____ (Month/Year)

NO, I am not pursuing wage-loss benefits at this time. I understand that I can file for wage-loss benefits in the future by submitting a signed statement to that effect to the district office.

Signature (Required)

Signature

Date

**Mail form to: U.S. Department of Labor OWCP/DEEOIC
PO Box 8306
London, KY 40742-8306**

Information Required for the Wage Loss Benefits Form (EN-11B)

- Initial loss of wages begin date (the month and year it was first experienced)
- Period of wage loss being claimed (when wage loss began, month & year, to what date)
- Signature of the employee/claimant, authorized representative, or the employee's Power of Attorney
- Supporting medical and employment earnings evidence for the years being claimed
- *Entitlement limitations

Filing Additional Claims for Wage Loss Benefits

- An employee previously awarded compensation for wage loss may file a new wage loss claim on Form EN-10 for subsequent calendar years of wage loss.
- Additional filings can be submitted no earlier than one year after the previous wage loss compensation award date (Final Decision).
- Sufficient medical and employment earnings evidence for the period claimed must be submitted to receive additional wage loss benefits.

Claim for Additional Wage-Loss and/or Impairment Benefits Under the Energy Employees Occupational Illness Compensation Program Act

U.S. Department of Labor
Office of Workers' Compensation Programs
Division of Energy Employees Occupational Illness Compensation



Note: Please review all instruction relating to this form before completing. Sign and date the bottom of the page.		OMB Control No: 1240-0002 Expiration Date: 05/31/2025
Employee's Information (print clearly)		
1. Name (Last, First, Middle Initial)		2. Social Security Number
3. Address (Street, Apt. #, P.O. Box) (City, State, ZIP Code)		4. Telephone Number(s) a. Home: () - b. Other: () -
Additional Compensation Claimed: (check one or both boxes)		
<input type="checkbox"/> Wage-Loss – I hereby claim additional wage-loss benefits as a result of my accepted work-related illness. It has been at least one year from the date of a prior final decision awarding me wage-loss benefits. As a result of this claim, I realize that I will be expected to provide the evidence necessary to support that I have sustained additional wage-loss in one or more calendar year(s). My claim does not include years of wage-loss addressed by a previous final decision.		
<input type="checkbox"/> Impairment – I hereby claim increased permanent impairment benefits as a result of my accepted work-related illness. It has been at least two years from the date of a prior final decision awarding me benefits based on a percentage of whole person impairment. As a result of this claim, I realize that I will be expected to provide medical evidence that supports an increased impairment. This may include obtaining updated diagnostic evidence, along with an updated medical examination by an appropriate physician.		
Declaration of the Person Completing this Form		
Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. In addition, a felony conviction will result in termination of all current and future EEOICPA benefits. I affirm that the information provided on this form is accurate and true.		Resource Center Date Stamp
_____ (Signature)		_____ (Date)

Medical Evidence Needed to Establish Wage Loss

- **Narrative Report from a Physician -**
A physician's narrative report is to contain an explanation about the causal relationship between the covered illness and the period(s) of wage loss and reference medical evidence that is contemporaneous to the claimed period(s) of wage loss. A narrative report that is speculative in nature, or is not well-rationalized is not considered to be of sufficient probative value.

Medical Evidence Needed to Establish Wage Loss (continued)

- Doctor's office notes.
- Return to work slips.
- Document Acquisition Request (DAR) records, work restrictions caused by a covered illness may result in a compensable wage loss.
- Referral to a Contract Medical Consultant (CMC) – if applicable.

Employment Earnings Evidence

- CEs generally rely on SSA earnings records.
 - Records must include the 3 years prior to the quarter of reported wage loss (for Average Annual Wage determination) and all years during the reported wage loss.
- May also use evidence submitted by claimant such as:
 - Tax returns
 - Pay stubs
 - Union records
 - Pension records (proof of wages only)
 - Social Security Disability Records
 - Document Acquisition Request (DAR)

Examples of Wages vs. Non-Wages

Examples of Wages:

- SSA Earning Records
- Salaries
- Overtime compensation
- Sick leave
- Vacation leave
- Tips
- Bonuses

Examples of non-wages:

- Capital gains
- IRA distributions
- Pensions
- Annuities
- Unemployment compensation
- State workers' compensation benefits
- Medical retirement benefits
- Social Security benefits

Wage Loss Benefit Amount Determination

- The following factors are considered when determining the amount of wage loss:
 - When initial loss of wages began (the month and year it was first experienced)
 - Dates of wage loss claimed (specific dates provided by the employee or survivor)
 - Number of years of wage loss prior to the normal SSA retirement age
 - Calculated Average Annual Wage amount prior to the onset of wage loss

Calculation of Employee Wage Loss Compensation

- The benefit amount is calculated using a formula that applies an Average Annual Wage (AAW), which is calculated using the 12 quarters of wages immediately preceding the quarter in which the employee first experiences the wage loss.
- The AAW is used to measure loss of wages by comparing wages before and wages after a claimant began experiencing wage loss.
- The CE compares the AAW of the employee with his or her adjusted wages in later calendar years to determine the wage loss percentage for each claimed year of wage loss.
- For each qualifying year in which an employee's earnings were significantly below his or her calculated AAW, either \$10,000 or \$15,000 is payable.

Employee Wage Loss Compensation

- The wage loss percentage is used to determine the amount of the employee's wage loss compensation.
- \$10,000 is awarded for each year in which the employee's adjusted wages during a claimed calendar year is greater than 50% but less than or equal to 75% of the AAW.
- \$15,000 is awarded for each year in which the employee's adjusted wages during a claimed calendar year is equal to or less than 50% of the AAW.
- Wage loss benefits are subject to Tort Offset/SWC Coordination.

Survivor's Benefits for Wage Loss

- If an employee dies of a covered illness prior to his/her normal SSA retirement age, eligible survivors may be awarded wage loss benefits for all calendar years after the calendar year of death up to and including the calendar year of normal SSA retirement age.
- In addition to the base survivor benefit of \$125,000, the survivor may receive an additional:
 - **\$50,000** – If 20 calendar years or more of wage loss is established.
 - **\$25,000** – If between 10 and 19 calendar years of wage loss is established.

Survivor Benefits for Wage-Loss Prior to/after Employee's Death

- In some instances, the employee may have lost wages due to a covered illness prior to his or her death.
- The CE undertakes the same medical and employment development and AAW calculation as if the employee had filed a claim for wage loss.
- A causal link must be established between a covered illness and each claimed year of wage loss (same as employee claim).
- Compensation depends on percentage of wages earned in a calendar year of claimed wage loss compared to the AAW.
 - **IMPORTANT** –in order to be included in the award calculation, yearly earnings must be equal to or less than 50% of AAW.
- Each eligible year prior to death is then added to years after death to determine total years of compensation.
- 0-9 years = \$0, 10-19 years = \$25,000, 20+ \$50,000

Election of Benefits

- If a covered Part E employee dies after submitting a Part E claim, but before that claim is paid, and death is solely by a non-covered illness or illnesses, the survivor may elect to receive the compensation that would have been payable to the employee.
- The survivor must file a written confirmation that he/she is seeking an Election of Benefits.
- All required medical and employment evidence must be submitted to determine wage loss eligibility.

Wage Loss Recommended Decision

- Wage loss decisions are to explain each finding relevant to the applicable wage loss decision, along with a clear description of the calculations used to compute any possible wage loss benefit.
- The CE must explain the sufficiency (or insufficiency) of the evidence justifying the decision outcome.
- The RD must thoroughly explain the calculation(s) determination, to include Tort Offset/SWC Coordination.
- The RD is forwarded to the FAB for an independent review.

Tools/Links

EEOICPA Procedure Manual

<https://www.dol.gov/agencies/owcp/energy/regs/compliance/PolicyandProcedures/ConsolidatedProcedureManual>

How Do I Qualify for Wage Loss Benefits?

https://www.dol.gov/owcp/energy/regs/compliance/brochure/ESA_wage_loss.pdf

How Does a Tort Action Affect My Right to EEOICPA Benefits?

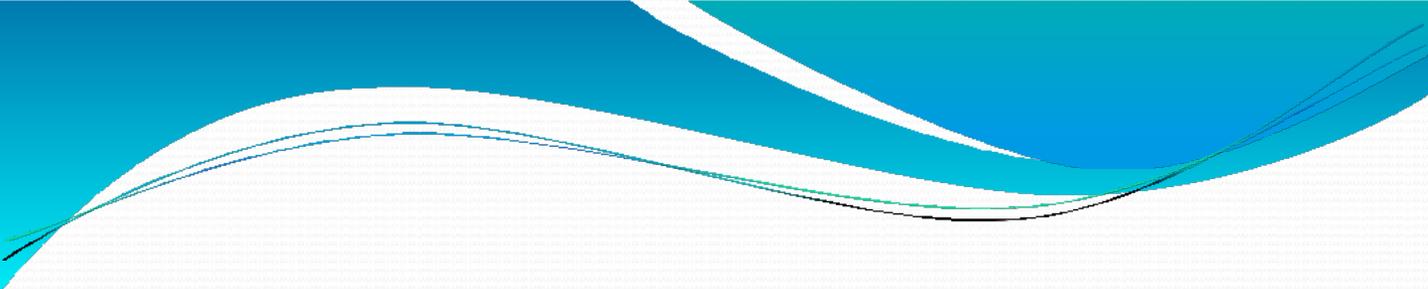
<https://www.dol.gov/owcp/energy/regs/compliance/brochure/tortaction.pdf>

Resource Centers

<https://www.dol.gov/owcp/energy/regs/compliance/ResourceMeetings/ResourceCenters.htm>

What Can You Do To Make Things Easier?

- File a Wage Loss Claim using the correct forms.
- Complete the Wage Loss Claim forms correctly and completely.
- Make sure the rationalized medical evidence from the employee's treating physician identifies the covered illness that is causally related to the employee's inability to work and specifies the time period the employee was unable to work.
- Assist in submitting all requested information quickly, i.e., completion of EN-16, Tort Offset/State Workers' Compensation (SWC) Coordination documentation.



QUESTIONS?