

Development and Adjudication of Wage Loss Claims



Necessary Information

The evidence needed to pay a claim for wage loss consists of appropriate pay information and probative medical evidence that establishes disability from work for the period claimed.



Necessary Information – Pay Rate

Effective Date of Pay Rate

Disability Cases:

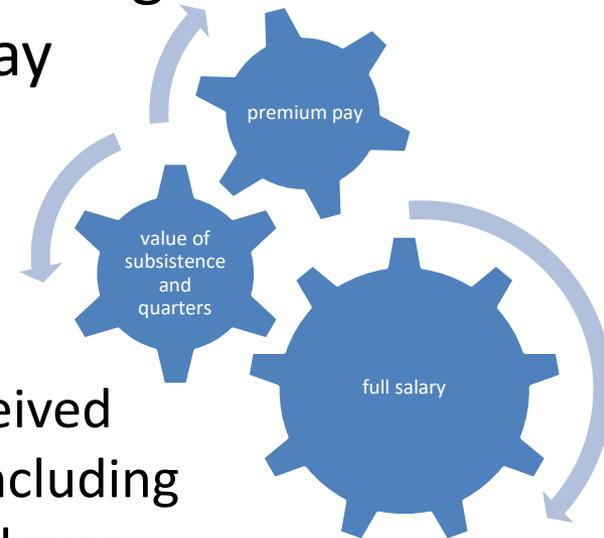
- In keeping with Section 5 U.S.C. 8101 (4), compensation in disability cases is computed using the pay rates in effect on:
 - (a) The date of injury (DOI) (or death);
 - (b) The date disability began (DDB); or
 - (c) The date disability recurred (DOR), if the recurrence began more than six months after the employee resumed regular full-time federal employment.
- The dates when compensable "disability began" or "disability recurred" are the dates the employee stopped work due to the injury, not the dates pay stopped.
- For occupational disease claims where the claimant remains exposed to the work factors claimed, the pay rate is the rate of pay effective the date of the last exposure.



Pay Rate Statutory Inclusions

The Federal Employees' Compensation Act (FECA) provision at 5 U.S.C. 8114 includes the following elements for determining an employee's pay rate:

- (a) The employee's full salary or full cash wage;
- (b) The value of any subsistence and quarters received for services in addition to the cash wage (not including subsistence and quarters furnished by the employer and paid for directly by the employee or by deduction from the employee's salary); and
- (c) Premium pay for scheduled standby duty as provided by 5 U.S.C. 5545(c)(1).



Administrative Inclusions

- Night differential between the hours of 6:00 p.m. and 6:00 a.m.
- Shift differential is typically 7.5% for the entire shift of a swing shift or shift 2.
- Extra compensation for performing work on Sundays or holidays paid to regular employees of the U.S. Postal Service.
- Premium pay for work on Sundays and/or Saturdays when an employee's regular work schedule includes an eight-hour period, any part of which falls on a Sunday.
- Premium pay for work on holidays when an employee's regular schedule includes work on a holiday. This increment may not be paid for work which exceeds eight hours or which represents overtime.
- Retention pay when the employee is in a field which is difficult to staff or requires specific skills and/or is considered "difficult to hire employment."
- Premium pay for administratively uncontrollable overtime (AUO), including holiday pay under 5 U.S.C. 5545(c)(2).
- Availability pay for criminal investigators is 25% of basic pay which is paid to ensure the availability of investigators for unscheduled duty, and replaces AUO for these employees.

[For other administrative inclusions, please refer to 5 U.S.C. 8114.]



Statutory Exclusions

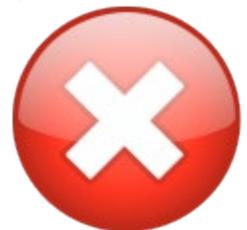
5 U.S.C. 8114(e) excludes the following elements from an employee's pay rate:

- (1) Overtime pay. The extra pay required by the Fair Labor Standards Act (FLSA) for hours worked in excess of the standard prescribed under the FLSA is not to be included in computing pay for the purposes of continuation of pay or compensation. Such extra pay is earned only if the actual hours are worked and is considered to be overtime pay for the purposes of 5 U.S.C. 8114(e).
- (2) Additional pay or post-allowance authorized outside the United States and its possessions because of differential in cost of living or other special circumstances. The separate maintenance allowance authorized in 5 U.S.C. 5923(3) is also excluded, since it is a cost-of-living allowance paid to an employee in a foreign area.
- (3) Bonus or premium pay for extraordinary service, including "danger pay," which is any amount paid as a bonus for particularly hazardous services in time of war.



Administrative Exclusions

- Per diem received by an employee while in a travel status.
- Extra allowance paid for an employee's use of his or her private motor vehicle (such as rural carriers for the U.S. Postal Service).
- Unemployment compensation.
- Earnings from dissimilar concurrent employment. For example, if the claimant works for the federal government as a part-time secretary and also works as a cashier part-time for a private employer, the earnings from the cashier position would not be included in the pay rate. However, such earnings may help in determining the claimant's ability to work full time.
- Earnings as an activated reservist or National Guard member when the activation is not as a result of a presidential call under §12301(a), §12302, or §12304 of Title 10, U.S.C. (See R.E. ECAB Docket 08-1728, 04/10/09.)
- Earnings as a reservist or National Guard member when the membership is not a condition of the employee's civilian employment with the Guard or Reserve.



Work Schedule

- The employing agency (EA) should advise the Office of Workers' Compensation (OWCP) of the claimant's work schedule.
- When compensation is paid in a disability case and the claimant has a regular work schedule, the compensation payment should be based on "work days," in which the claimant will be paid for each actual work day lost.
- A "regular work schedule" is one in which the claimant works the same fixed days each week.

Work Schedule - Irregular

- If the claimant has an irregular work schedule, or if he/she is placed on the periodic roll for temporary total disability, payment is made on a "calendar day" basis.
- An "irregular work schedule" is one in which the claimant works different days each week, has a rotating day off, or is otherwise variable.

	Team 1	Team 2	Team 3	Team 4	
Jan	Orange				
Feb		Orange	Orange		
Mar			Orange	Orange	
Apr	Green		Green	Green	
May		Purple		Orange	
Jun	Green	Orange	Green	Orange	
Jul		Green		Green	
Aug			Purple		
Sept		Purple		Purple	
Oct	Purple		Orange		Purple
Nov		Purple	Green		
Dec			Purple		

Deductions

- When a federal employee enters a leave without pay (LWOP) status, EA is no longer able to deduct for health benefits and life insurance premiums. If compensation for wage loss is payable under the FECA, the responsibility for making those deductions transfers to OWCP.
- OWCP will begin deductions effective the first day of LWOP. Beginning deductions promptly enables OWCP to provide continuity of payment for the injured worker with no interruptions in insurance deductions.

(Note-Insurance deductions are not made for intermittent hours or days within a pay period.)



Deductions

- Federal Employees' Group Life Insurance (FEGLI) - Employing Agency Responsibilities:
 - EAs are required to inform OPM of their injured worker's status at 365 days on LWOP.
 - However, most EAs neglect to submit the required forms to OPM. Consequently, OPM often learns a claimant is receiving FECA compensation from DFEC.
 - EA's failure to inform OPM often results in significant FECA overpayments (OPs)

Deductions

- Timing of FEGLI Elections:

When a claimant reaches 365 days on leave without pay (LWOP), separates, or retires from his/her employing agency, he or she **MUST** make an election to continue life insurance (LI) as a Compensationner.

- The claimant's EA is required to provide the SF 2818 form to the claimant and to complete its own form (SF 2821) certifying coverage as the employer. The EA should submit both forms to OPM, who verifies LI eligibility to continue coverage.
- Once verified, OPM informs DFEC of the claimant's election via the LI Notification letter (NOTI) and SF 2818.

Tips for CA-7 Form Completion

- Agency Portion -

- Be sure to correctly enter the pay rate information in Section 8. It is important to include any premiums pays that the injured employee was earning at the time of injury and/or disability.
- Premium pays include, but are not limited to: night and Sunday differential, dirty work pay, holiday pay, administratively uncontrollable overtime (AUO), quarters allowance, National Guard Service, locality and hazardous duty pay.
- Regular overtime should not be included in the pay rate.
- Be sure to accurately represent the employee's work schedule in Section 9.
- Report any health benefits, life insurance, or optional life insurance deductions and retirement system of the employee in Section 10. Please include last date of deduction.
- Please provide a contact name and phone number in Section 16 in case the claims examiner needs additional information.

Necessary Information - Medical Evidence

- A claim for wage loss should be consistent with the accepted condition and with appropriate treatment for that condition.
- The medical evidence in the case must sufficiently demonstrate that the claimant is totally disabled; OR
- That the claimant is partially disabled AND the factual evidence must establish that EA is unable to offer limited duty work for the dates and hours claimed; OR
- That the claimant attended medical appointments for treatment of the accepted work injury on the dates and hours claimed.



Necessary Information - Medical Evidence

The following types of medical evidence are generally considered adequate to support disability:

- Form CA-16 with a projected period of disability;
- Form CA-20 with a stated period of disability;
- Form CA-17 stating that the claimant cannot yet return to duty;
- The attending physician's treatment notes indicating that the claimant is unable to work pending reevaluation at a future date;
- Hospital records indicating disability for the period being claimed;
- A contemporaneous narrative medical report indicating disability for the period claimed; or
- A previous narrative medical report which projected disability through the period claimed.

Necessary Information - Medical Evidence

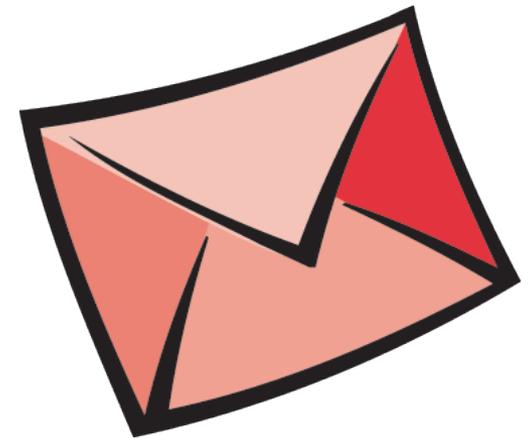
- A claimant may need to undergo examination, testing, or treatment following an accepted injury or illness. Time lost for such appointments, including OWCP directed medical exams, may be covered for compensation while obtaining the medical services and for a reasonable time spent traveling to and from the provider's location [5 U.S.C. 8105].
- OWCP procedures state that “For a routine medical appointment, a maximum of four hours of compensation may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. These claims for wage loss should be considered on a case-by-case basis and any exception should be documented in the file. Some agencies do not allow employees in particular job classifications (e.g. USPS rural carriers) to take less than a full day off from work. Such employees should be compensated for the full shift of lost time from work.”

Development Letters

If OWCP does not receive sufficient evidence necessary to process payment, a development letter will be issued requesting the missing information.

Reasons for development:

- Medical evidence is lacking
- Time and attendance discrepancies
- Availability of suitable employment
- Pay information is incomplete



When Development is Necessary (for pay rate information)

EA or claimant may challenge, correct, or expand on the evidence in the original reports with respect to terms of employment, amount of pay, types of pay, and/or amounts of increments.

- The claims examiner (CE) must clarify any material discrepancies in the record before establishing a pay rate for compensation purposes. This can be done by letter, secure e-mail with EA to and from a government network, or by telephone call followed by written confirmation.
- Evidence submitted by an EA that is supported by records will usually prevail over statements from the claimant, unless such statements are supported by documentary evidence.
- When a discrepancy in the reported pay rates is identified, compensation should be paid based on the lower figure until the CE resolves the discrepancy. A provisional rate of GS-2, step 1, or the amount reached by multiplying the daily wage by 150 may be used if necessary. The eight hours per day used in the "150-formula" is based on a five-day work week, or 40 hours per week. Any adjustment should be included in a later payment.

Due Process and Formal Decisions

- If the office determines that the medical evidence is insufficient to establish the claim, the injured worker will be provided 30 days to submit the necessary evidence to substantiate his/her claim.
- Following development, if the evidence is not sufficient to support the period of wage loss being claimed and compensation cannot be approved, a formal decision denying the claim for compensation can be issued.
- Any Notice of Decision will be accompanied with appeal rights.
- If the evidence is sufficient to support the claim, the claim can be processed for payment.



Questions

In order to issue payment on a claim for wage loss in an accepted claim, the evidence of record needs to include:

- a) Appropriate pay information
- b) Probative medical evidence that establishes disability from work for the period claimed as a result of the accepted condition
- c) All of the above

Questions

All of the following types of pay are included in calculating a pay rate to issue wage loss compensation except:

- a) Premium pay for work on holidays
- b) Overtime pay
- c) Night differential between the hours of 6:00pm and 6:00am
- d) Premium pay for work on Saturdays and/or Sundays
- e) Availability pay for criminal investigators

Questions

If the injured employee has an irregular work schedule, one in which they work different days each week, a rotating day off, or is otherwise variable, then payment will be made based on calendar days.

- a) True
- b) False

Questions

Medical evidence is necessary in order to issue compensation benefits. Depending on the type of wage loss claimed, OWCP will evaluate:

- a) Whether the claim for wage loss is consistent with the accepted condition and with appropriate treatment for that condition.
- b) If the claimant is totally disabled, the medical evidence in the case sufficiently demonstrates that level of disability.
- c) If the claimant requests wage loss to attend medical appointments, then the medical evidence should show those appointments were for treatment of the accepted work injury on the dates and hours claimed.
- d) All of the above

Questions

If OWCP does not receive sufficient evidence necessary to process payment, a development letter will be issued requesting the missing evidence. If OWCP does not receive the additional evidence within 30 days, a formal decision will be issued denying compensation. This type of formal decision cannot be appealed.

- a) True
- b) False

Take Away Tips

- 1) Compensation in disability cases is computed using the pay rates in effect on either (a) The date of injury (DOI) (or death); (b) The date disability began (DDB); or (c) The date disability recurred (DOR), if the recurrence began more than six months after the employee resumed regular full-time federal employment.
- 2) When compensation is paid in a disability case and the claimant has a regular work schedule, the compensation payment should be based on "work days," in which the claimant will be paid for each actual work day lost.
- 3) If the claimant has an irregular work schedule, or if he/she is placed on the periodic roll for temporary total disability, payment is made on a "calendar day" basis.
- 4) Premium pays include, but are not limited to: night and Sunday differential, dirty work pay, holiday pay, administratively uncontrollable overtime (AUO), quarters allowance, National Guard Service, locality and hazardous duty pay.

Take Away Tips

- 5) When a federal employee enters a LWOP status, EA is no longer able to deduct for health benefits and life insurance premiums. If compensation for wage loss is payable under the FECA, the responsibility for making those deductions transfers to OWCP.
- 6) The medical evidence in the case must sufficiently demonstrate that the claimant is totally disabled; OR that the claimant is partially disabled AND the factual evidence must establish that EA is unable to offer limited duty work for the dates and hours claimed; OR that the claimant attended medical appointments for treatment of the accepted work injury on the dates and hours claimed.
- 7) If OWCP does not receive sufficient evidence necessary to process payment, a development letter will be issued requesting the missing information.
- 8) If the office determines that the medical evidence is insufficient to establish the claim, the injured worker will be provided 30 days to submit the necessary evidence to substantiate his/her claim. Following development, if the evidence is not sufficient to support the period of wage loss being claimed and compensation cannot be approved, a formal decision denying the claim for compensation can be issued.