

October 17, 2007

Notice No. 123

NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE
LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AND OTHER
INTERESTED PERSONS

SUBJECT: Maximum and Minimum Compensation Rates Under the
Longshore Act, Effective October 1, 2007; Adjustments of
Permanent Total Disability and Death Cases

Section 6(b)(3) of the Longshore and Harbor Workers' Compensation Act provides that prior to October 1 of each year, based on the national average weekly wage for the three calendar quarters ending June 30 of that year, the Secretary of Labor shall determine the national average weekly wage (NAWW) to be applicable for the 12-month period beginning October 1. It has been determined that the applicable NAWW for the period beginning October 1, 2007, and ending September 30, 2008, is \$580.18.

Minimum and Maximum Rates

Section 6(b)(1) provides that the maximum rate of compensation under this Act shall not exceed 200 percent of the national average weekly wage. Therefore, the maximum compensation rate for total disability and death is \$1,160.36 (200 percent of \$580.18). Compensation for disability subject to this maximum should be paid at 66 2/3 percent of the employee's average weekly wage, as determined under Section 10, subject to the limitation of \$1,160.36.

The minimum compensation rate payable for disability incurred after October 1, 2007, is \$290.09 per week, which is 50 percent of the NAWW. However, if an employee's average weekly wage is less than this amount, he or she receives his or her entire average weekly wage as compensation for total disability.

In computing death benefits covered by this period, the average weekly wage of the deceased employee shall not be less than \$580.18 per week. In addition, under the provisions of the 1984 Amendments, the total weekly death benefits shall not exceed the lesser of (1) average weekly wages of the deceased or (2) 200 percent of the NAWW. The 200 percent maximum benefit is \$1,160.36 per week, and is applicable to cases in which the death occurs during the period October 1, 2007, through September 30, 2008,

except for District of Columbia Compensation Act (DCCA)¹ cases which are not subject to the 1984 amendments.

The above-noted maximum and minimum rates for disability and death also apply to employees covered by the Nonappropriated Fund Instrumentalities Act (NFIA). The minimum rate does not apply to employees covered by the Defense Base Act.

Annual Adjustments

Under Section 10(f) and 10(h) of the amended Act, compensation or death benefits payable for permanent total disability or death cases which were incurred prior to October 1, 2007, are to be increased by the lesser of (1) a percentage equal to the percentage by which the applicable national average weekly wage for the period beginning October 1, 2007, exceeds the applicable national average weekly wage for the preceding period, or (2) 5 percent. (DCCA cases are always subject to the percentage increase in the NAWW without regard to the 5 percent limitation.) The percentage increase in the NAWW is 4.12 percent. As this figure is less than 5 percent, compensation is to be increased by 4.12 percent effective October 1, 2007.

Field or district offices of insurance carriers or self-insured employers paying benefits under the Longshore and Harbor Workers' Compensation Act and related Acts (DCCA, Defense Base Act, Outer Continental Shelf Lands Act, and Nonappropriated Fund Instrumentalities Act) will soon receive specific instructions from OWCP district offices and/or from the District of Columbia Government for making the adjustments on Section 10(f) and 10(h) cases, and should begin paying at the new benefit levels as soon as possible.

In case of questions about implementing these mandatory adjustments, any district office or the OWCP National Office, Longshore Division (Telephone: (202) 693-0038) may be contacted. For DCCA cases, contact the D.C. Government, Department of Employment Services (Telephone: (202) 671-1000).

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

¹ District of Columbia Compensation Act of 1928 which is applicable only to injuries which occurred prior to July 26, 1982.

LHWCA BULLETIN NO. 08-01

Issue date: October 1, 2007

Expiration Date: September 30, 2008

Subject: National Average Weekly Wage, Minimum/Maximum Rates, and Annual Adjustment Under Section 10(f), Effective October 1, 2007.

Background: Under Section 6(b)(3) of the LHWCA, the Secretary has determined that the National Average Weekly Wage (NAWW) for the three consecutive calendar quarters ending June 30, 2007 is \$580.18. This amount is the applicable NAWW for the period October 1, 2007, through September 30, 2008.

In accordance with Section 2(19) of the Act, the NAWW of \$580.18 is based on the national average earnings of production or nonsupervisory workers on private nonagricultural payrolls. Such earnings during the three consecutive calendar quarters ending June 30, 2007, as obtained from the Bureau of Labor Statistics, are \$578.34, \$576.09 and \$586.12. The average of these three quarterly figures is \$580.18.

Under Section 6(b)(1) of the Act, the maximum compensation for disability or death is "200 per centum of the applicable national average weekly wage." Given the NAWW of \$580.18, the maximum compensation rate for the 12-month period beginning October 1, 2007, is \$1,160.36 per week.

The minimum compensation rate under Section 6(b)(2) is "50 per centum of the applicable national average weekly wage," or \$290.09 per week for the period October 1, 2007, through September 30, 2008.

Section 10(f) provides that, effective October 1 of each year, compensation for permanent total disability or death shall be increased by (1) a percentage equal to the percentage by which the current NAWW exceeds the preceding NAWW or (2) 5 percent, whichever is less. The NAWW of \$580.18 exceeds the preceding NAWW of \$557.22 by 4.12 percent. Therefore, the increase provided by Section 10(f) for October 1, 2007, is 4.12 percent.

In summary, the following amounts and percentage are applicable during the period October 1, 2007, through September 30, 2008:

National Average Weekly Wage	\$580.18
Maximum Compensation Rate	\$1,160.36
Minimum Compensation Rate	\$290.09
Adjustment Under Sections 10(f) and 10(h)	4.12%

Purpose: To provide the national average weekly wage, the minimum and maximum compensation rates, and the percent of adjustment under Section 10(f) applicable to the period beginning October 1, 2007, and to provide information and guidance on their application.

References: Chapters 3-202 and 3-203 of the Longshore (LHWCA) Procedure Manual.

Applicability: All District Directors, Claims Examiners, and Claims Clerks in the DLHWC District Offices.

Action:

1. Effective October 1, 2007, compensation for disability incurred during the period 10/1/2007 - 9/30/2008 is to be computed at 66 2/3% of the employee's average weekly wage as determined under Section 10, subject to the maximum compensation rate of \$1,160.36. The minimum compensation rate in total disability cases is \$290.09. However, if an employee's average weekly wage is less than this amount, compensation should be paid at 100% of the employee's average weekly wage.
2. In computing death benefits, the average weekly wage of the deceased employee should not be less than \$580.18, and the total weekly death benefit should not initially exceed the maximum compensation rate of \$1,160.36. Death benefits can subsequently exceed the initial maximum limitations by virtue of Section 10(f) adjustments.
3. Form LS-557, copy attached, has been revised to reflect the current minimum and maximum limitations applicable where the injury occurred on or after October 1, 2007. Form LS-557 is also being sent as an attachment in Microsoft Word for Windows XP format to the District Directors. Each district office may print the forms as needed. No supply of the form will be provided by the National Office unless specifically requested. A small supply of the previous edition of the LS-557 should be retained for use in those cases where the injury occurred prior to October 1, 2007.

4. In accordance with the provisions of Section 10(f) of the LHWCA, the compensation being paid in cases of permanent total disability or death arising out of injuries subject to the Act which existed prior to October 1, 2007, is to be increased by 4.12 percent.

The adjusted weekly amount will be fixed at the nearest dollar. Figures ending in \$.50 or more will be raised to the next whole dollar; figures ending in less than \$.50 will be rounded to the preceding dollar amount. No adjustment of less than \$1.00 will be made. Therefore, in any case where the weekly award is \$24.27 per week or less, there will be no adjustment of compensation. If the award is greater than \$24.27, then there will be an adjustment.

5. Form LS-521, copy attached, has been revised to reflect the percentage of adjustment for October 1, 2007. Form LS-521 is also being sent in electronic form via e-mail in Microsoft Word for Windows XP format. Offices should use the automated LS-521 process available in the Longshore Case Management System (LCMS). Those offices using word processing or other programs to generate the LS-521 should make appropriate revisions to that document. Any previous editions of the form are obsolete and should be destroyed.

6. Examples of computations of Section 10 adjustments for October 1, 2007, are as follows:

Example 1. Cases currently being paid at the maximum compensation rate:

\$1,114.44 (Weekly compensation payment)

$\$1,114.44 \times 4.12\% (.0412) = \45.9149 (\$45.91 rounded to the nearest cent)

$\$1,114.44 + \$45.91 = \$1,160.35$ or \$1,160.00 rounded to the nearest dollar.

NOTE: If application of a Section 10 adjustment results in compensation above the maximum amount because of rounding to the nearest dollar, the compensation must be reduced to the maximum rate. However, this is not the case for this year's adjustment.

Example 2. Section 10(h)(1) cases currently being paid at the highest rate:

\$371.00 (Weekly compensation payment)

$\$371.00 \times 4.12\% (.0412) = \15.285 (\$15.29 rounded to the nearest cent)

$\$371.00 + \$15.29 = \$386.29$ or \$386.00 rounded to the nearest dollar

Example 3. Cases in which no adjustment is to be made:

\$24.27 (Weekly compensation payment)

$\$24.27 \times 4.12\% (.0412) = \1.0786 (\$1.08 rounded to the nearest cent)

Section 10(g) states in such case that there is no adjustment in compensation. This example indicates that in any case where the weekly award is \$24.27 or less there shall be no adjustment to compensation. If the award is greater than \$24.27, then there will be an adjustment.

Disposition: This Bulletin should be retained until the indicated expiration date or until the necessary changes have been made to the Longshore (LHWCA) Procedure Manual.

MICHAEL NISS
Director, Division of
Longshore and Harbor
Workers' Compensation

Attachments

Distribution: List No. 1
(Regional Directors, OWCP; District Directors, DLHWC; All Claims Examiners; Rehabilitation Specialists; Mail and File Section; National Office DLHWC Professional Staff; Director, OWCP; Director, DFEC; Director, DCMWC, Rehabilitation Division; Director, DEEOIC, Rehabilitation Division; Solicitor's Office, Division of Black Lung and Longshore Legal Services)