



File Number:

LHWCA BULLETIN NO. 11-01

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Subject: National Average Weekly Wage, Minimum/Maximum Rates, and Annual Adjustment Under Section 10(f), Effective October 1, 2010.

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, 2010 is \$628.42. This amount is the applicable NAWW for the period October 1, 2010, through September 30, 2011.

In accordance with Section 2(19) of the Act, the NAWW of \$628.42 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, 2010, as obtained from the Bureau of Labor Statistics, are \$625.79, \$624.93 and \$634.53. The average of these three quarterly figures is \$628.42.

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 \$628.42, the maximum compensation rate for the 12-month period beginning October 1, 2010, is \$1,256.84 per week.

The minimum compensation rate under Section 6(b)(2) is "50 per centum of the applicable national average weekly wage," or \$314.21 per week for the period October 1, 2010, through September 30, 2011.

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 \$628.42 exceeds the preceding NAWW of \$612.33 by 2.63 percent. Therefore, the increase provided by Section 10(f) for October 1, 2010, is 2.63 percent.

In summary, the following amounts and percentage are applicable during the period October 1, 2010, through September 30, 2011:

National Average Weekly Wage . . . . .	\$628.42
Maximum Compensation Rate . . . . .	\$1,256.84
Minimum Compensation Rate . . . . .	\$314.21
Adjustment Under Sections 10(f) and 10(h) . . . . .	2.63%

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, 2010, 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, 2010, compensation for disability incurred during the period 10/1/2010 - 9/30/2011 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 \$1,256.84. The minimum compensation rate in total disability cases is \$314.21. 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 \$628.42, and the total weekly death benefit should not initially exceed the maximum compensation rate of \$1,256.84. 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, 2010. 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, 2010.

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, 2010, is to be increased by 2.63 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 \$37.83 per week or less, there will be no adjustment of compensation. If the award is greater than \$37.83, then there will be an adjustment.

5. Form LS-521, copy attached, has been revised to reflect the percentage of adjustment for October 1, 2010. 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, 2010, are as follows:

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

\$1,224.66 (Weekly compensation payment)

$\$1,224.66 \times 2.63\% (.0263) = \$32.208$  (\$32.21 rounded to the nearest cent)

$\$1,224.66 + \$32.21 = \$1,256.87$  which would be \$1,257.00 rounded to the nearest dollar.

NOTE: Since application of the Section 10 adjustment this year results in compensation above the maximum amount because of rounding to the nearest dollar, the compensation must be reduced to the maximum rate of \$1,256.84.

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

\$407.00 (Weekly compensation payment)

$\$407.00 \times 2.63\% (.0263) = \$10.704$  (\$10.70 rounded to the nearest cent)

$\$407.00 + \$10.70 = \$417.70$  or \$418.00 rounded to the nearest dollar

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

\$37.83 (Weekly compensation payment)

$\$37.83 \times 2.63\% (.0263) = \$.9949$  (\$.99 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 \$37.83 or less there shall be no adjustment to compensation. If the award is greater than \$37.83, 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.



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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)