

POLICY 5.81

Section: Time-loss Eligibility

Effective:

Title: Policy 5.81 - Paying Loss of
Earning Power Compensation

Cancels: Policy 5.81
dated 2-9-1998

See Also: [RCW 51.32.090](#) (temporary disability benefits)
[RCW 51.32.095](#) (voc rehab services)
Policy 4.41 (wage definition)
Policy 4.42 (wages for sole proprietors)
Policy 4.71 (concurrent payment of time-loss)
Policy 16.35 (time-loss compensation on reopenings)

Approved by: _____
Sarah Jackson for the Insurance Services Policy Council

This policy applies when determining whether to pay partial time-loss compensation benefits called loss of earning power (LEP) compensation.

1. **A worker may be entitled to LEP compensation when earning power has decreased as a result of an industrial injury or occupational disease.**

The law defines earning power as the worker's ability to earn income. (See [RCW 51.32.090\(3\)](#)).

2. **The department or self-insured employer determines whether the worker qualifies for LEP compensation.**

For all dates of injury or disease manifestation:

- The worker must have a loss of earning power exceeding five percent of wages at the time of injury; **and**
- Medical certification must indicate the worker's loss of earning power is due to the industrial injury or occupational disease; **and**
- The worker must be able to return to work or be working at any employment for income, salary, wages, or commission. Employment may include, but isn't limited to, light, transitional, or modified duty work as well as on-the-job training in an approved vocational plan.

NOTE: If the attending provider approves a written light, transitional, or modified duty job description offered to the worker and the worker chooses **not** to accept the work,

they're only entitled to LEP based on the wages they would have earned at the transitional or light duty job.

3. The department or self-insured employer pays LEP benefits through legal fixity as long as the worker remains eligible for benefits.

Loss of earning power is paid until **legal fixity** if the worker remains eligible. This includes when a worker is found employable at a lower paying job and the job market shows a pay gap of greater than five percent compared to the job of injury.

Legal fixity occurs when the department or self-insured employer issues an order closing the worker's claim. A protest to the closing order doesn't extend the period of payment for LEP benefits if the order is later affirmed.

4. The department or self-insured employer calculates LEP compensation by comparing updated wages to the current wage or earning potential.

There is one method for calculating LEP when the date of injury or manifestation is **prior to** May 7, 1993, and an additional method when the date of injury or manifestation is **on or after** May 7, 1993.

For injuries prior to May 7, 1993: LEP compensation is a percentage of the difference between the wage the worker earned at the time of injury or date of manifestation and the wage the worker is earning or capable of earning.

For injuries on or after May 7, 1993: LEP compensation is based on 80 percent of the actual difference between the workers present wages and earning power at the time of injury or date of manifestation. For injuries on or after May 7, 1993, the department or self-insured employer does **both calculations** and uses the method that gives the larger LEP benefit to the worker.

For both methods, the department or self-insured employer must use updated wages to accurately measure loss of earning power.

5. Loss of earning power is based on reduced earning power, not fluctuations in the labor market.

Loss of earning power compares the job of injury updated hourly rate of pay to the worker's current earning power. The updated hourly rate of pay of date of injury or manifestation wages can increase or decrease, but the employment pattern or job of injury hours should remain constant.

During difficult economic times, some employers may reduce the working hours and in some cases the hourly wage rate for all of their employees. *Updated wages apply only to the wage rate, **not** to adjustments in the hours available to work.*

Updated wages means the wages the worker would be earning at the job of injury if the injury hadn't occurred. This includes monthly wages from all employment at the time of injury or occupational disease, including healthcare benefits.

6. **The worker remains entitled to LEP when missing work due to an unrelated condition.**
7. **The worker isn't entitled to LEP while off work due to the industrial injury or occupational disease.**

If the worker misses work due to the industrial injury or occupational disease, the department pays full time-loss compensation for that period of time.

8. **The department or self-insured employer may pay provisional LEP compensation.**

When addressing claim validity or when reopening a claim, the department or self-insured employer may pay provisional LEP compensation on a temporary order. (See Policy 16.35-Payment of Provisional Time-loss on Reopening Applications.)

9. **The department or self-insured employer doesn't use LEP compensation when calculating wages for a new claim.**

When a worker receiving LEP compensation sustains a new injury, the department or self-insured employer doesn't consider LEP compensation paid to the worker when calculating gross monthly wages on the new claim. (See [RCW 51.08.178](#), Policy 4.41, and Policy 4.71).

10. **When the department or self-insured employer reopens a claim closed with a permanent partial disability award, LEP compensation is paid based on a comparison of current or available earnings to the updated wages from the job at the time of the original injury or date of manifestation.**

For further information about this or other workers' compensation policies, you may contact the Insurance Services' policy program at 360-902-6932.

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