



Washington State Department of
Labor & Industries

Update on Benefit Accuracy Workgroup

Report to the Legislature

February 2016

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Executive Summary

Introduction

In 2015, the legislature passed ESB 5510, requiring the Department of Labor & Industries (L&I) to convene a benefit accuracy workgroup and to report back to the legislature by February 1, 2016 and by September 1, 2016.

The charge of the workgroup is to focus on improving the accuracy, simplicity, fairness, and consistency of calculating and providing wage replacement benefits and shall not consider overall reductions in existing worker benefit levels.

Information Requested by the Legislature

The Director of L&I appointed members to the workgroup, as required by ESB 5510. The workgroup has met four times. The workgroup has reviewed benefit and claim-related data to identify complex areas of wage calculations that may contribute to controversy, disputes, and criticisms of wage calculations in Washington, as well as where they want to focus their next steps.

Some of Washington's wage calculation requirements are considered vague, making them difficult to administer, provide uncertain benefits as a result, may cause disincentives to return to work, and that parts of the law may be unfair to certain groups of workers. In many cases, Washington's law defining wages is difficult to apply to today's often flexible or variable compensation packages, work hours and days. Industries that have a larger share of workers with non-standard work patterns tend to have a greater share of protests of wage decisions than other industries. This may indicate that determining the wage for such work is difficult, and interpretations may be inconsistent, leading to a higher rate of disputes.

Washington's use of a variable scale of time-loss and pension benefits as a percentage of wages based on marital and dependent status is unique. Of the six other states that make some adjustment for marital and dependent status, they do so based on tax withholding tables. This means the impact on compensation is the same dollar amount without regard to pre-injury wages.

As far as we know, Washington is also unique in adjusting benefits when employers reduce or cease to provide employer-paid health insurance benefits.

Next Steps

The workgroup has future meetings scheduled about every four to eight weeks. The workgroup will submit a final report to the legislature by September 1, 2016. Having reviewed and discussed a variety of data and trends, the workgroup will now focus on RCW 51.08.178 (definition of wages) and related policies.

Introduction

In 2015 the legislature passed ESB 5510, requiring the Department of Labor & Industries (L&I) to convene a benefit accuracy workgroup and to report back to the legislature by February 1, 2016 and by September 1, 2016. The Director of L&I was required to appoint to the workgroup two members representing labor, two members representing employers, and at least two members representing L&I.

The charge of the workgroup is to focus on improving the accuracy, simplicity, fairness, and consistency of calculating and providing wage replacement benefits and shall not consider overall reductions in existing worker benefit levels. The workgroup is tasked with a difficult assignment: given the complex nature of our workforce and the ways in which our workforce is compensated makes it challenging to identify ways to simplify the determination of wages while maintaining or improving fairness in benefits to injured workers and costs to employers.

The workgroup has met four times and has future meetings scheduled. Problem areas and criticisms from stakeholder perspectives have been identified, data reviewed, and next steps for the workgroup planned.

Information Requested by the Legislature

Benefit Accuracy Workgroup Members

- Joe Kendo, Washington State Labor Council
- David Lauman, Washington State Association for Justice
- Tammie Hetrick, Washington Retail Association, representing State Fund employers
- Lisa Vivian, Eberle-Vivian, representing self-insured employers
- Vickie Kennedy, Washington State Department of Labor and Industries
- Kirsta Glenn, Washington State Department of Labor and Industries

COMMON UNDERSTANDING OF THE SYSTEM

The workgroup started by developing a common understanding of the current Washington system of wage calculations and benefits generally.

Topics discussed include:

- Calculation of time-loss benefits
 - Type of work
 - Variable, intermittent, seasonal, part-time
 - Non-standard hours of work, days of work, pay
 - Types of pay
 - Overtime, room & board, health care
 - Dependents/spouse for determining benefit levels
 - Minimum/maximum benefit levels
- Self-insured audit data
- Claim manager view of difficulty of wage process
- Protests, overpayments, and adjustments
- Healthcare benefit adjustment

PROBLEM STATEMENT

The wage replacement calculation methods used in Washington have developed over many years, altered by case law, and influenced by various policies and practices.

Today, several industries in Washington's system include non-standard wages or wage patterns, making the concept of calculating a monthly wage difficult to apply. Over half of time-loss claims in 2014 came from industries that often work non-standard schedules or for variable compensation such as truck drivers, waitresses, construction, and agriculture.

With some non-standard employment, a worker may work multiple jobs for multiple employers in a given month. In such cases, the concept of a *usual* monthly wage may be something of an anachronism. Workers also receive compensation in various forms: room and board, bonuses, employer-paid health care benefits, to name a few. Converting these to dollar values for wage calculations can be complex.

If we recognize that a routine or consistent monthly wage, and that the concepts of part-time, seasonal, and intermittent work may be outdated in Washington law, then we're free to look at other wage-setting methodologies.

CURRENT COMPLEXITIES OF WASHINGTON'S SYSTEM

Requirements are vague:

- Hard to apply consistently
- Hard for workers/employers/advocates to verify
- Cause disputes

Some requirements are difficult to administer, can result in uncertain benefits, and may cause disincentives for return to work:

- Differentiation between seasonal, intermittent, and regular work
- Provisions paying spouse/adult children separately
- Changes in benefits when employer reduces or eliminates contribution to employer-paid health insurance

Parts of the law cause varied results for workers when compared to other states:

- Washington has relatively high maximum and relatively low minimum compared to other states
- Washington is the only state that pays benefits for dependents and spouse as a percentage of the injured worker's wage (as a result, a spouse or dependent of a high wage worker increases the compensation more than the spouse or dependent of a low wage worker)

CALCULATION METHODS

Washington's Calculation Method

Washington calculates wage replacement benefits as a share of the injured worker's monthly wage. The share is determined by their marital status and number of dependents.

Monthly wage is determined by their employment pattern:

- Monthly at time of injury if available
- Daily multiplied by the days of month as specified in law if no monthly wage is available
- Annual divided by 12 if worker is a seasonal or intermittent employee (specific criteria must be met based on case law)

- If a wage has not been fixed or cannot be reasonably and fairly determined, compensation can be based on the usual wage for similar work

There are separate provisions for piece work, commissions, bonuses, and tips. A change in the compensation amount can be made under certain circumstances. Such changes most often occur in cases where the injured worker loses employer-paid health insurance benefits or a dependent becomes of age. New marriages or new children are not included, unless the child was conceived prior to injury.

Washington’s use of a variable share of wage to determine benefits appears to be unique and adds documentation requirements and calculations. As far as we know, Washington is also unique in adjusting benefits when employers reduce or cease to provide employer-paid health insurance benefits.

EVIDENCE OF COMPLEXITY IN THE CALCULATION OF WAGES

Claim Manager Focus Group

Based on a focus group of L&I claim managers, non-standard wage calculations are considerably more difficult. These non-standard calculations include such items as multiple employers, multiple jobs and pay ranges with one employer, piecework, commissions, and non-monetary payments. The employer-paid health care adjustment is considered common and relatively time-consuming. Evaluating whether a worker is seasonal or intermittent can be complex and subject to the intent of the worker.

Disputes

There are protests on about 10% of all wage orders. Industries that often pay non-standard wages have higher protest rates, and those with more traditional salaries have lower protest rates:

- Agriculture 19%
- Food processing 16%
- Temporary Help 14%
- Construction 13.5%
- Government 6%
- Schools 6%
- Utilities 4%

Self-Insurance Audits

A pilot of the new self-insurance audit process resulted in 167 audits of wage calculations that were non-standard. (The piloted “Tier 1” audits intentionally focused on wage issues considered the most complex and, as a result, subject to error.) Of those, three were found not to have errors. About half of the audits were determined to need further review. The top five errors identified were: multiple

rates of pay, health care benefits, bonuses, non-monetary compensation, choice of time period upon which to base wage estimate.

APPLYING MARITAL, DEPENDENT STATUS

About 40% of injured workers are single with no dependents and, thus, receive 60% of their calculated monthly wage. A further 30% are married, but with no dependents, receiving 65% of their wage. A very small share of injured workers has three or more dependents, about seven percent.

In other states, the percentage of wages paid in benefits is consistent for all injured workers with 66 2/3rds% being the most common.

Of the six other states that make some adjustment for marital and dependent status, they do so based on tax withholding tables. This means the impact on compensation is the same dollar amount without regard to pre-injury wages.

Next Steps

During the January meeting, the workgroup decided to focus going forward specifically on the language of RCW 51.08.178 and related policies. RCW 51.08.178 defines “wages.”

The workgroup has also agreed to draft legislation for consideration in 2017 that would simplify the payment of benefits when dependent children reside in a different household from that of the injured worker.

The final report to the legislature is due by September 1, 2016.