



Loss of Earning Power – A guide to Return-to-Work modified duty

Workers may be eligible for Loss of Earning Power (LEP) benefits when working modified duty at reduced pay or hours. Here is a guide vocational rehabilitation counselors (VRCs) can use to help workers navigate and prepare for return-to-work modified duty.

Eligibility

- A worker who has been given work restrictions by their attending provider, and is working modified duty at reduced pay or hours, is encouraged to apply for LEP benefits, even if they are unsure that they qualify.
- The claim manager (CM) ultimately determines eligibility once all required documents are gathered.
- The worker's loss of earnings must be more than five percent compared to their wages at the time of injury.
- Missed work time may show up on the worker's paystub as holiday, sick, vacation, and paid time off. It is helpful if the worker details the purpose of their time off. Examples may include:
 - Personal illness
 - Dependent illness
 - Outages due to the industrial injury
 - Vacation or holidays

If sick leave is used, indicate whether the employer has a buy-back policy.

- L&I will issue either a payment order or an order denying benefits for the time period submitted.

LEP Forms

- Make sure the worker completes their section and signs the [Application for LEP - Medical form](#) (F242-208-909). It is helpful if the paystub for the corresponding pay period is included with the form.
- The employer section should be completed and signed. However, if there are barriers to doing so, the worker may submit the form with the employer section blank. The CM will strive to gather all missing information to adjudicate appropriately.
- The physician section should be completed and signed. However, if there are barriers to doing so, the worker may submit the form with the physician section blank.
- The [Application for LEP Compensation Voc form](#) (F242-209-000) should only be used when a worker is in a retraining plan.

Potential delays between time-loss and LEP

- A natural delay in payroll may occur when a worker starts or returns to a job due to a gap between a pay period ending and the actual payday.
- The first LEP payment may take longer than expected because the CM must obtain or verify specific information from the employer. Generally, some of the initial delays can be eliminated once ongoing LEP is established.
- Issuing an LEP payment requires coordination with the employer's payroll schedule and obtaining important payroll information, such as:
 - Total gross pay
 - Healthcare benefits paid
 - Potential available hours
 - Updated wages
- CMs should address LEP benefits within five days of receiving the Application for LEP – Medical form in the claim file. This five-day window does not include the extra time it might take for CMs to receive a response from the employer, worker, or provider when more information is needed.
- You may contact the CM if no payment is made or additional information requested after five days, or if significant delays continue. Avoid undue hardship on the worker while they wait for payment as much as possible.

Ongoing time-loss payments after Return-to-Work

- When the VRC identifies the return-to-work date, they must call the CM and submit an EVOC to the claim file. This protects the worker from receiving an overpayment.
- Overpayments can occur, like when the return-to-work notification and scheduled payment dates are close together. The worker should contact the CM if additional information or discussion about the overpayment is needed.
- Contact L&I if time-loss is scheduled to continue after the return-to-work notification has been made.

VRCs can help workers understand the process and reasons for potential delays in receiving LEP benefits when transitioning from time-loss to LEP. VRC guidance can prevent additional stress and confusion for the worker, and prepare them to return to work.

For questions about LEP guidance, email VocRecoveryProject@Lni.wa.gov.