Loss of Earning Power Compensation

Self-Insurance Claims Adjudication Guidelines

Paying Loss of Earning Power Benefits

RCW 51.32.090, WAC 296-20-01002

Definition

Earning power is defined as the worker's ability to earn income as a result of labor.

RCW 51.32.090 requires the self-insurer to compensate a worker for loss of earning power (LEP) when the worker's earning capacity has decreased as a result of the industrial injury or occupational disease.

Criteria

In order for a worker to be eligible for loss of earning power benefits:

- The worker's loss of earnings must be greater than 5 percent of wages at the time of injury.
- Medical certification must indicate that the worker's loss of earning capacity is due to the industrial injury or occupational disease.

Note: The department's LEP Worksheet or online LEP Calculator may be used to help calculate LEP benefits.

Situations Where a Worker May Be Entitled to LEP

There are several situations where a worker may be eligible for LEP after an injury or occupational disease. The worker may be entitled to LEP if they:

- Return to work at a lower wage.
- Had more than one job at the time of injury and is restricted from performing one of the jobs, even if it is not the job of injury.
- Return to work but is unable to work at the premium or higher rates they normally work.
- Return to work at regular wage but fewer hours. This includes workers who return to full time, i.e. 40 hours per week, but prior to their injury or occupational disease were regularly working overtime. (**Exception:** This does not apply if the employer no longer offers overtime work to any employees.)
- The worker declines or is terminated for cause from a valid light duty job (light duty job offer had a greater than 5% loss in earning power)

- The worker is found employable based on transferable skills or a vocational retraining plan (job worker found employable at has a greater than 5% loss in earning power)

NOTE: In the last two bullets, the worker may be entitled to LEP benefits until the claim reaches legal fixity, meaning when a closing order is issued.

Timeliness of Payments

LEP payments should be paid as close to the worker's time-loss payment cycle as possible. This can be bi-weekly or semi-monthly.

This requirement applies to provisional payments as well.

If a worker is being paid light duty wages, but is not actively working in a light duty position, pay LEP based on the employers pay schedule.

Valid Light Duty

RCW 51.32.090, Policy 5.15

Certain criteria must be met for a job offer to be considered valid:

- The job must be with the employer of injury.
- The job description/analysis must be sent to the medical provider, with a copy to the worker.
- The job must be approved by the medical provider, and the worker should not be assigned to any other work unless approved by the worker's attending provider.
- The job offer must be offered in writing, and the start date must be reasonable so that the worker has sufficient time to get the offer, review it and make arrangements to report to work.
- Health care benefits must be reinstated to the level at the time of injury, unless to do so would be against the collective bargaining agreement or the terms of the benefit program.

The employer may offer a light duty job that does not meet the above criteria, but the worker is not required to accept the job. If the worker declines an invalid light duty job, time-loss compensation benefits should continue to be paid.

Refusal of Light Duty Work

If the worker's attending medical provider approves a written light duty or transitional job description offered to the worker and the worker chooses not to accept the work:

> **For all payments after 6/30/2025 (regardless of date of injury (DOI)):**
> The worker is not entitled to time loss, but is entitled to LEP based on the wage they would have earned at the light duty job.
>
> **For DOI and payments made 5/7/1993-6/30/2025:**
> The worker is not entitled to time loss or LEP compensation.
>
> **For DOI prior to 5/7/1993:**

The worker is not entitled to time loss, but is entitled to LEP based on the wage they would have earned at the light duty job.

The Four Key Numbers

Four key numbers must be accurate to correctly calculate LEP. The key numbers are:

➊ Updated Date of Injury Wages (previously known as Wages at the Date of Injury)

➋ Current Wages

➌ Time-Loss Rate

➍ State's Average Wage x 1½

Each of these numbers must be calculated specifically for the period being paid. **Do not use the total monthly rate** for wages or time-loss compensation unless the period being paid equals 30 calendar days.

Calculating the Employer's Contribution to Health Care

When calculating the four key numbers, the employer's contribution to a worker's health care benefits must be considered.

There are two calculations for the employer's contribution to health care.

- **Employer contributes a monthly amount:** Divide the monthly amount by 30 days to get a daily contribution amount, then multiply the daily amount by the number of calendar days in the period.

  Example: Cynthia's employer contributes $450.00 per month to her health care benefits (HCBs). Her LEP period is 4/16/23-4/30/23.

$450.00 ÷ 30 = $15.00 (daily rate) x 15 (calendar days) = **$225.00** (HCB for LEP period)

- **Employer contributes an hourly rate based on hours worked:** Calculate the hourly contribution in the same way the hourly wage rate is calculated for the gross monthly wage. Divide that amount by 30 days to get a daily contribution amount, then multiply by the number of calendar days in the period.

  Example: Mark works 10 hours per day, 4 days per week. His employer contributes $3.75 per hour to his health care benefits. His LEP period is 3/1/23-3/14/23.

  $3.75 x 10 (hours per day) x 18 (days per month) = $675.00 per month
  $675.00 ÷ 30 = $22.50 (daily rate) x 14 (calendar days) = **$315.00** (HCB for LEP period)

Calculating Health Care and other benefits for Updated Date of Injury:

We update the employer's contribution toward healthcare benefits and the value of other benefits included in wage calculations just as we update the wage rate.

Example: If an injured worker's employer was contributing $400.00 per month toward housing costs at the time of injury, and the employer is contributing $500.00 per month during the LEP period, then calculate the injured worker's updated wages using $500.00 per month.

In situations where a worker has returned to work light duty, if the employer continues to contribute or reinstates health care benefits to the level they were on the date of injury (or higher), do not include them in the updated date of injury wage calculations. If the employer is not contributing, do include them in the updated date of injury wage calculations.

Example 1: Henry was injured while working 8 hours per day, Monday through Friday, at $16.00 per hour, but has now returned to light duty at a reduced pay rate. The employer stated that if Henry was still working the job of injury, he would have received a $2.00 per hour raise. Additionally, the employer was contributing $450 toward healthcare benefits on the date of injury, but is no longer contributing, as this would go against the union bargaining agreement. Henry performs light duty from April 16, 2023 through April 30, 2023.

$18 X 8 X 10 working days (regular schedule) = $1440 updated wages
$450 HCB ÷ 30 days = $15.00 X 15 calendar days = $225 HCB during LEP period

$1440 + $225 = **$1665 Total Updated Wage**

Example 2: Harriet was injured while working as a salaried employee making $4500 per month. Her employer contributed $300 per month toward healthcare benefits, and continues to do so. We need to find the updated wages for April 16, 2023 through April 30, 2023.

$4500 ÷ 30 = $150 per day X 15 calendar days (varied schedule) = **$2250 Total Updated Wage**

Note: We do not "update" wage rates or benefit contributions to lower levels. If workers doing the job during the LEP period have wage rates that are lower than at the time of injury, or benefits have been reduced since the worker's injury, then use the wage rates and benefits provided at the time of injury.

Calculating Health Care Benefits for Current Wages:

Healthcare benefits should not be used in the current wage calculations, unless the employer is contributing to health care benefits at a reduced amount. In this case, health care benefits would be added at the pre-injury amount to the updated wages and at the reduced amount, under current wages.

Calculating Health Care Benefits for Time Loss:

If the employer reinstates or continues to contribute to HCB, do not include the contribution in the gross monthly wage calculation. If benefits are discontinued, add the amount of the employer's health care contribution on the date of injury to the gross monthly wage.

Updated Date of Injury Wages (Wages at the Date of Injury)

We use updated date of injury (DOI) wages to take into account wage rate changes that have nothing to do with the industrial injury. Updated date of injury wages are effectively the wages a worker would have made had they not been injured.

To calculate updated wages for an LEP period, we use the work pattern the worker had at time of injury (hours and days), but we use the *wage rates* of workers who are doing the job of injury during the LEP period.

> **Example**: If an injured worker was working 10 hours per day, 6 days per week, at $15 per hour, and workers, who are doing that job during the LEP period, are working 8 hours per day, 5 days per week, at $20 per hour, then we calculate the injured worker's updated wages using 10 hours per day, 6 days per week, at $20 per hour.

It is also important to use the correct number of days in your calculations. For workers with a set schedule (e.g. 8 hours/day and 5 days/week), you would calculate using actual **Working Days** in the LEP period. For workers with a varied schedule, or in other words, there is no true pattern to the hours they work, we would calculate using **Calendar Days** in the LEP period.

Regular Schedule = Working Days
Varied Schedule = Calendar Days

Current Wages

"Current wages" are the worker's earning capacity during the LEP period. This is usually the actual gross earnings as listed on the pay stub or payroll records. See "Current Wages When Missed Work or on Leave" for information regarding how to calculate current wages if the worker does not work all available hours.

Overtime – If the worker was paid overtime (OT) during the LEP period, the OT should be included based on the subsection the date of injury wage rate was based upon (WAC 296-14-530).

- For workers whose work pattern was calculated using subsection 1, include the overtime *hours* worked using the "regular" rate of pay.

- For workers whose work pattern was calculated using subsection 2, the overtime rate of pay should be included in determining the worker's wages.

Bonuses – Any bonuses earned during the LEP period should be included in the Current Wages for that LEP period.

Example: Joseph earned a $200.00 annual bonus during his LEP period. His other earnings from light duty work totaled $750.00 for a 15-day period. His employer does not contribute to health care benefits.

$200.00 bonus paid during LEP period + $750.00 light duty earnings =$950.00 (current wages)

Example 1:

George was injured on October 12, 2022. At the time of injury, he was earning $27.00 per hour. His schedule varied, but he always worked full time with an average of 45 overtime hours per month. His employer does not contribute to health care benefits.

He has been working light duty for the last two months at $20.00 per hour. His schedule varies, but he continues to work full time. His average overtime hours per month have been reduced to 14. From April 16, 2023 through April 30, 2023, he worked a total of 88 regular hours and 8 overtime hours.

Calculate his "current wages" for the LEP period.

$20.00 (current hourly wage) x 88 (regular hours worked) = $1,760.00
OT: $20.00 (current hourly wage) x 8 (overtime hours) = $160.00
$1,760.00 + $160.00 = **$1,920.00** (current wages)

Note: Because George is a regular and continuous employee, overtime is included at the regular rate of pay.

Example 2:

Samantha was injured on January 9, 2023. At the time of her injury, she was earning $34.75 per hour, working Monday through Friday, 8 hours per day. Her employer continues to contribute $525.00 per month to health care benefits.

She is currently working light duty 4 hours per day, Tuesday through Friday, earning $27.50 per hour.

Calculate her “current wages” for the LEP period of May 1, 2023 through May 14, 2023.

$27.50 (current hourly rate) x 4 (hours per day) = $110.00 (daily wage)
$110.00 x 8 (working days in LEP period) = $880.00(current wages)

Example 3:

Shane was injured July 29, 2022. At the time of injury, he was a park maintenance worker earning $16.00 per hour. His hours varied seasonally; in the 12 months prior to his injury, he worked an average of 135 hours per month. His employer was contributing $125.00 per month to his health care benefits.

He was released to light duty work by his attending provider and returned to work at the same wage, but a reduced schedule. For the LEP period of September 20, 2022 through October 3, 2022, he worked a total of 46 hours. His employer’s contribution to health care benefits ended effective August 1, 2022.

Calculate his current wages for the LEP period.

$16.00 (current hourly rate) x 46 (total hours worked) = **$736.00** (current wages)

Current Wages When Missed Work or on Leave

When a worker misses work during the LEP period for something unrelated to the injury (sickness, vacation, holiday, paid or unpaid leave), the wages the worker would have earned for the hours missed on the light duty job should be included in the LEP calculation. However, if a worker used sick leave for a reason related to the industrial injury, those hours should not be included in the current wages calculation.

Example: Marie was scheduled to work light duty 4 hours per day, 3 days per week. She earned $17.00 per hour. For the LEP period of May 16, 2023 through May 31, 2023, she was scheduled to work 10 days, but only worked 9 days because her son was sick one day.

Calculate her available earnings for the LEP period:

$17.00 x 4 (hours per day) x 10 (scheduled work days) = **$680.00** (current wages)

Current Wages When a Worker is Not Working

If a worker is due LEP benefits, but is not currently working, you will need to determine the wages that the worker is capable of earning. How you gather these wages will depend on the situation.

Worker declined, or was fired for cause from a valid light duty job:
Use the wages that the worker would have earned from the light duty position. Remember that if the light duty job offer provided a set schedule, you should use working days. If a salary or varied schedule was included, use calendar days.

Worker Found Employable based on transferable skills or a retraining plan:
Use the wages listed on the Labor Market Survey found in the vocational closing report. If there are no wages listed on the Labor Market Survey, use Employment Security Department data.

Time-Loss Rate

The Time Loss rate should be calculated based on the rate in effect at the time of the LEP period. All COLAs, maximum, and minimum time-loss rates apply. Divide the monthly compensation rate by 30 to find the daily rate, then multiply it by the number of calendar days in the LEP period.

The Time -Loss rate key number is what you would be paying the worker in time-loss benefits, if they were not working light duty.

State's Average Wage x 1½

The State's Average Wage (SAW) is calculated by the Employment Security Department each year. The monthly and daily rates for 1½ x the SAW can be found on the second page of the LEP Worksheet. Use the rate in effect at the time of the LEP entitlement period. The daily rate should be multiplied by the number of calendar days in the period. This amount will be automatically calculated if you choose to use the online LEP calculator.

Example: For the payment period August 30, 2022 – September 12, 2022, the SAW x 1½ amount from the chart is $343.78 per day.

SAW x 1½ for a 14-day LEP period: $343.78 x 14 days = **$4,812.92**

Calculating Loss of Earning Power

The department's LEP Calculator calculates the LEP percentages at each stage going out five places from the decimal and rounding to four places from the decimal (e.g. .34756 is rounded to .3476).

Method A

For injuries or occupational diseases **prior** to May 7, 1993, loss of earning power benefits are based on a percentage of the monthly compensation rate. This formula, known as Method A, is the only method used to determine LEP entitlement. Further, in cases where a worker is entitled to LEP benefits, but is not earning current wages (declined valid light duty, terminated for cause, vocationally found employable), Method A is the only method used.

Method B

For injuries on or after May 7, 1993, an additional formula known as Method B must also be calculated. The formula is 80 percent of the difference between the worker's current wages and earning power (updated DOI wages) at the time of injury.

The Calculation

Example:

> Forrest was earning a monthly salary of $12,000 at the time of his injury on December 22, 2022 and it had not increased at the time of his LEP entitlement. Forrest is married with no dependents. After a period of recovery, the attending provider released him to work 7 hours per day, 5 days per week, Monday through Friday. The employer made Forrest a valid job offer for $60 per hour. He returned to work on March 2, 2023 and remained on the light duty job through March 11, 2023.

Calculate the 4 key numbers for the LEP period March 2, 2023 through March 11, 2023.

❶ $12,000 ÷ 30 = $400.00 (daily rate) x 10 (calendar days) = **$4,000.00** (updated DOI wages)

❷ $60 x 7 (hours per day) = $420 (daily wage)
$420.00 x 7 (LD working days) = **$2,940.00** (current wages)

❸ $12,000.00 x 65% = $7,800.00 (monthly time-loss compensation rate)
$7,800.00 ÷ 30 = $260.00 (daily time-loss rate)
$260.00 x 10 (calendar days) = **$2600.00**

❹ $343.78 (state's average wage x 1½) x 10 (calendar days) = **$3,437.80**

First, complete the Method A section of the worksheet using the first three key numbers:

(1)	$2,940.00 ❷	÷	$4,000.00 ❶	=	.7350
	Current Wages		DOI Wages (Updated Wages/Earning Capacity)		Percent of Wages at the Time of Injury
(2)	1.00	-	.7350	=	.2650
			Percent of Wages at the Time of Injury		Loss of Earning Power Percent
(3)	.2650	x	$2,600.00 ❸	=	$689.00
	Loss of Earning Power Percent		Time-Loss Compensation Rate		Method A LEP Entitlement

Second, complete the Method B section using the first two key numbers:

(4)	$4,000.00 ❶	-	$2,940.00 ❷	=	$1060.00
	DOI Wages (Updated Wages/Earning Capacity)		Current Wages		"Difference"
(5)	$1060.00	x	.80	=	$848.00
	"Difference"				Method B LEP Entitlement

If Method A is the higher entitlement, stop and pay Method A.
If Method B is the higher entitlement, there are additional rules to check to determine if the entitlement must be "capped." (See below.)

Capping

The injured worker's current wages plus the Method B LEP entitlement may not exceed 1.5 times the state's average monthly wage for the period. To see if this cap applies, use the following formula:

(6)	$2,940.00 ❷	+	$848.00	=	$3,788.00 *
	Current Wages		Method B LEP		

* If this amount exceeds 1.5 times the state's average wage (see calculation❹, above), it must be capped as follows:

(7)	$3,437.80 ❹	-	$2,940.00 ❷	=	$497.80
	State's Average Wage Multiplied by 1.5		Current Wages		Capped Amount for Method B

The worker may not receive more than the full time-loss rate for this period. If the Method B entitlement is higher than the time-loss rate for this period (see calculation❸, above), it must be capped by changing the Method B LEP entitlement to the time-loss rate (see calculation❸, above).

The worker must receive the highest benefit amount between Method A and your final amount for Method B (whether capped or not). Compare the Method A entitlement to the Method B entitlement and pay the higher amount.

Compensation paid this period:

3/2/2023	3/11/2023	10	$689.00
From	Through	Number of Calendar Days	Amount LEP Paid

Which method was used? __________Method A__________

LEP Examples

Example 1:

On July 14, 2022, Chris strained his back at work. At the time of his injury, he was working 8 hours per day, Monday through Friday, and earning $29.50 per hour. His employer contributed $420.00 per month to his family's health care benefits. He was married with 3 dependents.

On August 15, 2022, Chris returned to work light duty. He was working the same days and hours but was earning $25.00 per hour. His employer discontinued their contribution to health care benefits while he was on light duty. Effective August 1, 2022, his job of injury hourly wage increased to $30.00 per hour.

Calculate his LEP entitlement from August 15, 2022 through August 31, 2022.

Calendar days

August 2022

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

❶ $30.00 (updated hourly rate) x 8 (hours per day) = $240.00 (daily wage)

$240.00 x 13 (working days in LEP period) = $3,120.00 (updated DOI wages)

$420.00 (HCB per month) ÷ 30 (calendar days) = $14.00 (daily contribution to HCB)

$14.00 x 17 (calendar days in the period) = $238.00
$3,120.00 + $238.00 = **$3,358.00** (updated DOI wages)

❷ $25.00 (light duty hourly rate) x 8 (hours per day) = $200.00 (daily wage)
$200.00 x 13 (actual working days in LEP period) = **$2,600.00** (current wages)

❸ $29.50 (date of injury hourly rate) x 8 (hours per day) = $236.00 (daily wage)
$236.00 x 22 (per RCW 51.08.178) = $5,192.00
$5,192.00 + $420.00 (HCB per month) = $5,612.00 (gross monthly wage)

$5,612.00 x 71% (married with three dependents) = $3,984.52 (monthly TL rate)
$3,984.52 ÷ 30 = $132.82 (daily TL rate)
$132.82 x 17 (calendar days in LEP period) = **$2,257.94** (time-loss rate)

❹ $343.78 (SAW x 1½ daily rate) x 17 (calendar days in LEP period) = **$5,844.26**

Example 1 LEP Calculator:

State's average wage multiplied by 1.5, multiplied by the number of calendar days in the period

$5,844.26

Calendar days

17

LEP entitlement

$606.40

Method used

Method B

Method A

	$2,600.00	Current wages
÷	$3,358.00	DOI Wages
=	77.43%	Percent of Wages at the time of injury

	100%	
-	77.43%	Percent of Wages at the Time of Injury
=	22.57%	Loss of Earning Power Percent

	22.57%	Loss of Earning Power Percent
X	$2,257.94	Time-Loss Comp. Rate
=	$509.62	Method A LEP Entitlement

Method B

	$3,358.00	DOI Wages
-	$2,600.00	Current Wages
=	$758.00	Difference

	$758.00	Difference
X	80%	
=	$606.40	Method B LEP Entitlement

Example 2:

On June 14, 2021, Kami fell at work, sustaining multiple injuries. At the time of her injury, she was averaging 188 hours per month, earning $26.00 per hour. Her employer contributed $450.00 per month towards her health care benefits. Kami is married with no dependent children.

Kami was released for light duty effective August 1, 2023. Her light duty schedule was Tuesday through Friday, 6 hours per day. She continued to be paid $26.00 per hour. While she was on light duty, her employer did not continue to contribute to health care benefits due to the union contract. The employer confirmed her job of injury hourly wage and health care contributions had not changed.

Calculate her LEP entitlement from August 1, 2023 through August 15, 2023.

Calendar Days			August 2023		LD Working Days	
Sun.	**Mon.**	**Tues.**	**Wed.**	**Thurs.**	**Fri.**	**Sat.**
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

❶ $26.00 x 188 (average hours per month) = $4,888.00
$4,888.00 ÷ 30 = $162.93 (daily wage)
$162.93 x 15 (calendar days in period) = $2,443.95

$450.00 (HCB) ÷ 30 = $15.00
$15.00 x 15 (calendar days in period) = $225.00

$2,443.95 + $225.00 = **$2,668.95** (updated DOI wages)

❷ \$26.00 (light duty hourly rate) x 6 (hours per day) = \$156.00
\$156.00 x 9 (working days in LEP period) = **\$1,404.00** (current wages)

❸ \$26.00 (date of injury hourly rate) x 188 (average hours per month) = \$4,888.00
\$4,888.00 + \$450.00 (HCB) = \$5,338.00 (gross monthly wage with HCB)

\$5,338.00 x 65% (married with no dependents) = \$3,469.70
\$3,469.70 x 1.09675 (cumulative COLA) = \$3,805.39 (monthly TL rate)
\$3,805.39 ÷ 30 = \$126.85 (daily TL rate)

\$126.85 x 15 (calendar days in period) = **\$1,902.75** (time-loss rate)

❹ \$350.69 (SAW daily rate x 1½) x 15 (calendar days in period) = **\$5,260.35**

Example 2 LEP Calculator:

State's average wage multiplied by 1.5, multiplied by the number of calendar days in the period

$5,260.35

Calendar days

15

LEP entitlement

$1,011.96

Method used

Method B

Method A

	$1,404.00	Current wages
÷	$2,668.95	DOI Wages
=	52.60%	Percent of Wages at the time of injury

	100%	
-	52.60%	Percent of Wages at the Time of Injury
=	47.40%	Loss of Earning Power Percent

	47.40%	Loss of Earning Power Percent
X	$1,902.75	Time-Loss Comp. Rate
=	$901.90	Method A LEP Entitlement

Method B

	$2,668.95	DOI Wages
-	$1,404.00	Current Wages
=	$1,264.95	Difference

	$1,264.95	Difference
X	80%	
=	$1,011.96	Method B LEP Entitlement

Example 3:

Christine was injured at work on January 4, 2023. She works 9 hours a day, 5 days a week, Monday through Friday, and earns $17.25 per hour. Her employer was contributing $445.00 per month for health care benefits. At the time of injury, she was single with two dependents under the age of 12.

On 3/15/23, she returned to work light duty. She worked 8 hours a day, Monday through Friday, because her employer no longer offered overtime work to any employees. She earns $16.00 per hour while on light duty. Her employer continues to contribute to health care benefits.

Calculate her LEP entitlement from March 15, 2023 through March 28, 2023.

Calendar Days

March 2023

LD Working Days

Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

❶ $17.25 x 9 (hours per day) = $155.25 (daily wage)
$155.25 x 10 (working days in LEP period) = **$1552.50** (updated DOI wages)

❷ $16.00 (light duty hourly rate) x 8 (hours per day) = $128.00 (daily wage)
$128.00 x 10 (working days in LEP period) = $**1,280.00** (current wages)

❸ $17.25 (date of injury hourly rate) x 9 (hours per day) = $155.25 (daily wage)
$155.25 x 22 (per RCW 51.08.178) = $3,415.50 (gross monthly wage, not including HCB because the employer is still paying)

$3,415.50 x 64% (single with two dependents) = $2,185.92 (monthly TL rate)
$2,185.92 ÷ 30 = $72.86 (daily TL rate)

$72.86 x 14 (calendar days in period) = **$1,020.04** (time-loss rate)

❹ $343.78 (SAW daily rate x 1½) x 14 (calendar days in period) = **$4812.92**

Example 3 LEP Calculator:

State's average wage multiplied by 1.5, multiplied by the number of calendar days in the period

$4,812.92

Calendar days

14

LEP entitlement

$218.00

Method used

Method B

Method A

	$1,280.00	Current wages
÷	$1,552.50	DOI Wages
=	82.45%	Percent of Wages at the time of injury

	100%	
-	82.45%	Percent of Wages at the Time of Injury
=	17.55%	Loss of Earning Power Percent

	17.55%	Loss of Earning Power Percent
X	$1,020.04	Time-Loss Comp. Rate
=	$179.02	Method A LEP Entitlement

Method B

	$1,552.50	DOI Wages
-	$1,280.00	Current Wages
=	$272.50	Difference

	$272.50	Difference
X	80%	
=	$218.00	Method B LEP Entitlement

Determining the Dependent Portion of LEP

The dependent portion of LEP depends on the worker's percentage of time-loss compensation and the number of dependents. Divide the percentage for the dependent(s) by the worker's total entitlement percentage, then multiply that number by the LEP entitlement.

Example:

Jim is single with two dependents who live with an alternate recipient. His total LEP entitlement is $1,500.00.

4 (2% for each dependent)	÷	64 (time-loss entitlement percentage)	=	.0625

.0625	x	$1,500.00 (total LEP entitlement)	=	**$93.75** (dependent portion of LEP)

Reporting and Communication Requirements

RCW 51.32.190, WAC 296-15-340, WAC 296-15-420, WAC 296-15-425

Reporting to the Department

Within five days of starting loss of earning power compensation, the self-insurer must send the Start, Stop or Deny Compensation Benefits template (form F207-224-000) to the worker. A copy of the template must be sent to the department, along with the SIF-2. If it has not already been done, the self-insurer must also send the Calculation of Monthly Wage as a Basis for Time-Loss Compensation template (form F207-227-000) to the worker with a copy of the SIF-5A.

Any LEP calculations not previously submitted to the department must be sent when requesting closure. Insurers may choose to use their own LEP worksheets as long as they show the calculations. The department's LEP Worksheet or printouts from the LEP Calculator can also be used for documentation.

Statement of Benefits

WAC 296-15-340(2) requires self-insurers to send a statement of benefits to the worker with each payment, including the type of benefit being paid and the date span. This statement may be provided electronically if authorized by the worker.

Underpayments and Overpayments

If benefits are determined to be underpaid and an adjustment is payable, the self-insurer must send the Notice of Underpayment template (form F207-223-000) to the worker within five days of knowledge of the underpayment.

Alternatively, if benefits have been overpaid, the self-insurer must send the Assessment of Overpayment template (form F207-222-000) to the worker with five days of knowledge. More information about Overpayments is available in the Miscellaneous Claims Issues chapter.

Additional LEP Information

Terminated for Cause

Workers who have returned to light duty employment and are subsequently terminated for cause are due LEP benefits based on what they would earn if performing the light duty work. This applies as long as the termination is for actions occurring during the light duty employment and not retroactively. A worker who was terminated for cause prior to light duty employment is entitled to time-loss compensation (e.g. the worker failed a drug test that was conducted prior to returning to light duty work). (See *Glacier Northwest, Inc. v. Walker*, 151 Wash. App. 389, 212 P.3d 587 (2009) and *O'Keefe v. Dept. of L&I* (2005)).

If a worker who was terminated for cause is then given increased restrictions which would preclude him or her from doing the light duty job, time-loss benefits again become payable. If a light duty job is offered again, even if it is the same job, LEP benefits should be considered (see in re Jennifer Soesbe (2003)).

Worker Accepts a Light Duty Job at Lower Wage

If a worker accepts a light duty job at a lower wage after the employer offers a valid light duty job at a higher wage, loss of earning power is calculated using the higher wage if the worker is capable of performing the higher wage job.

Work No Longer Available

RCW 51.32.090(4)(b)

If a light duty job comes to an end or is no longer available due to plant shutdown, layoffs, etc. before the worker is released to full duty, the worker is entitled to time-loss compensation.

Injured While Working Light Duty

When a worker suffers a new injury while working a transitional light duty job with the employer of injury, the new injury should be addressed under the existing claim. This is because the worker would not have been working light duty if not for the original injury or occupational disease.

When a worker sustains a new injury while working a permanent light duty job for the employer of injury or while working light duty with a different employer, a new claim should be filed.

If the worker was receiving LEP benefits due to their limited ability to work on the original claim, these benefits would continue on the original claim based on the light duty wage. LEP benefits would be calculated using Method A, based on what the light duty job would have paid if the worker had continued working. Method B of the LEP calculation would not apply because the worker must be working to receive Method B (see in re Karl Bean (2006)).

The worker would be entitled to time-loss benefits under the second claim if certified by the attending provider. The wages for the second claim will be based solely on the light duty wage the worker was earning at the time of injury. LEP benefits are not considered when calculating gross monthly wages on the new claim. The wages for the new injury would be based on the hours worked and hourly rate at the time of the new injury.

Provisional LEP

When a claim validity or reopening decision has not been made and the worker has returned to light or modified duty or has been offered a valid light duty job, provisional LEP compensation should be paid.

Provisional LEP payments should contain notification to the worker that the LEP will be recovered if the claim is rejected or the reopening is denied.

Dual Claim Benefits

Policy 4.71

Workers may receive LEP compensation under two or more claims, State Fund and/or self-insured. They are entitled to benefits equal to the amount entitled under the claim with the highest compensation rate.

The payments should be divided between the claims. See Dual Claim Benefits in the Time-Loss Compensation chapter for more information and examples.

Terminating Loss of Earning Power Benefits

When terminating LEP benefits, the self-insurer must notify the worker using the Start, Stop or Deny Compensation Benefits template (form F207-225-000), as required by WAC 296-15-425.

Using the following criteria, determine when to terminate LEP payments:

- **Released for Full Duty** – When a worker is given a full release to the job of injury, LEP benefits may be terminated. This is true even if the worker chooses not to return to the job of injury and continues earning a lower wage.

- **Loss of Earnings is Less than 5%** – If a worker’s earnings have returned to within 5% of the updated wages at the time of injury, they are no longer entitled to LEP. However, if a worker’s Loss of Earning power later becomes greater than 5%, LEP benefits will again be due.

- **Found Employable (with loss of earning power less than 5%)** – When a vocational assessment is conducted and a worker is determined to be employable in a job field with a loss of earning power of less than 5%, LEP benefits may be terminated on the date the vocational determination is made. .
- **Legal Fixity** – Legal fixity occurs when an order is issued closing the claim. (A protest to the closing order does not extend the period of payment for LEP benefits if the department later affirms the closing order.)

LEP is paid until "legal fixity" in the following situations:

- The employer of injury returns the worker to a permanent light duty job.

- The worker is participating in, or has recently completed, an on-the-job training program (RCW 51.32.095).
- The worker is found employable with a loss of earning power greater than 5%. In this case, the employer is responsible to pay LEP benefits, with "current wages" based on the rate of pay expected in the new career field. The employer can find the new career field rate of pay in the vocational closing report. If the vocational closing report does not contain this information, the employer can use the rate of pay provided by Employment Security Department data.