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MAE News: Newsletter from the Office of Monitoring, Audit and Enforcement, Special Edition 2013

Maine Workers' Compensation Board

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MAE News

Newsletter from the Office of Monitoring, Audit and Enforcement Maine Workers' Compensation Board

2013

Special Edition



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Payment to an injured employee must provide the full amount of compensation to which the employee is entitled in accordance with the Act. Executive Director Sighinolfi has made several changes since arriving in March 2011 in order to facilitate the accuracy of payments to injured employees; however, feedback from the Claims Management Unit as well as the results of the Board's monitoring and auditing program indicate that the completion of Wage Statements and the establishment of the employee's average weekly wage (AWW) and weekly compensation rate (WCR) continue to be major contributing factors in inaccurate payments. The following reminders are not judicially enforceable and are intended solely to advise persons in complying with their legal duties. Please refer any questions or concerns regarding this newsletter to Gordon.Davis@Maine.gov.

Wage Statement (Form WCB-2)

- A Wage Statement must be completed for the injured employee regardless of the number of weeks of earnings. **DO NOT COMBINE EARNINGS FROM ONE OR MORE EMPLOYEES** on the Wage Statement in order to show 52 weeks of earnings.
- In accordance with the June 11, 2011 directive, actual weekly earnings are required (estimates are unacceptable). In addition, bi-weekly earnings divided by two or similar proration is **NOT** acceptable (unless the employee is salaried). The Board discards any Wage Statements not meeting this requirement and the form is **NOT** considered filed.
- Week 52 of the Wage Statement should always be the week ending that includes the date of injury. Work back from there to week 1. Do not omit any weeks. If there are weeks with no earnings, simply enter zero for those weeks.
- Use week ending dates in box 20, not the date checks are issued. Gross wages for each week must be filled out, even if a worksheet is attached.
- Box 21 (total earnings) should be the total of all earnings in box 20. If any of the weeks with earnings are omitted from the calculation, the week(s) should still be included in box 21, with a comment (box 23) that they were omitted in the AWW calculation.
- Preparer name and contact information must be included in boxes 24 and 25.
- If calculating the AWW pursuant to §102(4)(C) (seasonal), the Wage Statement should show earnings for the calendar year (January 1 through December 31) of the year prior to the injury. For example, a date of injury of January 1, 2013 or December 31, 2013 would both require a Wage Statement with earnings for calendar year 2012.
- If calculating the AWW pursuant to §102(4)(D), submit the employee's own Wage Statement along with separate Wage Statements for each of the comparable employees (2 or more). The comparable Wage Statements should be clearly designated as "comparable 1," "comparable 2," etc. (do not include the name of the employees). If comparables cannot be obtained from the employer of injury, they may be obtained from other employers in the region that have employees doing the same or similar work.
- If the employee was employed regularly in any of the 52 weeks prior to the date of injury (i.e. concurrent employment pursuant to §102(4)(E)), separate Wage Statements must be filed for each concurrent employer.
- Do not include fringe benefit costs if they continue to be paid during the incapacity. If they are discontinued during the incapacity, an amended Wage Statement must be filed.

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Average Weekly Wage (AWW) calculation (please refer to §102(4) of the Act)

- Apply section 102(4) paragraphs (A) through (D) in order. If one does not apply or does not produce a fair and reasonable AWW, go to the next:
- If 102(4)(A) applies, AWW is the salary or earnings at the time of the injury. Note you cannot use §102(4)(A) if the employee worked less than 200 days in the 52 week period.
- If 102(4)(B) applies, divide total earnings (box 21) by the number of weeks with earnings (don't use weeks with no earnings, even if the employee chose not to work those weeks). ALSO, remember to exclude the week of injury and/or the week of hire if (and only if) either or both reduce the AWW.
- If 102(4)(C) applies, divide the prior calendar year earnings by 52, regardless of any weeks with no earnings. To qualify for §102(4)(C), the employee must have been employed seasonally (26 weeks or less) in a seasonal position in the prior calendar year. EXCEPTION: employees who are employed directly in agriculture or in the harvesting or hauling of logs are considered seasonal, even if they worked more than 26 weeks.
- If none of the above apply, or if they fail to produce a fair and reasonable AWW, use 102(4)(D), known as the "fallback provision." You must obtain at least two comparable Wage Statements. Taking those into consideration, along with the employee's own earnings, you must use your own judgment in arriving at a fair and reasonable AWW.
- If there are concurrent employers, each AWW must be calculated separately. The same method need not be used for each employer.

Weekly Compensation Rate (WCR) calculation

- For injuries on or after January 1, 2013, the WCR is defined as 2/3 of the AWW and is calculated by dividing the AWW by three and multiplying by two. Do not use a decimal (.6667, for example); it will likely produce an incorrect WCR. Filing status and dependents have no effect on this WCR calculation. (Injuries prior to 1/1/13 continue to use filing status/dependents and the benefit tables.)
- For injuries on or after January 1, 2013, the maximum WCR is 100% of the state average weekly wage (SAWW), adjusted every July 1. (Injuries prior to 1/1/13, use 90% of SAWW.)
- If the AWW includes fringe benefits, the maximum rate becomes 2/3 of SAWW at the time of the injury (NOT subject to subsequent SAWW adjustments.) You must calculate the WCR using the AWW with and without fringes and pay the greater. In the case of varying partial earnings, this can vary from week to week, requiring calculation both ways each week.
- If you are paying the max rate based on AWW without fringes, it must be adjusted every July 1 and a WCB-4 modification filed. If the new max rate exceeds the employees own rate, use the employees own rate.

Please refer to the Board's web site at www.maine.gov/wcb/ for the Act, current rules, Forms Manual, SAWW information and training modules on these and a variety of other topics.