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Quick tips for calculating pre-injury average weekly wage

First of a three-part series regarding common pitfalls when calculating indemnity benefits

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Pre-injury average weekly wage (“AWW”) is the basis for determining temporary total, temporary partial, permanent partial, and permanent total disability benefits. Thus, an incorrect AWW could result in thousands of dollars of undue compensation paid to the claimant. Because this calculation is so important and mistakes can easily be made, we are providing a short guide to help you calculate AWW in most cases, and inform you of some common mistakes.

The standard method to calculate AWW is to take the total amount of gross earnings over the 52 weeks prior to the work accident and then divide by 52. However, the Virginia Code sets forth exceptions to that general rule when the standard method does not adequately approximate the economic loss suffered by the claimant. *See* Va. Code § 65.2-101(1).

One of the most common AWW calculation errors we have observed is in cases involving school employees. If you have a claimant who works for a school system and does not work during the summer, you should divide the claimant’s total pre-accident annual salary by 52 weeks, not the number of weeks worked during the year. Otherwise, dividing the annual salary by the number of weeks worked per year (usually around 42-44), will result in an inflated and inaccurate average weekly wage.

Example: Teacher makes \$50,000 per year. If you were to erroneously divide \$50,000 by 42 weeks (number of weeks worked) instead of 52 weeks, you would get an AWW of \$1,190.48 instead of the appropriate AWW of \$961.54. If the teacher were totally disabled for an entire year and you had calculated AWW by dividing by 42 weeks, he/she would receive a windfall because the AWW is inflated; he/she would earn more money while disabled than if he/she were never injured. There may be an exception if the teacher had previously worked another job during the summer break, but this is unclear from the case law.

Additionally, remember that some employees are paid every one or two weeks, while some are paid twice a month. Calculation errors can occur if you have a misunderstanding about the pay schedule, and then count the number of paychecks in order to determine the last 52 weeks prior to the accident. The best method is to simply look at the total pay over the course of 52 weeks, and then divide by 52 to obtain the average.

If a claimant is injured after only a few days or weeks on the job, then you may need to look to the wages for the past year for a similarly situated employee to determine if that other employee’s wages more accurately reflect the economic loss suffered by the claimant. The Virginia Code defines a similarly situated employee as one in a position of the same grade and

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character employed in the same class of employment in the same locality or community. Va. Code § 65.2-101(1)(a).

If you realize that you have made an AWW calculation error and an award has already been entered, you may still be able to correct the error! The Commission may allow you to amend the AWW, apply those changes retroactively, and request a credit for past overpayments of indemnity benefits.

Please call our office if you have any questions about calculating AWW or amending AWW already established by a prior award.

Keep an eye out for the next two e-newsletters in this three-part series regarding calculating indemnity benefits. The next two will focus on temporary partial and permanent partial disability benefits.

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