**90-351 WORKERS’ COMPENSATION BOARD**

**Chapter 8: PROCEDURES FOR PAYMENT**

**Summary:** This rule clarifies the procedures for payment of compensation required by the Act.

**§ 1.** The initial Statement of Compensation Paid, Interim Report (WCB-11) shall be filed with the Board within 195 days of the date of an injury where indemnity payments have been made, and as a Final Report when no further payments are anticipated. Subsequent Statements of Compensation Paid (WCB-11) shall thereafter be filed with the Board within fifteen (15) days of each anniversary date of an injury when payments of any type have been made since the previous Statement of Compensation Paid (WCB-11). The Statement of Compensation Paid (WCB-11) is required when only medical payments are made subsequent to the filing of a Final Report. There is no requirement to file the Statement of Compensation Paid on claims when payments are made for medical only services and no indemnity was ever paid on the claim.

**§ 2.** In cases in which the employee’s claim is only for medical expenses, the employer may file a single Notice of Controversy for purposes of contesting all present and future claims for medical expenses accrued until the Board enters an order resolving the Notice of Controversy. A copy of this Notice of Controversy must be sent to health care provider if the reasonableness of the health care provider’s bill is being contested. Except as provided in W.C.B. Rule Ch. 5, the employer is not required to file a Notice of Controversy contesting a claim for medical expenses if there is already a pending Notice of Controversy indicating a dispute on the employee’s claim for compensation for the same date of injury.

**§ 3.** When an employee is paid 1/2 day or more wages on the date of injury, the date of injury will not be considered a day of incapacity.

**§ 4.** Incapacity compensation benefit payments shall be paid weekly and directly to the employee entitled to that compensation at that employee’s last known mailing address, or at any place that employee designates.

**§ 5.** If the employee’s date of injury is on or after January 1, 2013, the employee’s incapacity benefits must be calculated by multiplying the employee’s gross average weekly wage by two (2) and then dividing that amount by three (3).

**§ 6.** The employer is obligated to make all payments of benefits ordered by an Administrative Law Judge of the Workers’ Compensation Board pending the issuance of further findings of fact and conclusions of law requested pursuant to 39‑A M.R.S.A. §318 and pending any appellate process.

**§ 7.** Interest on awards of compensation must be calculated by the employer and paid to the employee pursuant to 39‑A M.R.S.A. §205(6). Interest must be paid to the employee even if there is no express language in the decision of the mediator or Administrative Law Judge ordering such payment. Interest must be calculated using the formulae and table contained in Appendix I.

**§ 8.** A. If the injured employee’s date of injury is prior to January 1, 2013, partial benefits are calculated at a rate of 80% of the difference between the employee’s after-tax average weekly wage before the injury and the after-tax average weekly wage that the employee is able to earn after the injury, but not more than the maximum benefit under section 211. To calculate partial benefits:

1. Determine the 80% rate for the employee’s pre-injury average weekly wage using the Weekly Benefit Table in effect at the time of the employee’s injury.

2. Determine the 80% rate for the employee’s post-injury weekly earnings using the Benefit Table used in step 1 above.

3. The difference between the post-injury rate and the pre-injury rate is the partial benefit amount.

B. If the injured employee’s date of injury is on or after January 1, 2013, partial benefits are equal to 2/3 of the difference due to the injury, between the employee’s average gross weekly wages, earnings or salary before the injury and the average gross weekly wages, earnings or salary that the employee is able to earn after the injury, but not more than the maximum benefits under section 211. To calculate partial benefits:

1. Determine 2/3 of the employee’s gross average weekly wages, earnings or salary in effect at the time of the employee’s injury.
2. Determine 2/3 of the employee’s post-injury weekly earnings.
3. The difference between the post-injury rate and the pre-injury rate is the partial benefit amount.

**§ 9.** For dates of injury prior to January 1, 2013, form WCB‑2A shall be completed based on the employee’s federal tax return filed for the calendar year prior to the employee’s date of injury, unless the employee demonstrates a change in marital status or number of dependents since the calendar year for which the tax return was filed.

**§ 10.** If an employee is released to return to work without restrictions or limitations due to the injury before exhausting the seven day waiting period, a Notice of Controversy is not required to be filed regarding incapacity benefits unless the employee makes a specific claim for benefits.

**§ 11.** Reductions or discontinuances pursuant to 39-A M.R.S.A. §205(9)(A) are governed by this section.

1. Except as provided in paragraph (2) of this sub-section, reductions and discontinuances pursuant to 39-A M.R.S.A. §205(9)(A) must be based on the employee’s actual earnings.

2. An employer may discontinue benefits regardless of the employee’s actual earnings if:

A. The employee returns to work without restrictions or limitations, due to the injury for which benefits are being paid, according to the employee’s treating health care providers; and

B. There are no conflicting medical records with respect to the lack of restrictions or limitations due to the injury for which benefits are being paid.

C. For purposes of this subsection, return to work includes periods where:

(1) The employee is released to return to work without restrictions or limitations due to the injury for which benefits are being paid by the employee’s treating health care providers;

(2) There are no conflicting medical records with respect to the lack of restrictions or limitations due to the injury for which benefits are being paid; and

(3) The employee, instead of returning to work, receives vacation pay, “paid time off” or its equivalent, or holiday pay instead of regular wages.

3. The Discontinuance or Modification of Compensation (WCB‑4) shall be filed by the employer or insurer within 14 days after the employee returns to work or receives an increase in pay discontinuance or reduction pursuant to 39‑A M.R.S.A. §205(9)(A).

**§ 12.** When an employer or insurer makes payments of compensation pursuant to an agreement by the parties or a decision of the Board, the employer or insurer shall document such payments by completing the appropriate sections of Form WCB‑3, Form WCB‑4, and/or Form WCB‑11.

**§ 13.** If the employer or insurer disputes a medical bill on a claim for which a First Report was never filed, the employer or insurer shall file a First Report with the Notice of Controversy as set forth in W.C.B. Rule Ch. 3, §4.

**§ 14.** All parties shall utilize forms and instructions prescribed by the Board.

**§ 15.** Pursuant to P.L. 2009, c. 280, reductions and/or discontinuances based on earnings when an employee returns to work with a different employer and an employer/insurer has filed a 21-day certificate of discontinuance or a Petition for Review are governed by this section.

1. Actual documented earnings must be provided by the employee or the employee’s representative to the employer/insurer within 7 days of the employee’s return to work as required by 39-A M.R.S.A. §308(1). Actual documented earnings must be received by the employer/insurer from the employee or the employee’s representative in writing. The documentation may be pay stubs or other suitable written evidence to substantiate the discontinuance or reduction.

2. **Reduction or discontinuance pursuant to §205(9)(B)(1)**

A. When benefits are discontinued or reduced pursuant to §205(9)(B)(1), actual documented earnings means the written documentation relied upon by the employer/insurer to justify the reduction or discontinuance indicated in the 21‑day certificate of discontinuance.

B. The employer/insurer must include, with the 21-day certificate of discontinuance, form WCB-231A (Employee’s Return to Work Report) along with the following statement:

**NOTICE**

Your weekly benefits will be reduced or discontinued each week to the amount shown on the 21-day certificate of discontinuance. You are required to provide documentation to the insurer of your weekly earnings for the 21-day period by completing the enclosed “Employee’s Return to Work Report.” If you fail to provide documentation, the reduction or discontinuance shown on the 21-day certificate of discontinuance shall remain in effect and your benefits will not be adjusted.

C. Within 14 calendar days after the expiration of the 21-day period, or within 14 days after receipt of documentation from the employee if the documentation is received after the expiration of the 21-day period, the employer/insurer shall file with the Board the documentation it has received along with an amended form WCB-8 which shall also include any necessary adjustments based on the documentation received by the employer/insurer.

3. **Reduction or discontinuance pursuant to §205(9)(B)(2)**

A. When benefits are discontinued or reduced pursuant to §205(9)(B)(2), actual documented earnings means the written documentation relied upon by the employer/insurer to justify the reduction or discontinuance requested in the Petition for Review.

B. In addition to the Petition for Review, the employer/insurer shall send to the employee form WCB-231A (Employee’s Return to Work Report) along with the following statement:

**NOTICE**

Your weekly benefits will be reduced or discontinued each week to the amount shown on the Petition for Review. You are required to provide documentation to the insurer of your weekly earnings while the Petition for Review is pending before the Workers’ Compensation Board by completing the enclosed form “Employee’s Return to Work Report.” If you fail to provide documentation, the reduction or discontinuance shown on the Petition for Review shall remain in effect and your benefits will not be adjusted.

C. The employer/insurer shall file the actual documented earnings referenced in sub‑§(1) of this section and form WCB-4 showing the adjustment that was made with the Board at the same time it files the Petition for Review. Thereafter, the employer/insurer shall, within 30 days after receipt of actual documented earnings, file with the Board the actual documentation it has received along with form WCB-4 showing the adjustment that was made.

**§ 16.** When an employee loses a day or more from work that does not result in the filing of a Memorandum of Payment or a Notice of Controversy, the employer/insurer shall notify the Board of the employee’s return to work date, if the date was not included on the original First Report, by filing an 02 First Report using the IAIABC Claims Release 3 format. The employee’s return to work date shall be filed within seven (7) days of the employee’s return to work.

**§ 17.** The employer/insurer shall send the Employee’s Return to Work Report (WCB‑231) to the employee when filing the Memorandum of Payment pursuant to 39‑A M.R.S.A. §205(7).

**§ 18.** 1. The Consent Between Employer and Employee (WCB‑4A) may be used when the parties have agreed to a voluntary payment of a retroactive closed-end period of incapacity, or a modification, reduction or discontinuance in ongoing weekly incapacity benefits. The Consent Between Employer and Employee (WCB‑4A) may be used when the parties agree to discontinue or reduce benefits during the 21-day period following the filing of a Certificate of Discontinuance or Reduction of Compensation (WCB-8). The Consent Between Employer and Employee (WCB‑4A) cannot be used to reduce or discontinue benefits on a date that is subsequent to the date the parties sign the WCB-4A.

2. The WCB-4A shall be signed by the employee or a representative of the employee, and a representative of the insurer.

3. The parties may agree to the pre-injury average weekly wage or may agree to pay benefits based upon a provisional wage and reserve the issue of the pre-injury average weekly wage for later determination by the Board. In either event, the form shall also indicate whether the employee is receiving 100% of the benefits at issue for the designated period. If the employee is receiving less than 100% of the benefits at issue for the designated period, the form shall indicate the percentage of benefits that the employee is receiving.

4. The employer or insurance carrier shall make compensation payments within 10 calendar days after the WCB‑4A is signed by the parties.

5. Signing the WCB-4A does not by itself create a compensation payment scheme.

6. The WCB‑4A shall be distributed as follows: (1) Workers’ Compensation Board; (2) Employee; (3) Insurer; (4) Employer.

7. Upon request by any of the parties, the Consent Between Employer and Employee, WCB‑4A, shall be reviewed within 14 calendar days by an agent at the Board’s regional offices in order to answer any relevant questions prior to the employer and employee signing this form.

8. The Consent Between Employer and Employee, WCB‑4A, shall not be used when an ongoing order, award of compensation, or a compensation payment scheme is entered under §205(9)(B)(2).

9. The Payments Division will review the filed Consent Between Employer and Employee, WCB‑4A, in order to verify that the agreed upon benefits were correctly determined.

10. The Deputy Director of Benefits Administration will refer abuses of the Consent Between Employer and Employee, WCB‑4A, to the Workers’ Compensation Abuse Investigation Unit.

**CHAPTER 8, SECTION 7**

**APPENDIX I**

The following formulae only apply to continuous compensation payments where the weekly benefit amount remains constant. If the weekly benefit amount changes, and/or there is a break in the period of compensation, the formulae must be applied to each continuous period of equal payments. The interest due from each period must then be added to determine the total interest due.

**FORMULAE**

(A) To calculate interest when payment is made during the period of entitlement to benefits, the following formula shall be used:

(Weekly compensation x weeks of benefits) x Factor from Table A = Interest due.

For example: A decree dated September 4, 1998 awards compensation at a rate of $300.00 per week from February 2, 1997 to the present and continuing. On September 5, 1998, compensation is paid for incapacity from February 2, 1997 through September 5, 1998. Calculate interest due as follows:

*($300.00 x 83) x 0.079084 = $1,969.19*

(B) To calculate interest due between the date last payment was due, and the date of payment, the following formula shall be used:

First, determine the amount of interest due for the period of incapacity using formula (A) above. Then apply the following formula:

Amount of interest due between date last payment due and date of payment =

((Weekly compensation x weeks of benefits) + Interest due) x days x 10%

365

The total amount of interest due will equal the sum of formula (A) and formula (B).

For example: A decree dated September 4, 1998 awards compensation at a rate of $300.00 per week from February 2, 1997 through July 26, 1997. On September 9, 1998, compensation is paid for incapacity from February 2, 1997 through July 26, 1997. Calculate interest as follows:

First calculate the interest due for the period of incapacity:

*($300.00 x 25) x 0.022328 = $167.46*  (The interest due through July 26, 1997.)

Then, calculate the interest due between the date the last payment was due and the payment date:

*(($300.00 x 25) + $167.46) x 405 x 10%*

*365* = *$850.77* (The interest due from August 1, 1997 through September 9, 1998)

Last, calculate the total amount of interest due:

*$167.46 + $850.77 = $1,018.23*

**TABLE A**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| # WKS | Factor |  | # WKS | Factor |  | # WKS | Factor |
| 1 | 0.000000 |  | 53 | 0.049221 |  | 105 | 0.101698 |
| 2 | 0.000917 |  | 54 | 0.050199 |  | 106 | 0.102741 |
| 3 | 0.001836 |  | 55 | 0.051178 |  | 107 | 0.103785 |
| 4 | 0.002755 |  | 56 | 0.052158 |  | 108 | 0.104830 |
| 5 | 0.003676 |  | 57 | 0.053139 |  | 109 | 0.105877 |
| 6 | 0.004598 |  | 58 | 0.054122 |  | 110 | 0.106924 |
| 7 | 0.005521 |  | 59 | 0.055106 |  | 111 | 0.107974 |
| 8 | 0.006445 |  | 60 | 0.056091 |  | 112 | 0.109024 |
| 9 | 0.007370 |  | 61 | 0.057077 |  | 113 | 0.110076 |
| 10 | 0.008296 |  | 62 | 0.058064 |  | 114 | 0.111129 |
| 11 | 0.009224 |  | 63 | 0.059053 |  | 115 | 0.112183 |
| 12 | 0.010152 |  | 64 | 0.060043 |  | 116 | 0.113239 |
| 13 | 0.011082 |  | 65 | 0.061034 |  | 117 | 0.114296 |
| 14 | 0.012013 |  | 66 | 0.062026 |  | 118 | 0.115354 |
| 15 | 0.012945 |  | 67 | 0.063020 |  | 119 | 0.116414 |
| 16 | 0.013878 |  | 68 | 0.064014 |  | 120 | 0.117475 |
| 17 | 0.014812 |  | 69 | 0.065010 |  | 121 | 0.118537 |
| 18 | 0.015747 |  | 70 | 0.066007 |  | 122 | 0.119601 |
| 19 | 0.016684 |  | 71 | 0.067006 |  | 123 | 0.120666 |
| 20 | 0.017622 |  | 72 | 0.068006 |  | 124 | 0.121732 |
| 21 | 0.018561 |  | 73 | 0.069006 |  | 125 | 0.122800 |
| 22 | 0.019501 |  | 74 | 0.070009 |  | 126 | 0.123868 |
| 23 | 0.020442 |  | 75 | 0.071012 |  | 127 | 0.124939 |
| 24 | 0.021384 |  | 76 | 0.072017 |  | 128 | 0.126010 |
| 25 | 0.022328 |  | 77 | 0.073022 |  | 129 | 0.127083 |
| 26 | 0.023272 |  | 78 | 0.074030 |  | 130 | 0.128157 |
| 27 | 0.024218 |  | 79 | 0.075038 |  | 131 | 0.129233 |
| 28 | 0.025165 |  | 80 | 0.076048 |  | 132 | 0.130310 |
| 29 | 0.026113 |  | 81 | 0.077058 |  | 133 | 0.131388 |
| 30 | 0.027062 |  | 82 | 0.078070 |  | 134 | 0.132468 |
| 31 | 0.028013 |  | 83 | 0.079084 |  | 135 | 0.133549 |
| 32 | 0.028965 |  | 84 | 0.080098 |  | 136 | 0.134631 |
| 33 | 0.029917 |  | 85 | 0.081114 |  | 137 | 0.135715 |
| 34 | 0.030871 |  | 86 | 0.082131 |  | 138 | 0.136800 |
| 35 | 0.031826 |  | 87 | 0.083150 |  | 139 | 0.137886 |
| 36 | 0.032783 |  | 88 | 0.084169 |  | 140 | 0.138974 |
| 37 | 0.033740 |  | 89 | 0.085190 |  | 141 | 0.140063 |
| 38 | 0.034699 |  | 90 | 0.086213 |  | 142 | 0.141153 |
| 39 | 0.035659 |  | 91 | 0.087236 |  | 143 | 0.142245 |
| 40 | 0.036620 |  | 92 | 0.088261 |  | 144 | 0.143338 |
| 41 | 0.037582 |  | 93 | 0.089287 |  | 145 | 0.144433 |
| 42 | 0.038545 |  | 94 | 0.090314 |  | 146 | 0.145529 |
| 43 | 0.039510 |  | 95 | 0.091342 |  | 147 | 0.146626 |
| 44 | 0.040476 |  | 96 | 0.092372 |  | 148 | 0.147725 |
| 45 | 0.041443 |  | 97 | 0.093403 |  | 149 | 0.148825 |
| 46 | 0.042411 |  | 98 | 0.094436 |  | 150 | 0.149926 |
| 47 | 0.043380 |  | 99 | 0.095469 |  | 151 | 0.151029 |
| 48 | 0.044351 |  | 100 | 0.096504 |  | 152 | 0.152133 |
| 49 | 0.045322 |  | 101 | 0.097541 |  | 153 | 0.153238 |
| 50 | 0.046295 |  | 102 | 0.098578 |  | 154 | 0.154345 |
| 51 | 0.047269 |  | 103 | 0.099617 |  | 155 | 0.155454 |
| 52 | 0.048245 |  | 104 | 0.100657 |  | 156 | 0.156563 |

**TABLE A**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| # WKS | Factor |  | # WKS | Factor |  | # WKS | Factor |
| 157 | 0.157674 |  | 209 | 0.217412 |  | 261 | 0.281194 |
| 158 | 0.158787 |  | 210 | 0.218599 |  | 262 | 0.282462 |
| 159 | 0.159901 |  | 211 | 0.219788 |  | 263 | 0.283732 |
| 160 | 0.161016 |  | 212 | 0.220979 |  | 264 | 0.285004 |
| 161 | 0.162132 |  | 213 | 0.222171 |  | 265 | 0.286277 |
| 162 | 0.163251 |  | 214 | 0.223364 |  | 266 | 0.287551 |
| 163 | 0.164370 |  | 215 | 0.224559 |  | 267 | 0.288828 |
| 164 | 0.165491 |  | 216 | 0.225756 |  | 268 | 0.290106 |
| 165 | 0.166613 |  | 217 | 0.226954 |  | 269 | 0.291385 |
| 166 | 0.167737 |  | 218 | 0.228153 |  | 270 | 0.292666 |
| 167 | 0.168862 |  | 219 | 0.229354 |  | 271 | 0.293949 |
| 168 | 0.169988 |  | 220 | 0.230557 |  | 272 | 0.295233 |
| 169 | 0.171116 |  | 221 | 0.231761 |  | 273 | 0.296520 |
| 170 | 0.172245 |  | 222 | 0.232967 |  | 274 | 0.297807 |
| 171 | 0.173376 |  | 223 | 0.234174 |  | 275 | 0.299097 |
| 172 | 0.174508 |  | 224 | 0.235382 |  | 276 | 0.300388 |
| 173 | 0.175642 |  | 225 | 0.236593 |  | 277 | 0.301680 |
| 174 | 0.176777 |  | 226 | 0.237804 |  | 278 | 0.302974 |
| 175 | 0.177913 |  | 227 | 0.239018 |  | 279 | 0.304270 |
| 176 | 0.179051 |  | 228 | 0.240232 |  | 280 | 0.305568 |
| 177 | 0.180190 |  | 229 | 0.241449 |  | 281 | 0.306867 |
| 178 | 0.181331 |  | 230 | 0.242666 |  | 282 | 0.308168 |
| 179 | 0.182473 |  | 231 | 0.243886 |  | 283 | 0.309470 |
| 180 | 0.183616 |  | 232 | 0.245107 |  | 284 | 0.310775 |
| 181 | 0.184761 |  | 233 | 0.246329 |  | 285 | 0.312080 |
| 182 | 0.185908 |  | 234 | 0.247553 |  | 286 | 0.313388 |
| 183 | 0.187056 |  | 235 | 0.248779 |  | 287 | 0.314697 |
| 184 | 0.188205 |  | 236 | 0.250006 |  | 288 | 0.316008 |
| 185 | 0.189356 |  | 237 | 0.251235 |  | 289 | 0.317320 |
| 186 | 0.190508 |  | 238 | 0.252465 |  | 290 | 0.318635 |
| 187 | 0.191662 |  | 239 | 0.253697 |  | 291 | 0.319950 |
| 188 | 0.192817 |  | 240 | 0.254930 |  | 292 | 0.321268 |
| 189 | 0.193973 |  | 241 | 0.256165 |  | 293 | 0.322587 |
| 190 | 0.195131 |  | 242 | 0.257401 |  | 294 | 0.323908 |
| 191 | 0.196291 |  | 243 | 0.258639 |  | 295 | 0.325231 |
| 192 | 0.197451 |  | 244 | 0.259879 |  | 296 | 0.326555 |
| 193 | 0.198614 |  | 245 | 0.261120 |  | 297 | 0.327881 |
| 194 | 0.199778 |  | 246 | 0.262363 |  | 298 | 0.329208 |
| 195 | 0.200943 |  | 247 | 0.263607 |  | 299 | 0.330538 |
| 196 | 0.202110 |  | 248 | 0.264853 |  | 300 | 0.331869 |
| 197 | 0.203278 |  | 249 | 0.266101 |  | 301 | 0.333202 |
| 198 | 0.204448 |  | 250 | 0.267350 |  | 302 | 0.334536 |
| 199 | 0.205619 |  | 251 | 0.268600 |  | 303 | 0.335872 |
| 200 | 0.206791 |  | 252 | 0.269852 |  | 304 | 0.337210 |
| 201 | 0.207966 |  | 253 | 0.271106 |  | 305 | 0.338550 |
| 202 | 0.209141 |  | 254 | 0.272362 |  | 306 | 0.339891 |
| 203 | 0.210318 |  | 255 | 0.273619 |  | 307 | 0.341234 |
| 204 | 0.211497 |  | 256 | 0.274877 |  | 308 | 0.342578 |
| 205 | 0.212677 |  | 257 | 0.276137 |  | 309 | 0.343925 |
| 206 | 0.213858 |  | 258 | 0.277399 |  | 310 | 0.345273 |
| 207 | 0.215041 |  | 259 | 0.278663 |  | 311 | 0.346623 |
| 208 | 0.216226 |  | 260 | 0.279928 |  | 312 | 0.347974 |

STATUTORY AUTHORITY: 39-A MRS §101 *et seq.*

EFFECTIVE DATE:

January 15, 1993 (Emergency)

EFFECTIVE DATE OF PERMANENT RULE:

April 7, 1993

AMENDED:

March 1, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):

April 28, 1996

NON-SUBSTANTIVE CORRECTIONS:

September 12 and October 9, 1996 - header added, minor formatting.

AMENDED:

April 2, 1997 - Section 18

May 23, 1999 - Section 7 (Calculation of Interest), Appendix I, and Table A added.

NON-SUBSTANTIVE CORRECTIONS:

October 26, 1999 - minor formatting

AMENDED:

March 4, 2001 - Sections 1, 8, 16

December 27, 2010 - Sections 11, 15 & 18; filing 2010-640

REPEALED AND REPLACED:

August 18, 2014 – filing 2014-174

AMENDED:

September 1, 2018 – filing 2018-129