

# Calculating Wage

## Wisconsin Division of Worker's Compensation

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# Basics of Calculating Wage

## Two-Part Comparison

The Average Weekly Wage (AWW) will be set at the greater of either:

Hourly Rate x Hours Worked

OR

Gross Earnings ÷ Weeks Worked

The following are notes on each of these four variables.

### Hourly Rate

The hourly rate used should be the hourly rate that the claimant was earning at the time of injury. Any set rates of pay (paid weekly, monthly, salary) should be broken down to an hourly rate. If the claimant was earning a shift differential (aka shift premium) at the time of injury, this should also be included in the hourly rate. The hourly rate must be at least minimum wage, which is \$7.25 per hour, for the majority of employees.

### Hours Worked

Hours worked should be the number of hours the employee is regularly scheduled for the week. Full-time workers are assumed to be working 40 hours per week. Overtime or double time hours should only be included here if the claimant is regularly scheduled those hours every week. If the work is scheduled on an alternating week basis (for example, 36 hours one week and 48 hours the next week), the regular hours and overtime hours worked each week would be averaged separately, so the AWW would be based on 38 regular hours and 4 overtime hours. For part-time employees, please see page 5 for more information.

### Gross Earnings

The gross earnings is the total gross taxable amount that the claimant earned in the 52-weeks immediately prior to the week of injury. Earnings from the week of injury should not be included, unless the injury fell on a Friday or Saturday. Bonuses, incentive pay, and overtime earnings are all taxable earnings and should be included in gross earnings. If there are weeks where the claimant has disability earnings, FMLA, or TTD/TPD from a previous claim, those earnings should not be included. Non-taxable earnings (travel reimbursements, per diem, etc.) should not be included. If an employee has worked less than 6 weeks, gross earnings cannot be used to determine AWW.

### Weeks Worked

Weeks worked should be the total number of weeks worked in the 52-week period prior to the week of injury. Weeks start on Sunday and end on Saturday. A week should be counted if any part of a week was worked (except the week of injury). Hours paid in lieu of work (vacation, holiday, personal time, etc.) should be included as "worked". If there are weeks where the claimant has disability earnings, FMLA, or TTD/TPD from a previous claim, those weeks should not be included.

# Part-Time Employment

An employee is considered part-time if they are regularly scheduled 35 hours or less per week. To calculate the AWW of part-time employees, determine if the employee:

1. Is part of class of regularly scheduled part-time employees, and/or
2. Self-restricts to part time on the labor market.

Once these two factors are determined, the Two-Part Comparison can be used to calculate the AWW.

## **Determining If an Employee Is Part of Class**

The employee is considered part of class if all the following are true:

1. There is at least one other part-time employee at the location of injury doing the same job with the same schedule.
2. The employee works a regular schedule. A regular schedule is one that in the 13 weeks prior to injury, the maximum and minimum number of hours worked per week does not vary by more than five.
3. The class of part-time employees represents a minimum of 10% of all employees at the place of injury doing the same type of work.

If the employee is part of class, the hours entered in Part 1 of the Two-Part Comparison would be their regularly scheduled hours or expanded to the minimum of 24 hours.

If the employee is NOT part of class, the hours entered in Part 1 of the Two-Part Comparison would be expanded to full-time, 40 hours.

## **Self-Restriction to Part Time on the Labor Market**

Applying the self-restriction option to a claim limits the AWW and TTD rate for part-time employees. If the self-restriction option is applied to a claim, the wage is based on the employee's actual earnings or their regular schedule multiplied by the hourly rate, whichever is higher. Self-restriction also requires payment of TTD at 100% of the AWW rather than 66.67%.

The self-restriction option can be applied if:

1. The employee confirms that they restrict to part time on the labor market at the time of injury
2. The employee does not have a second job or is self-employed at the time of injury
3. The restricted TTD is not greater than the non-restricted TTD

To apply the self-restriction option, have the employee fill out the self-restriction form (WKC-45C) that may be downloaded from the DWC web site. The form must be signed and dated after the injury; we will not accept pre-agreements from the time of hire. If the claimant is 15 years old or younger, the statement is not needed, but the WKC-13A should indicate that the employee restricts if they do.

# Additions to Cash Wage

## **Tips**

Be sure the employer reports total tips separately from total gross earnings. Then divide the total tips by the number of weeks worked while earning tips to get the weekly tip average. The average tips per week then will be divided by average weekly hours worked to get the tip rate. The tip rate is added to the hourly rate when calculating wage and the total must equal no less than minimum wage. The weekly tip average is added to the gross earnings average.

## **Other Additions to Cash Wage**

We need to know if any of the following is continued during the disability. Those items continued by the employer through the disability period, and for which reimbursement is not expected, do not need to be added to the TTD wage for the period received. However, they are included in the PPD and death benefit rates. If discontinued during the disability period, the value must be refigured into the TTD rate.

## **Room and Board**

The standard value for “meals” and “room” is set in Wis. Admin. Codes DWD 80.29 and DWD 272. The value of all other items is set by common marketplace value to the employee. Meals received at a discount are not used as additions to cash wage. See ERD-9247-P (Spanish ERD-9247-S-P) for Wisconsin Maximum Allowances for Board and Lodging.

## **House or Apartment**

The employer determines the value. Be sure to check if the housing is shared (e.g. if shared with one other person, use half the value if the employer gives you the total value.)

# Miscellaneous Situations

## **Seasonal Employment**

Seasonal employment is that which can only be done at certain times of the year and does not cover a period of more than 14 weeks. Seasonal employment is usually associated with the canning industry, but also applies to apple and cherry pickers, ice harvesters, cranberry harvesters and Christmas tree cutters when no regular workweek is established. Since a normal workweek is difficult to establish because of variations in weather and crop conditions, a 44-hour week is used as a reasonable average. Actual average wage is not considered, nor is premium pay used. Employees in these industries who work year-round or beyond the seasonal period have their wages established as in ordinary cases. This does not apply to the usual summer job situation or holiday retail. Refer to Sections 102.11(1)(b) and (d), Statutes.

## **Piecework Earners**

Piecework earners are workers who are paid based on their production quantity, not an hourly rate. To calculate their wage, we do need to create an hourly rate for them. To do so, take their gross earnings from the 52-weeks prior to injury and divide by the total number of hours worked. Exclude any overtime earnings or hours in this calculation.

## **Commission-Only Earners and Truckers Paid by the Mile**

Employees who are paid based on commission only or truckers paid by the mile do not have a set rate of pay. For full-time employees, their AWW would be calculated based on their gross earnings divided by the number of weeks worked. If the claimant has worked less than 6 weeks (i.e. we cannot base the AWW on the gross), use a similar employee's wages to calculate the claimant's AWW. For part-time employees, create an hourly rate by dividing their gross earnings in the 52-week period prior to injury by the hours worked.

## **Sheltered Employees**

Some employers have a sub-minimum wage license that allows them to pay less than the minimum hourly rate. This rate is paid to workers in sheltered employment for rehabilitation purposes whose skills are such that they cannot compete in the labor market. Since the employers are licensed to pay sub minimum hourly rates for these employees, the actual hourly rate (rather than the minimum hourly rate) may be used for purposes of determining the compensation rate.

# Calculating Wage for School (K-12) Employees

In addition to getting specific wage information for injured school employees, it is critical that you find out two other pieces of information:

1. Was the employee contracted or hired to work the school year, a summer school session, or the entire calendar year, and
2. Was the employee's position salaried (exempt from overtime) or hourly (eligible for overtime).

One piece of information you do not need is the employee's payment arrangement with the school system. When eliciting information from a school representative, it is critical that you ask your questions in such a way that the school does not provide you with misleading information. How or how often the employee is paid (e.g., teaches the school year but paid over an 11/12-month period) is totally inconsequential and often gets in the way of accurately setting wage for worker's compensation benefits. Remember, it's when the wages are earned, not when or how they are paid.

## School Professionals

School professionals are employees who hold positions which meet state and federal laws to be classified under the "professional exemption." As such, these employees are not eligible for overtime, regardless of how many hours they work. Generally, these employees are hired under a contract to work for a specified time such as either the school year or a calendar year. The contract may include provisions for additional earnings over the base amount for extra activities or responsibilities. The professional exemption includes teachers, counselors, librarians, and some professional support personnel. Typically, these are full-time positions. Wisconsin law does not permit this classification to be used if the employee earns less than \$750 per month.

To set the wage for a school professional (i.e. one with a professional exemption), find out the amount of the contract and the number of weeks the contract covers. Many school contracts are given in days rather than weeks. It is reasonably accurate to divide the number of days in the contract by five to calculate the number of weeks worked. Partial weeks count as whole weeks. Divide the contract amount by the number of weeks and report that amount on the WKC-13A as the weekly rate. For full-time employees, report 40 hours scheduled. Next, get the total gross earnings paid to the employee for the 52 weeks prior to the week of injury, or date of hire if the employee has worked less than 52 weeks. This amount will include earnings for extra activities or responsibilities paid to the employee over and above the base contract. Divide that amount by the number of weeks worked for that sum, regardless of when the payment was received. Report on the WKC-13A as gross earnings and weeks worked.

Earnings from other separate contracts/checks, such as coaching or summer school, should not be included in earnings for the regular school year. If injured on a summer school contract or a separate coaching contract, only those earnings are included, not the regular school year earnings. The basic rule is if the employee receives one check for multiple responsibilities, use all earnings to calculate gross. If paid by separate checks for different responsibilities, such as a teacher who is injured as a coach and receives a separate check for the coaching, set the wage using only the coach earnings.



### **Para-Professionals and Other Hourly Employees**

These employees hold positions which require that overtime (time-and-a-half) be paid for work over 40 hours per week and are classified as "non-exempt." These positions will use a base hourly rate as the basis of pay. Examples of the non-exempt classification include education/teacher/instructional assistants, library assistants, clerical personnel, food service workers, and custodians. Although almost exclusively part-time, school bus drivers and crossing guards would also be included.

As with any hourly employee, you need the hourly rate at the time of injury and the number of hours normally scheduled. Next, get the gross earnings paid to the employee for the 52 weeks prior to the week of injury, or date of hire if the employee worked less than 52 weeks. Divide that amount by the number of weeks worked for that sum, regardless of when the payment was received. While some custodians work the calendar year, most other hourly workers do not. Report on the WKC-13A as gross earnings and weeks worked.

If the employee is part time (works less than 35 hours per week) you will need "part of class" information. When counting the number of other part-time employees "doing the same work and on the same schedule", count only those at the same location (school) as the injured employee. Food service workers, bus drivers and crossing guards are automatically considered to be numerically part of a class of part-time employees; you need only establish that the injured employee worked a regular schedule.

### **School Administrators**

School administrators are exempt from overtime under either an executive or professional exemption. Generally, they have a contract with a base amount and may have additional earning opportunities that would increase the actual gross earnings. The contract may be for weeks or months which must be determined so that an accurate weekly rate can be calculated. Review the method of calculating wage in the School Professional section, as it is the same for school administrators. Wisconsin law does not permit this classification to be used if earning less than \$700 per month.

### **Substitute Teachers**

Substitute teachers are typically paid on a daily rate. You need to know the number of hours the employee was scheduled to work on the day of injury. Divide the daily rate of pay by the number of hours scheduled to work to determine the hourly rate. Use the gross earnings for the number of weeks worked, as calculated above.

# Volunteers, Paid On-call Members of Fire Departments, Rescue Squads, and Diving Teams

When the injured worker has sustained a work-related injury or illness as a member of a volunteer fire company or a fire department organized under Ch. 213 Wis. Stats., or a legally organized rescue squad or diving team, the average weekly wage (AWW) is determined under the provision of DWD 80.30 Administrative Code. See s.102.07(7)(a) Wis. Stats.

DWD 80.30 establishes the average weekly earnings to be the maximum in effect on the date of the injury except where a specific showing may be made in individual cases where the maximum is not proper.

If the maximum rate is thought to be not proper for a volunteer and/or paid on-call member of a fire department, rescue squad or diving team, the AWW is then based on the equivalent earnings for a full-time position with the nearest full-time (career) fire department. When selecting a position with equivalent earnings, factors to be considered include, but are not limited to, the injured worker's years of service, level of experience and/or responsibility, certification, and training for the position.

## Frequently Asked Questions

1. *If a volunteer or paid on-call member was paid by the department when injured, why is that wage not used to determine the average weekly earnings?*

If the injured worker comes under the provisions of s.102.07(1)(a), the wage is set using DWD 80.30, not s.102.11. The training or paid on-call wage is not representative of the injured worker's value to the public for the service performed. Thus, the AWW will be set at the maximum rate for the year of injury unless/until rebutted with the equivalent wage for a full-time position from the nearest (career) fire department.

2. *Isn't setting the wage for a volunteer or paid on-call firefighter or EMT by using an equivalent full-time (career) firefighter's earnings unrealistic, given the earnings actually received?*

The long-standing public policy in Wisconsin is summed up in *Sorenson v. City of Elroy* (W.C. Claim No. 83-49944, LIRC Jan. 27, 1988): "as previously stated, Ind. 80.30 also allows a respondent to rebut the presumption of maximum earnings, but only to the extent that there is a disparity between the maximum earnings figure and the 'usual going earnings' paid to full-time firefighters . . . [the volunteer] may end up receiving compensation which bears no relation to his actual earning record or capacity. The legislature intended this result as a protection for volunteer firefighters and as an incentive for them to perform this important work." Although the above case referred specifically to a firefighter, the Department's position concerning EMTs and others who fall under the provisions of s. 102.07(1)(c) is the same with regard to legislative intent, i.e., protection and incentive. Also see *City of Elroy v. LIRC*, 152 Wis. 2d 320, (Ct. App. 1989).

3. *If the injured worker is an EMT rather than a firefighter, why would the nearest fire department be used rather than a private ambulance service?*

A private ambulance service is not the equivalent of a rescue squad. Typically, a volunteer rescue squad performs duties far beyond those of an ambulance service and the personnel have been trained for those duties. These rescue duties are far more similar to those performed either by full-time EMTs or firefighter/EMTs with career fire departments. Also note that volunteer rescue squads have a wide variety of organizational names. They need not be named a "rescue squad" to come under the provisions of s. 102.07(1)(c).

4. *How is "nearest" full-time (career) fire department determined?*

Functionally, that question is best answered by the fire department or rescue squad to which the injured worker belongs, as the "nearest" full-time (career) fire department will be called for mutual support when needed. (Note: Currently there are 36 public, full-time (career) fire departments in Wisconsin from which to determine "nearest." The Department does not use private, federal, state, tribal or military fire departments or brigades to determine equivalent earnings.)

**Regular Schedule for Full-Time (Class 1 or Career) Fire Departments**

As of October 2013

Appleton	56	Kenosha	56	Oshkosh	56
Beloit	52.92	La Crosse	56	Racine	56
Brookfield	56	Madison	48	Rhineland	56
Caledonia	56	Manitowoc	56	South Shore	56
Chippewa Falls	56	Marinette	56	Stevens Point	56
Cudahy	56	Marshfield	56	Superior	56
Eau Claire	56	Merrill	56	Waukesha	52.3
Fond Du Lac	56	Milwaukee	56	Wausau	56
Franklin	56	Neenah-Menasha	56	Wauwatosa	56
Green Bay	53	New Berlin	56	West Allis	56
Greenfield	56	North Shore	56	Wisconsin Rapids	48
Janesville	56	Oak Creek	56		

# Calculating Wage for Business Owners

To establish the AWW for sole proprietors, spouse owned businesses, and business partners, use the reported net earnings for the year prior to the year in which the injury occurred. Presume that the claimant has worked all 52 weeks of that prior year unless there is documentation to the contrary. Do not use the gross income reported, as their expenses still need to be deducted to determine their taxable earnings. The net earnings are typically found on either the Schedule C or the Schedule K-1.

The adjuster should request from the claimant the schedule appropriate to the business and tax year and use information from the schedule to set the AWW. The minimum AWW allowed is \$290.00 (based on the current minimum wage of \$7.25 per hour x 40 hours). If the schedule shows net earnings less than \$15,080, raise the AWW to the minimum wage of \$290.00.

The claimant will/should know which Schedule they used to report net earnings. However, the summary below is provided to assist in discussions with the claimant or accountant.

## **Sole Proprietor**

Request a copy of the Schedule C or Schedule C-EZ. One form or the other would have been submitted with the Form 1040. For the Schedule C, use the net profit or loss reported on line 31. For the Schedule C-EZ, use the net profit reported on line 3.

## **Spouse Owned Business**

If two spouses jointly own and operate a business and share in the profits and losses, they are partners in a partnership, even if there is no formal partnership agreement. As such, they may not use Schedule C or C-EZ. Instead they may file a Form 1065. Each spouse will show his or her share of the partnership income or loss on Schedule K-1. Request a copy of the claimant's Schedule K-1 for the tax year prior to the year of the injury. Use the amount shown on line 1 (ordinary business income). If no amount is shown on line 1, presume there was a loss of earnings and set the AWW at \$290.00.

If Spouse A is the formal business owner and Spouse B is not a formal business owner, nor a formal employee, but is injured while helping out at the business, we will use 50% of the net earnings that Spouse A filed for Spouse B's AWW calculation. This is derived from Wisconsin's 50/50 marital property laws regarding income.

## **S Corporations**

Request a copy of the Schedule K-1 for the insured. A partnership is the relationship between two or more persons who join to carry on a trade or business, with each person contributing money, property, labor, or skill and each expecting to share in the profits and losses of the business whether or not a formal partnership agreement is made. A joint undertaking merely to share expenses is not a partnership. Mere co-ownership of property that is maintained and leased or rented is not a partnership. However, if the co-owners provide services to the tenants, a partnership exists.

# TTD and PPD Rates

## TTD Rate

The TTD rate will be set at 2/3 of the AWW up to the maximum rate for the year of injury. Please reference chart WKC-9572-P, available from the DWD website, to view the maximum rates.

If the claimant is part-time and self-restricts (see page 5 for more information on Self-Restricting), the TTD rate will be paid out at 100% of the restricted AWW.

## PPD Rate

If the claimant is under 27 years of age at the time of injury, the PPD rate will be automatically set to the maximum rate for the year of injury. Otherwise, the PPD rate will be set at 2/3 of the AWW up to the maximum rate for set for the year of injury. Please reference chart WKC-9572-P, available from the DWD website, to view the maximum rates.

If the claimant is part-time and self-restricts, the PPD rate is NOT affected. The restriction only applies to temporary disability benefits, not permanent disability benefits. The PPD rate will be calculated based on the non-restricted AWW.

## Escalated TTD Rates

If there is a renewed period of TTD or TPD benefits two years after the date of injury and the employee has returned to work for 10 days since the date of their injury, an escalated TTD rate should be used to calculate new benefits. The escalation will be in proportion to the increase in maximum rates from the year of injury to the current year of renewed benefits.

### Example:

Claimant was injured in 2012. At that time their wage was verified at:

AWW: \$512.40

TTD: \$341.60

In 2012, the maximum TTD rate was \$854.00.

The claimant's TTD rate set in 2012 was 40% of the maximum TTD rate in 2012.

$$\$341.60/\$854.00 = 40\%$$

If the claimant has a renewed period of TTD in 2020, the escalated TTD rate used should be 40% of the 2020 maximum TTD rate. The 2020 maximum TTD rate is \$1,051.00, which makes the escalated TTD rate \$420.40.

$$\$1,051.00 \times 40\% = \mathbf{\$420.40}$$

# TPD Wage

If the employee is on TPD, their benefit due each week would be based on this formula:

$$\text{Weekly Benefit Amount} = \frac{\text{TPD Wage} - \text{Weekly Amount Earned from Employer}}{\text{TPD Wage}} \times \text{TTD Rate}$$

If the AWW is set based on the gross or a non-expanded hourly wage, the TPD wage will be the same as the AWW.

If the AWW is set based on an expanded hourly wage (expanded to 24 or 40 hours), then the TPD wage will be set to the non-expanded wage. If the claimant keeps a regular schedule, TPD wage would be the greater of the hourly rate x the schedule or gross/weeks. If they don't keep a schedule, TPD wage is the gross/weeks.

If you have a question on what the TPD wage is set to, please contact a wage analyst. For all other questions regarding TPD payments, please contact our main line to speak with one of our dispute resolution specialists.

## Example 1:

Claimant's wage information:

Hourly rate: \$10.00

Gross: \$8,000.00

Weeks worked: 37

Doesn't keep a regular schedule

Since the claimant doesn't keep a regular schedule, they are not a part of class and get expanded to 40, so AWW would be set to \$400. The TPD wage would be set to the non-expanded rate which is \$216.22 based on the gross/weeks.

## Example 2:

Claimant's wage information:

Hourly rate: \$10.00

Gross: \$6,000.00

Weeks worked: 45

Keeps schedule of 15 hours every week. Is a part of class.

Claimant gets expanded to the minimum of 24 hours, so the AWW is \$240. TPD wage is \$150 based on hourly rate x schedule.

# WI Statute 102.11: Earnings, Method of Computation

**(1)** The average weekly earnings for temporary disability, permanent total disability, or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than \$30 nor more than the wage rate that results in a maximum compensation rate of 110 percent of the state's average weekly earnings as determined under s.108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability shall be not less than \$30 and, for permanent partial disability for injuries occurring on or after March 2, 2016, and before January 1, 2017, not more than \$513, resulting in a maximum compensation rate of \$342, and, for permanent partial disability for injuries occurring on or after January 1, 2017, not more than \$543, resulting in a maximum compensation rate of \$362. Between such limits the average weekly earnings shall be determined as follows:

**(a) 1.** Daily earnings shall mean the daily earnings of the employee at the time of the injury in the employment in which the employee was then engaged. In determining daily earnings under this subdivision, any hours worked beyond the normal full-time working day as established by the employer, whether compensated at the employee's regular rate of pay or at an increased rate of pay, shall not be considered.

**2. a.** In this subdivision, "part time for the day" means Saturday half days and any other day during which an employee works less than the normal full-time working hours established by the employer.

**b.** If at the time of the injury the employee is working part time for the day, the employee's daily earnings shall be arrived at by dividing the amount received, or to be received by the employee for such part-time service for the day, by the number of hours and fractional hours of the part-time service, and multiplying the result by the number of hours of the normal full-time working day established by the employer for the employment involved.

**3.** The average weekly earnings shall be arrived at by multiplying the employee's hourly earnings by the hours in the normal full-time workweek as established by the employer, or by multiplying the employee's daily earnings by the number of days and fractional days in the normal full-time workweek as established by the employer, at the time of the injury in the business operation of the employer for the particular employment in which the employee was engaged at the time of the employee's injury, whichever is greater.

**4.** It is presumed, unless rebutted by reasonably clear and complete documentation, that the normal full-time workweek established by the employer is 24 hours for a flight attendant, 56 hours for a firefighter, and not less than 40 hours for any other employee. If the employer has established a multi-week schedule with regular hours alternating between weeks, the normal full-time workweek is the average number of hours worked per week under the multi-week schedule.

**(am)** In the case of an employee who is a member of a regularly-scheduled class of part-time employees, average weekly earnings shall be arrived at by the method prescribed in par. a, except that the number of hours of the normal working day and the number of hours and days of the normal workweek shall be the hours and days established by the employer for that class. An employee is a member of a regularly scheduled class of part-time employees if all of the following conditions are met:

**1.** The employee is a member of a class of employees that does the same type of work at the same location and, in the case of an employee in the service of the state, is employed in the same office, department, independent agency, authority, institution, association, society, or other body in state government or, if the department determines appropriate, in the same subunit of an office, department, independent agency, authority, institution, association, society, or other body in state government.

**2.** The minimum and maximum weekly hours regularly scheduled by the employer for the members of the class during the 13 weeks immediately preceding the date of the injury vary by no more than 5 hours. Subject to this requirement, the members of the class do not need to work the same days or the same shift to be considered members of a regularly scheduled class of part-time employees.

**3.** At least 10% of the employer's workforce doing the same type of work are members of the class.

**4.** The class consists of more than one employee.

**(b)** In case of seasonal employment, average weekly earnings shall be arrived at by the method prescribed in par. (a), except that the number of hours of the normal full-time working day and the number of days of the normal full-time workweek shall be the hours and the days in similar service in the same or similar non-seasonal employment. Seasonal employment shall mean employment that can be conducted only during certain times of the year, and in no event shall employment be considered seasonal if it extends during a period of more than fourteen weeks within a calendar year.

**(c)** In the case of a person performing service without fixed earnings, or when normal full-time days or weeks are not maintained by the employer in the employment in which the employee worked when injured, or where, for other reason, earnings cannot be determined under the methods prescribed by par. (a) or (b), the earnings of the injured person shall, for the purpose of calculating compensation payable under this chapter, be taken to be the usual going earnings paid for similar services on a normal full-time basis in the same or similar employment in which earnings can be determined under the methods set out in par. (a) or (b).

**(d)** Except in situations where par. (b) applies, average weekly earnings shall in no case be less than actual average weekly earnings of the employee for the 52 calendar weeks before his or her injury within which the employee has been employed in the business, in the kind of employment and for the employer for whom the employee worked when injured. Calendar weeks within which no work was performed shall not be considered under this paragraph. This paragraph applies only if the employee has worked within a total of at least 6 calendar weeks during the 52 calendar weeks before his or her injury in the business, in the kind of employment and for the employer for whom the employee worked when injured. For purposes of this section, earnings for part-time services performed for a labor organization pursuant to a collective bargaining agreement between the employer and that labor organization shall be considered as part of the total earnings in the preceding 52 calendar weeks, whether payment is made by the labor organization or the employer.

**(e)** Where any things of value are received in addition to monetary earnings as a part of the wage contract, they shall be deemed a part of earnings and computed at the value thereof to the employee.



**(f) 1.** Except as provided in subd. 2., average weekly earnings may not be less than 24 times the normal hourly earnings at the time of injury.

**2.** The weekly temporary disability benefits for a part-time employee who restricts his or her availability in the labor market to part-time work and is not employed elsewhere may not exceed the average weekly wages of the part-time employment.

**(g)** If an employee is under 27 years of age, the employee's average weekly earnings on which to compute the benefits accruing for permanent disability or death shall be determined on the basis of the earnings that the employee, if not disabled, probably would earn after attaining the age of 27 years. Unless otherwise established, the projected earnings determined under this paragraph shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable.

**(2)** The average annual earnings when referred to in this chapter shall consist of 50 times the employee's average weekly earnings. Subject to the maximum limitation, average annual earnings shall in no case be taken at less than the actual earnings of the employee in the year immediately preceding the employee's injury in the kind of employment in which the employee worked at the time of injury.

**(3)** The weekly wage loss referred to in this chapter, shall be the percentage of the average weekly earnings of the injured employee computed under this section that fairly represents the proportionate extent of the impairment of the employee's earning capacity in the employment in which the employee was working at the time of the injury, and other suitable employments. Weekly wage loss shall be fixed as of the time of the injury but shall be determined in view of the nature and extent of the injury.

# Wisconsin Statute Cheat Sheet

Topic	Reference	Notes
Rate of pay at time of injury	102.11(1)(a)1	For hourly, use rate at time of injury plus shift differential if in effect. Break down all set rates of pay (daily, weekly, monthly, salary) to an hourly rate.
Employee gross earnings	102.11(1)(d)	From the job of injury only, use the taxable income earned in the 52 weeks (or less, if employed less) prior to the date of injury. Include overtime, holiday/ vacation/sick pay, commissions, and bonuses.  Do not include unemployment or worker's comp benefits, short or long-term disability, partial pay under FMLA leave, or untaxed earnings (reimbursements and per diem).
Minimum of 24 hours	102.11(1)(f)1	AWW cannot be less than the hourly rate x 24 hours for non-restricted claims.
Part of Class requirement	102.11(1)(am)	Part of Class requirements: <ol style="list-style-type: none"> <li>1. Employee is a member of class of employees that does the same type of work at the same location</li> <li>2. Keeps a regular schedule</li> <li>3. At least 10% of the employer's workforce doing the same type of work are members of the class.</li> <li>4. Class consists of more than one employee</li> </ol>
Definition of "Regular Schedule"	102.11(1)(am)2	The minimum and maximum weekly hours regularly scheduled by the employer for the members of class during the 13 weeks immediately prior to the week of injury vary no more than 5 hours.
Self-restriction	102.11(1)(f)2 DWD 80.51(4)	Self-restriction is essentially the claimant saying "Yes, I only want this one part-time job. I do not want a full-time job, so you do not have to base my wage on 40 hours."  TTD benefits will be based on actual earnings and will not be based on hours that were raised to 24 or 40.  Claimant cannot restrict if they have another job at the time of injury.
Work less than 6 weeks	102.11(1)(d)	If claimant has worked less than 6 weeks, cannot use gross earnings to determine the average weekly wage. Can only use hourly rate x schedule to determine average weekly wage.
No fixed rate and less than 6 weeks work – use "same or similar" employment	102.11(1)(c)	If an employee does not have a set rate of pay (ex: truckers paid-by-the-mile, employees solely paid on commission) and has worked less than 6 weeks (can't use gross to determine AWW), use wages from a similar employee from same employer to determine AWW.
Firefighters, EMTs, and emergency rescue workers	102.07(1)(a) DWD 80.30	Set wages to max OR submit full-time wages of the nearest full-time career fire department.

<b>Topic</b>	<b>Reference</b>	<b>Notes</b>
Definition of "Seasonal Employment"	102.11(1)(b)	Employment that can be conducted only during certain times of the year and cannot extend more than 14 weeks. Only specific types of agricultural work are deemed seasonal: canning, cherry picking, Christmas tree harvesting, etc.
Escalation of TTD rate	102.43(7)	Renewed periods of TTD two years after the date of injury would have a TTD rate that is escalated in proportion to the raise in the max TTD rate for the year.
Additions to cash wage	102.11(1)(e) DWD 80.29 DWD 272	Value of lodging and free meals is established in DWD 272. AWW is calculated with these added into the cash wage if they were discontinued during disability period. PPD rate is calculated with them included.
PPD at max if under 27 years old	102.11(1)(g)	If claimant is under 27 years of age, PPD rate will be max for year of injury regardless of the AWW calculation.