# Calculating the Weekly Rate of Income Compensation

*Explanatory Guide*

D2024/335063

# Introduction

Inconsistencies in the calculation of the weekly rate of income compensation can sometimes cause confusion and disagreement between parties to a workers compensation claim. This guide is intended to provide practical information to workers, employers and claims officers with the aim of minimising errors and disputes, so workers receive the correct amount of compensation.

The guide is in five parts and an appendix:

- Part One sets out the information required and process to correctly calculate a worker’s pre-injury weekly rate of income.
- Part Two sets out how to calculate the maximum and minimum weekly rate of income compensation.
- Part Three sets out how to calculate a worker’s weekly rate of income compensation for the first 26 weeks from the pre-injury weekly rate of income.
- Part Four addresses how to calculate a worker’s weekly rate of income compensation after 26 weeks, when a worker’s income compensation is reduced by 15% (subject to the minimum rate).
- Part Five is a Q&A setting out the meaning of key terms and answers to common questions.
- An appendix sets out how to calculate the monetary value of board and lodging (if any).

The examples and scenarios presented are based on a worker having total incapacity for work and show the effect of different provisions of the Act before and after the step-down point at 26 weeks.

This guide provides practical assistance and information only and is not intended to be an exhaustive resource for all arrangements and circumstances. For example, it does not address the calculation of income compensation for working directors.

## Disclaimer

This publication is intended to provide general information only. You should not act or omit to act on the basis of anything contained herein. This explanatory guide should be read in conjunction with the *Workers Compensation and Injury Management Act 2023.* You should seek appropriate legal/professional advice about your particular circumstances.

## Part One – Calculating a Worker's Pre-injury Weekly Rate of Income

### *Step 1: Gather information*

Obtain payslips or payroll information for the period 12 months before the date of the worker's injury. This may include pay information from more than one employer if the worker worked concurrently in more than one job on the day the injury occurred.

Examine the payroll information to identify:

- If an industrial instrument, such as an award, applies.
- Payments for wages and salary.
- Payments for overtime, service payments, leave and allowances.
- Periods when the worker did not work due to a gap in their work history or because they were on leave without pay.
- Other payments made.

If any coding on the payslips or payroll information is not clear, contact the employer to clarify which amounts relate to which kind of payments.

Identify how many weeks the worker worked and had earnings in the 12-month period. To determine the number of weeks of paid work the worker worked in the position in a year, deduct the number of weeks leave without pay[1] from the number of weeks in the year.

### *Step 2: Calculate the Pre-injury Weekly Rate of Income (PIWRI)*

Familiarise yourself with the following definitions and match these to the earnings on the worker's pay information:

- Earnings[2]
- Regular additional earnings[3]

Calculate the total of all of the worker's pre-tax (gross) earnings for the 12 months prior to the day on which the worker's injury occurred. Divide the total pre-tax (gross) earnings over the relevant period by the number of weeks of paid work to obtain the PIWRI. This rate will be used to calculate the rate of income compensation for the worker's claim.

If a worker has more than one job at the time of the injury and is incapacitated for work in that other job as a result of the injury, calculate the income compensation rate in each employment independently and add the amounts determined to obtain the aggregate amount.

### *Step 3: Board and Lodging*

In some circumstances, a work arrangement may include the provision of board and lodging for the worker which need to be taken into account when calculating the weekly rate of compensation. See Appendix 1 for how to calculate the monetary value of board and lodging.

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[1] Leave without pay (LWOP) means time off work without pay on leave that is authorised or consented to by an employer for a period the worker would otherwise have been required to work.
[2] See the Q&A for the definition of 'earnings'. The definition is very broad and covers all payment types.
[3] See the Q&A for the definition of 'regular additional earnings'.

## Part Two – Calculating the Maximum and Minimum Weekly Rate of Income Compensation

A worker's weekly rate of income compensation may not exceed the maximum weekly rate of income compensation (twice average weekly total earnings in Western Australia )[4]. Where the maximum weekly rate of income compensation is exceeded, the maximum rate applies.

The worker's weekly rate of income compensation rate may not fall below the minimum rate of income compensation (sum of the base award rate + regular additional earnings if an industrial instrument applies) or, where an industrial agreement doesn't apply, the minimum amount under the *Minimum Conditions of Employment Act 1993.* Where the income compensation rate falls below the appropriately calculated minimum rate of income compensation, the minimum rate applies to the worker.

### *How do I calculate the minimum weekly rate of income compensation?*

1. For industrial instrument workers, determine the *base award rate*[5] component of the worker's weekly earnings in the position the worker held the day the injury occurred by reference to the industrial instrument under which the worker works.

2. For industrial instrument workers, then determine and calculate any regular additional earnings.

   *Regular additional earnings*[6] means:

   - any over award or service payment paid on a regular basis as part of the worker's earnings
   - any allowance (including overtime payments) paid on a regular basis as part of the worker's earnings and related to the number or pattern of hours worked by the worker.

3. Add the amounts determined at (1) and (2) to calculate the minimum weekly rate of income compensation.

4. The worker's post 26 week rate of income compensation (see Part 4) cannot fall below the minimum amount determined above or the minimum amount under the *Minimum* Conditions *of Employment Act 1993*. Where it does fall below one of those amounts, the worker's post 26 week rate of income compensation is to be calculated as the relevant minimum amount.

5. No minimum rate of income compensation applies in the following circumstances:

   - the only component of the worker's income compensation is the monetary value of board and lodging
   - the worker is a working director
   - the worker is a jockey.

[4] The maximum weekly rate of income compensation as of 1 July 2024 is $3,079. This amount is indexed annually and can be found on the WorkCover WA website.
[5] Base award rate means the base weekly rate of pay, excluding payments for overtime and any bonus or allowance applying to a worker under any industrial instrument or agreement.
[6] See the Q&A for more information on *regular additional earnings*.

# Part Three – Calculate a Worker's Weekly Rate of Income Compensation for the First 26 Weeks

The rate of income compensation payable for the first 26 weeks of a claim is the PIWRI unless:

- The PIWRI is higher than the maximum rate payable, in which case the rate will be capped at the maximum rate payable, or
- The PIWRI is lower than the minimum rate payable, in which case the rate will be increased to the minimum rate.

*Table 1: Calculating the weekly rate of income compensation for the first 26 weeks*

<table>
<tr><th>Pre-injury weekly rate of income (PIWRI)</th><th>Income compensation payable</th></tr>
<tr><td rowspan="6">PIWRI = worker's pre-injury average weekly rate of earnings.<br>Calculated over 12 months before injury, or period employed if less than 12 months.<br>Based on pre-tax (gross) earnings.</td><td>First 26 weeks</td></tr>
<tr><td>100% of PIWRI</td></tr>
<tr><td>Subject to:</td></tr>
<tr><td>Maximum rate of income compensation<br>Twice average weekly total earnings in Western Australia (indexed annually)</td></tr>
<tr><td>and</td></tr>
<tr><td>Minimum rate of income compensation<br>Sum of the base award rate + regular additional earnings if industrial instrument applies<br>or<br>Minimum amount under Minimum Conditions of Employment Act 1993</td></tr>
</table>

### *Example 1*

A worker employed under an award worked for 52 weeks in their current role and earned $52,000 per year without any extra payments.

As there are no other factors to be taken into account, the worker's PIWRI is $1,000.

The PIWRI does not exceed the maximum rate and is not less than the minimum rate.

Therefore, the worker's weekly income compensation rate for the first 26 weeks is **$1,000**.

### *Example 2*

A worker was employed under a contract with an agreed salary of $180,000 per year and had worked for the employer for three years when an injury occurred. He usually earned $180,000 divided by 52 weeks, i.e. $3,461.54 per week.

The worker's payslips indicate he had two weeks of annual leave, one week of personal leave and one week of leave without pay in the 12 months before the injury. He had not received any bonuses, allowances or other payments during that period.

Paid annual leave and sick leave are not excluded from the period used to calculate the worker's PIWRI.

The period used to calculate the worker's PIWRI is 52 weeks less the one week of leave without pay.

In that period, the worker earned $180,000 – 3,461.54 = $176,538.46

The PIWRI is calculated as follows:

$176,538.46 / 51 weeks = $3,461.54

This amount exceeds the maximum rate of income compensation ($3,079).

Therefore, the worker's weekly income compensation rate for the first 26 weeks is **$3,079**.

### *Example 3*

A worker has two jobs. Job one is at 0.2FTE receiving $400/week (has held the role for 12 months, no LWOP). Job two is at 0.5FTE receiving $750/week (has held the role for 10 weeks, no LWOP).

The PIWRI for <u>job one</u> is calculated as follows:

$400 x 52 = $20,800

$20,800 / 52 = $400

The PIWRI for <u>job two</u> is calculated as follows:

$750 x 10 = $7,500

$7,500 / 10 = $750

The aggregate amount is determined by adding each PIWRI together:

$750 + $400 = $1,150

This amount does not exceed the maximum rate of income compensation and is not lower than the minimum weekly rate of income compensation.

Therefore, the worker's weekly income compensation rate for the first 26 weeks is **$1,150**.

Note: Where a worker has more than one job at the time of the injury and is incapacitated for work in more than one position, the minimum weekly rate for the worker must be determined using the minimum amount under the *Minimum Conditions of Employment Act 1993.*

## Part Four – Calculate a Worker’s Rate of Income Compensation Post 26 Weeks

The rate of income compensation payable post 26 weeks of a claim is the worker’s weekly rate of income compensation, determined in Part Three, multiplied by 0.85

The rate of income compensation post 26 weeks cannot exceed the maximum rate of income compensation and may not be lower than the minimum weekly rate of income compensation.

This applies equally where a worker has total incapacity in one job, multiple jobs, and where the monetary value of board and lodging has been applied to determine the income compensation rate.

*Table 2: Calculating post 26 weeks income compensation*

| Pre-injury weekly rate of income (PIWRI) | Income compensation payable |
|---|---|
| PIWRI = worker’s pre-injury average weekly rate of earnings.<br>Calculated over 12 months before injury, or period employed if less than 12 months. | **Post 26 weeks** |
| | 85% of PIWRI |
| | **Subject to:** |
| | **Maximum rate of income compensation**<br>Twice average weekly total earnings in Western Australia (indexed annually) |
| | and |
| | **Minimum rate of income compensation**<br>Sum of the base award rate + regular additional earnings if industrial instrument applies<br>or<br>Minimum amount under *Minimum Conditions of Employment Act 1993* |

### *Example 4*

A worker has worked for 40 weeks in their current role and earned $1,000 per week as the base award rate. The worker also works a regular overtime, the averaged amount over 40 weeks equal to $200 per week.

For the <u>first 26 weeks</u>:

$1,000 x 40 = $40,000 + ($200 x 40 = $8,000) = $48,000

$48,000 / 40 = $1,200

The amount calculated is $1,200. This amount does not exceed the maximum weekly rate of income compensation and is not lower than the minimum weekly rate.

Therefore, the worker’s weekly income compensation rate for the first 26 weeks is **$1,200**.

<u>Post 26 weeks:</u>

$1,200 x 0.85 = $1,020

The amount calculated is $1,020. This amount does not exceed the maximum weekly rate of income compensation. However, the amount is less than the minimum weekly rate of income compensation (the worker’s base award rate and regular additional earnings).

Therefore, the worker's weekly income compensation rate for week 27 onwards continues to be **$1,200**.

### *Example 5*

A worker has worked for 40 weeks in their current role and earned $1,000 per week as the base award rate. The worker also works a regular overtime amount averaged to $200 per week, received two one off payments of $1,600 and $2,000 as unexpected irregular bonus payments, and received a working away from home allowance one week, earning an additional $200 for that pay period.

For the <u>first 26 weeks</u>:

$1,000 x 40 = $40,000 + ($200 x 40 = $8,000) = $48,000

$48,000 / 40 = $1,200

$48,000 + ($1,600 + $2,000 + $200) = $51,800

$51,800 / 40 = $1,295

The amount calculated is $1,295. This amount does not exceed the maximum weekly rate of income compensation and is not lower than the minimum weekly rate.

Therefore, the worker's weekly income compensation rate for the first 26 weeks is **$1,295**.

<u>Post 26 weeks:</u>

$1,295 x 0.85 = $1,100.75

The amount calculated is $1,100.75. This amount does not exceed the maximum weekly rate of income compensation. However, the amount is less than the worker's base award rate plus regular additional earnings.

Therefore, the worker's income compensation for week 27 onwards is **$1,200** (i.e. includes the regular overtime payments but not the irregular bonuses or the irregular allowance).

### *Example 6*

A worker has worked more than 12 months in their current role and earned $1,500 per week. The worker does not work under an award or other industrial agreement and does not work overtime or have any other additional earnings. The worker is aged over 21 and is not an apprentice.

The worker's weekly income compensation rate for the first 26 weeks is **$1,500**.

<u>Post 26 weeks:</u>

$1,500 x 0.85 = $1,275

The amount calculated is $1,275. This amount does not exceed the maximum weekly rate of income compensation. As no industrial instrument applies, the amount must not be less than the minimum amount under the *Minimum Conditions of Employment Act 1993* ($918.60 per week as of 1 July 2024).

Therefore, the worker's income compensation for week 27 onwards is **$1,275**.

## Part Five – Q&A

### *Q. What are earnings?*

A. Earnings means any amount paid or payable to the worker:

- as wages or salary
- as a piece rate or commission
- for a specified quantity of work for a specified sum
- as a bonus or allowance
- an over award or service payment
- overtime
- includes the monetary value of board and lodging provided as payment for work.

Earnings do not include:

- income compensation paid to the worker.

'Bonus or allowance' means any bonus or incentive, shift allowance, weekend or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowances, travelling allowance or other allowance.

An allowance is in addition to ordinary wages and generally refers to a payment in consideration of a particular obligation, responsibility or circumstance of the employment.

Over award or service payments are payments a worker would receive in excess of an industrial instrument rate of pay for the classification in which the worker is engaged and generally excludes payments related to overtime prescribed by an industrial instrument.

Overtime means time worked in excess of the number of ordinary working hours.

### *Q. What are 'regular additional earnings'?*

A. Regular additional earnings are:

- any over award or service payment paid on a regular basis as part of the worker's earnings
- any allowance (including overtime payments) paid on a regular basis as part of the worker's earnings and related to the number or pattern of hours worked by the worker.

Applicable case law provides:

- The term '*regular'* is broader than meaning recurring, uniform, habitual, calculable in time or manner, symmetrical or predictable. It also includes something which happens in the normal course of something periodic and customary.
- An '*allowance'* does not need to be paid on a fixed schedule to be regular. It may also include an allowance which both a worker and employer contemplate would be offered or required periodically (e.g. higher duties allowance).
- The '*pattern'* of hours worked generally relates to the roster the worker works to.

The reference to 'allowance' in regular additional earnings will generally not include a payment which is a 'one-off' payment or unusual incentive, or an expense which a worker no longer has. Examples of excluded one-off or unusual payments are things like dry-cleaning allowance, or a meal allowance.

Allowances such as overtime and being ‘on-call’ are generally related to the number or pattern of hours worked. They are consideration for being available to carry out additional hours after completing an ordinary shift and should be included as part of regular additional earnings.

### *Q. What is an industrial instrument?*

A. An industrial instrument includes any of the following:

- an award or order made under the *Industrial Relations Act 1979*
- an industrial agreement as defined in the *Industrial Relations Act 1979*
- a fair work instrument as defined in the *Fair Work Act 2009.*

### *Q. Is a worker entitled to an incremental pay increase/change in base rate of pay whilst in receipt of income compensation?*

A. Yes. The worker’s weekly rate of income compensation needs to be reviewed to reflect any increase or decrease in the base rate of pay (but not in regard to overtime or any bonus or allowance) that is effective after the injury occurred and would, having regard to all the circumstances, apply to the worker had the worker not been injured. This applies equally to an industrial agreement or a change in the minimum amount under the *Minimum Conditions of Employment Act 1993.*

### *Q. How do I calculate the base award rate if the industrial instrument becomes redundant or obsolete without being replaced?*

A. The base award rate must be calculated according to the base weekly rate of pay applying in the industrial instrument before it became redundant or obsolete, and must be adjusted to reflect any increase in the national minimum wage (where relevant).

### *Q. How is a week defined?*

A. A week is defined as a period of seven consecutive days, commencing on the day of the week the worker is first entitled to income compensation. Further, a week in which income compensation is payable for any day of days during the week.

When working out the step-down point at 26 weeks in circumstances when a worker has received income compensation payments for partial incapacity for work, aggregate the weeks in receipt of income compensation. Do not aggregate days per week. For example, if a worker has received income compensation based on reduced hours or days per week, say not working three of five days per week, the three days not working constitute a week.

### *Q. How is income compensation calculated if the worker is partially incapacitated for work?*

A. For any period the worker is partially incapacitated for work, the amount of income compensation is calculated as the amount that would apply if the worker was totally incapacitated for work and deducting from it the amount the worker earns, or is able to earn, in suitable employment.

**Note:** No income compensation is payable where the worker earns, or is able to earn, in suitable employment an amount equal to or greater than the amount of income compensation that would apply if the worker were totally incapacitated for work.

# Appendix 1 – How to calculate the monetary value of board and lodging where applicable

### *Step 1: Identify if board and lodging is applicable*

In some circumstances, a work arrangement may include the provision of board and lodging for the worker.

If the worker's board and lodging were part of their employment, the monetary value will need to be taken into account when calculating the weekly rate of compensation.

Board and lodging means accommodation and any meals, laundry services and other benefits having a monetary value provided together with the accommodation.

### *Step 2: Determine the market value of board and lodging*

In order to calculate how much the worker is entitled to in compensation for board and lodging, it is necessary to calculate the weekly monetary value of the board and lodging provided to the worker before their injury.

The monetary value of board and lodging is based on the market value of the board and lodging for the period of 12 months from the day the injury occurred, or else the period in which the worker held their current position if less than 12 months. This total amount is divided by 52 weeks or the lower number of weeks to calculate the rate of weekly board and lodging. Be careful to ensure this amount is expressed as a weekly monetary value, even if expressed differently in an industrial agreement.

The market value of board and lodging is determined by the amount set out in the industrial agreement, contract, or agreement that states the value of the board and lodging provided to the worker in addition to their wages. However, if there is no amount identified from these documents and the board and lodging is subject to fringe benefits tax, the taxable value of the board and lodging calculated under the *Fringe Benefits Tax Assessment Act 1986* (Cth) is the market value.

The daily value of board and lodging must not exceed the maximum board and lodging daily amount. Where the weekly monetary value of board and lodging exceeds the maximum board and lodging daily amount, apply the board and lodging maximum daily amount[7].

Where board and lodging cannot be ascertained, the monetary value of board and lodging is calculated by taking the board and lodging maximum daily amount and multiplying it by the number of full days board and lodging that was provided to the worker for the period of 12 months from the day the injury occurred, or else the shorter period in which the worker held their current position.

Regardless of the method used, the amount of board and lodging included in the worker's income compensation entitlement cannot exceed the maximum rate set out in the Act.

No minimum rate of income compensation applies if the monetary value of the provision of board and lodging is the only component of the worker's pre-injury weekly rate of income.

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[7] The maximum amount for board and lodging per day as of 1 July 2024, is $187. This amount is indexed annually and can be found on the WorkCover WA website.

### *Example 7*

A worker has worked in a position for 12 months and it is determined the worker's weekly income compensation rate for the first 26 weeks is **$1,500**

Scenario 1

The industrial agreement provides for board and lodging valued at **$15,800** per annum.

$15,800 / 52 = $303.85

(This amount does not exceed the maximum daily amount for board and lodging.)

Therefore, the worker's weekly income compensation rate for the first 26 weeks is **$1,803.85**

Scenario 2

Market value cannot be ascertained. The worker was provided board and lodging five days a week for 26 weeks in the year.

5 x 26 = 130

130 x $187 = $24,310

$24,310 / 52 = $467.50

$1,500 + $467.50 = $1,967.50

Therefore, the worker's weekly income compensation rate for the first 26 weeks is **$1,967.50**

Neither amount exceed the maximum rate of income compensation, and do not fall below the minimum rate of income compensation for these scenarios.