



Wage-Loss





Training Objectives & Purpose

- Discuss impairment & wage-loss provisions under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).
- Provide a better understanding of the evidence needed to file a claim for wage-loss.



What is Wage-Loss?

- Benefits provided under Part E of the EEOICPA to employees or eligible survivors for lost wages the employee incurred, prior to his or her normal Social Security Administration (SSA) retirement age, due to a covered illness contracted through exposure to a toxic substance at a covered DOE or RECA Section 5 facility.



Who Can File a Claim for Wage-Loss Benefits?

- **Employee:**
 - A covered Part E employee found to have contracted a covered illness through exposure to a toxic substance at a covered DOE facility or RECA section 5 facility.
- **Survivor:**
 - An eligible survivor of a covered Part E employee found to have contracted a covered illness through exposure to a toxic substance at a covered DOE facility or RECA section 5 facility, and the employee's death was a result of the covered illness.

Maximum payable compensation under Part E, excluding medical benefits, is \$250,000.00.



General Requirements for Wage-Loss

- **Covered Part E Employee** – The employee is, or was, an employee of a covered DOE contractor or subcontractor.
- **Covered Illness** – The employee developed a covered illness as a result of exposure to a toxic substance at a covered DOE facility or RECA section 5 facility.
- **Trigger Month** – A specific month and year that the employee's wage-loss commenced prior to his or her normal SSA retirement age.
- **Causal Relationship** – the employee's loss of wages must be related to a covered illness.
- **Wage-Loss** – Wage-loss determinations are based upon the calendar years of wage-loss occurring up to and including the calendar year the employee reaches normal SSA retirement age.



How Do You File for Wage-Loss Benefits?

- **Initial Filing:**
 - After the FAB issues a Part E final decision to an employee with a positive causation determination, the CE sends Form [EE-11B/EN-11B](#) to solicit wage-loss claims from employees who are potentially eligible for wage-loss benefits.
- **Subsequent Filings:**
 - An employee previously awarded compensation for wage-loss may file a new wage-loss claim on a yearly basis on [Form EN-10](#) for subsequent calendar years of wage-loss.
- **Words of Claim:**
 - A claimant can submit “Words of Claim” for wage-loss benefits. However, the CE will be required to obtain a signed Form EN-11B prior to the issuance of the recommended decision. The wage-loss forms must be signed by the employee/claimant, the authorized representative, or the employee’s attorney-in-fact under a Power of Attorney.



Information Required for the Wage-Loss Benefits Form (EN-11B)

- Initial loss of wages begin date (the month and year it was first experienced)
- Period of wage-loss being claimed (when wage loss began, month & year, to what date)
- Signature of the employee/claimant, authorized representative, or the employee's attorney-in-fact under a Power of Attorney
- Supporting medical and employment earnings evidence for the years being claimed
- No need to develop for wage-loss benefits if the employee was diagnosed with the covered illness after his/her normal SSA retirement age



Medical Evidence Needed to Establish Wage-Loss

- Narrative Report from a Physician
 - A physician's narrative report is to contain an explanation about the causal relationship between the covered illness and the period(s) of wage-loss and reference medical evidence that is contemporaneous to the claimed period(s) of wage-loss. A narrative report that is speculative in nature, or is not well-rationalized is not considered to be of sufficient probative value.
- Doctor's office notes.
- Return to work slips.
- Document Acquisition Request (DAR) records, work restrictions caused by a covered illness may result in a compensable wage-loss.
- Referral to a Contract Medical Consultant (CMC) – if applicable.



Employment Earnings Evidence Needed

- The Claims Examiner (CE) generally relies on SSA earnings records.
 - Records must include the 3 years prior to the month of experienced wage-loss (for Average Annual Wage determination) and all years during the experienced wage-loss.
- May also use evidence submitted by claimant such as:
 - Tax returns
 - W-2 Forms
 - Pay stubs
 - Union records
 - Pension records (proof of wages only)
 - Social Security Disability Records
 - Document Acquisition Request (DAR)



Examples of Wages vs. Non-Wages

Examples of Wages:

- Salaries
- Overtime compensation
- Sick leave
- Vacation leave
- Tips
- Bonuses

Examples of Non-Wages:

- Capital gains
- IRA distributions
- Pensions
- Annuities
- Unemployment compensation
- State workers' compensation benefits
- Medical retirement benefits
- Social Security benefits



Wage-Loss Benefit Amount Determination

- The following factors are considered when determining the amount of wage-loss:
 - When initial loss of wages began (the month and year it was first experienced)
 - Dates of wage-loss claimed (specific dates provided by the employee or survivor)
 - Number of years of wage-loss prior to the normal SSA retirement age
 - Calculated Average Annual Wage amount prior to the onset of wage-loss



Calculation of Employee Wage-Loss Compensation

- The benefit amount is calculated using a formula that applies an Average Annual Wage (AAW), which is calculated using the 36 months of wages immediately preceding the month in which the employee first experiences the wage-loss.
- The AAW is used to measure loss of wages by comparing wages before and wages after a claimant began experiencing wage-loss.
- The CE compares the AAW of the employee with his or her adjusted wages in later calendar years to determine the wage-loss percentage for each claimed year of wage-loss.
- For each qualifying year in which an employee's earnings were significantly below his or her calculated AAW, either \$10,000 or \$15,000 is payable.



Employee Wage-Loss Compensation

- The wage-loss percentage is used to determine the amount of the employee's wage-loss compensation.
- \$10,000 is awarded for each year in which the employee's adjusted wages during a claimed calendar year is greater than 50% but less than or equal to 75% of the AAW.
- \$15,000 is awarded for each year in which the employee's adjusted wages during a claimed calendar year is equal to or less than 50% of the AAW.
- Wage-loss benefits are subject to Tort Offset/SWC Coordination.



Survivor's Benefits for Wage-Loss

- If an employee dies of a covered illness prior to his/her normal SSA retirement age, eligible survivors may be awarded wage-loss benefits for all calendar years after the calendar year of death up to and including the calendar year of normal SSA retirement age.
- In some instances, the employee may have lost wages due to a covered illness prior to his or her death.
- In addition to the base survivor benefit of \$125,000, the survivor may receive an additional:
 - **\$50,000** – If 20 calendar years or more of wage-loss is established.
 - **\$25,000** – If between 10 and 19 calendar years of wage-loss is established.



Survivor Benefits for Wage-Loss Prior to/after Employee's Death

- The CE undertakes the same medical and employment development and AAW calculation as if the employee had filed a claim for wage-loss.
- A causal link must be established between a covered illness and each claimed year of wage-loss (same as employee claim).
- Compensation depends on percentage of wages earned in a calendar year of claimed wage-loss compared to the AAW.
 - IMPORTANT –in order to be included in the award calculation, yearly earnings must be equal to or less than 50% of AAW.
- Each eligible year prior to death is then added to years after death (up to and including the calendar year of normal SSA retirement age) to determine total years of compensation.



What Can You Do To Make Things Easier?

- File a Wage-Loss Claim using the correct forms.
- Complete the Wage-Loss Claim forms correctly with the required signature.
- Do Not File a Wage-Loss Claim Prematurely or for Future Years of Wage-Loss.
- Make sure the rationalized medical evidence from the employee's treating physician identifies the covered illness that is causally related to the employee's inability to work and specifies the time period the employee was unable to work.
- Assist in submitting all requested information quickly, i.e., completion of EN-16, Tort Offset/SWC Coordination documentation.



Wage Loss: Tools and Links

- **EEOICPA Procedure Manual**
- <https://www.dol.gov/owcp/energy/regs/compliance/PolicyandProcedures/ConsolidatedProcedureManual.htm>
- **How Do I Qualify for Wage Loss Benefits?**
- https://www.dol.gov/owcp/energy/regs/compliance/brochure/ESA_wage_loss.pdf
- **How Does a Tort Action Affect My Right to EEOICPA Benefits?**
- <https://www.dol.gov/owcp/energy/regs/compliance/brochure/tortaction.pdf>
- **Link to Form**
- https://www.dol.gov/owcp/energy/regs/compliance/claimant_medprovider_resources/en_11b.pdf
- **Resource Centers**
- <https://www.dol.gov/owcp/energy/regs/compliance/ResourceMeetings/ResourceCenters.htm>