

## **A Word on Mo Comp Rate Calculation**

By: Chris Archer, 2020

Underlined areas were changed in August of 1998 from the 1993 version of the Act. [ ] denotes that the 1998 changes deleted the bracketed language.

### **For TTD (287.170)**

(4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred five percent of the state average weekly wage. (Max rate)

### **For PPD (287.190)**

(5) For all injuries occurring on or after August 28, 1992, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty-five percent of the state average weekly wage. (Max rate)

### **287.250 Calculating Average Weekly Wage (Earnings)**

1. Except as otherwise provided for in this chapter, the method of computing an injured employee's average weekly earnings which will serve as the basis for compensation provided for in this chapter shall be as follows:

(1) If the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(2) If the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(3) If the wages are fixed by the year, the average weekly wage shall be the yearly wage fixed divided by fifty-two;

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured or if actually employed by the employer for less than thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the employee was actually employed by the employer. For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week. If the employee commenced employment on a day other than the beginning of a calendar

week, such calendar week and the wages earned during such week shall be excluded in computing the average weekly wage pursuant to this subdivision;

(5) If the employee has been employed less than two calendar weeks immediately preceding the injury, the employee's weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment at the time of the injury, except if the employer has agreed to a certain hourly wage, then the hourly wage agreed upon multiplied by the number of weekly hours scheduled shall be the employee's average weekly wage;

(6) If the hourly wage has not been fixed or cannot be ascertained, or the employee earned no wage, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees of the employer or any other employer;

(7) In computing the average weekly wage pursuant to subdivisions (1) to (6) of this subsection, an employee shall be considered to have been actually employed for only those weeks in which labor is actually performed by the employee for the employer and wages are actually paid by the employer as compensation for such labor.

2. For purposes of this section, the term "gross wages" includes, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging or similar advance received from the employer, except if such benefits continue to be provided during the period of the disability, then the value of such benefits shall not be considered in calculating the average weekly wage of the employee. The term "wages", as used in this section, includes the value of any gratuities received in the course of employment from persons other than the employer to the extent that such gratuities are reported for income tax purposes. "Wages", as used in this section, does not include fringe benefits such as retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan furnished by the employer for the benefit of the employee. Any wages paid to helpers or any money paid by the employer to the employee to cover any special expenses incurred by the employee because of the nature of his employment shall not be included in wages.

3. If an employee is hired by the employer for less than the number of hours per week needed to be classified as a full-time or regular employee, benefits computed for purposes of this chapter for permanent partial disability, permanent total disability and death benefits shall be based upon the average weekly wage of a full-time or regular employee engaged by the employer to perform work of the same or similar nature and at the number of hours per week required by the employer to classify the employee as a full-time or regular employee, but such computation shall not be based on less than thirty hours per week.

4. If pursuant to this section the average weekly wage cannot fairly and justly be determined by the formulas provided in subsections 1 to 3 of this section, the division or the commission may determine the average weekly wage in such manner and by such method as, in the opinion of the division or the commission, based upon the exceptional facts presented, fairly determine such employee's average weekly wage.

5. In computing the compensation to be paid to an employee, who, before the injury for which the employee claims compensation, was disabled and drawing

compensation under the provisions of this chapter, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which the employee may have suffered.

6. For purposes of establishing a rate of compensation applicable only to permanent partial disability, permanent total disability and death benefits, pursuant to this chapter, the average weekly wage for an employee who is under the age of twenty-one years shall be adjusted to take into consideration **the increased earning power** of such employee until she or he attains the age of twenty-one years and the average weekly wage for an employee who is an apprentice or a trainee, and whose earnings would reasonably be expected to increase, shall be adjusted to reflect a level of expected increase, based upon completion of apprenticeship or traineeship, provided that such adjustment of the average weekly wage shall not consider expected increase for a period occurring more than three years after the date of the injury.

7. In all cases in which it is found by the division or the commission that the employer knowingly employed a minor in violation of the child labor laws of this state, a fifty percent additional compensation shall be allowed.

8. For an employee with multiple employments, as to the employee's entitlement to any temporary total or temporary partial disability benefits only pursuant to subsection 9 of section 287.220, and for no other purposes, the employee's total average weekly wage shall be equal to the sum of the total of the average weekly wage computed separately for each employment pursuant to the provisions of this section to which the employee is unable to return because of this injury.

9. The parties, by agreement and with approval of an administrative law judge, legal advisor or the commission, may enter into a compromise lump sum settlement in either permanent total or permanent partial disability cases which prorates the lump sum settlement over the life expectancy of the injured worker.

When such an agreement has been approved, neither the weekly compensation rate paid throughout the case nor the maximum statutory weekly rate applicable to the injury shall apply. Instead, the prorated rate set forth in the approved settlement documents shall control and become the rate for that case. This section shall be retroactive in effect.

New Provision from SB1 and 130:

287.253. A **monetary bonus**, paid by an employer to an employee, of up to three percent of the employee's yearly compensation from such employer shall not have the effect of increasing the compensation amount used in calculating the employee's compensation or wages for purposes of any workers' compensation claim governed by this chapter.

### **Comments:**

- The compensation rate for TTD and PPD may be affected by the earnings from concurrent employment for accidents between 8-28-96 and 8-28-98. Call your

attorney. For accidents after 8-28-98, the SIF will pay for lost time benefits from concurrent or secondary employment.

- Part time employees who work less than twenty hours a week may be entitled to at least an assumed thirty-hour minimum hour for calculation of their PPD compensation rate. Call your attorney.
- Unanswered is whether construction workers who are on call to work "weather permitting" are considered absent for those days they don't work due to poor weather.
- Per diem expense reimbursement may not be included as wages. Call your attorney.

**Missouri Workers' Compensation Wage Statement**

Employee Name: \_\_\_\_\_

Date of Accident: \_\_\_\_\_

Date of Hire: \_\_\_\_\_

Number of Days per week employee is scheduled: \_\_\_\_\_ Is employee part-time? \_\_\_\_\_

Hourly rate at time of accident? \_\_\_\_\_ Does the employee receive an allowance for food,

housing, or uniforms? \_\_\_\_\_ Does the employee receive and/or report tips? \_\_\_\_\_/\_\_\_\_\_

Please list the gross wages paid this employee for the thirteen weeks prior to the accident. Do not include the week the employee was injured. Please note the employee's absences each week.

Week No.	Week From Date	Week Ending Date	Number of Days Worked	Number of Absences from Scheduled Days	Reported Tips if Applicable	Total Gross Wages
1.					\$	\$
2.					\$	\$
3.					\$	\$
4.					\$	\$
5.					\$	\$
6.					\$	\$
7.					\$	\$
8.					\$	\$
9.					\$	\$
10.					\$	\$
11.					\$	\$
12.					\$	\$
13.					\$	\$

I certify that the above is a true copy of the payroll record of : \_\_\_\_\_

Employer: \_\_\_\_\_ Completed by: \_\_\_\_\_ Date: \_\_\_\_\_