

Need to Know:

2012 Loss of Wage Earning Capacity Guidelines for Indemnity Caps

2007 Workers' Compensation Legislation provided a trade-off between business and labor. In exchange for an increase in weekly indemnity benefits to claimants and an increased fee schedule to be paid to medical providers, business would get a cap on the duration of indemnity benefits, and medical guidelines limiting the treatments that an injured worker could receive to only those shown to improve their medical condition.

The legislation also set up a committee to write a series of guidelines that would determine how a case would be subjected to the indemnity caps on benefits. Specifically, the duration of benefits would be dependent on the percentage of disability an injured worker has. In 2011, the guidelines were released that define these percentages.

When an injured worker has achieved maximum medical improvement after an injury (no sooner than 6 months post-accident), and their injury is a permanent disability, three factors will be weighed to determine the loss of wage earning capacity the claimant will experience as a result of the injury:

- **Impairment Ranking-** this is a letter ranking (A is minor, Z is total disability). This grade is determined by a medical doctor, directed by a set of guidelines. The result of the doctor's analysis is provided on WCB form C-4.3, Doctor's Report of MMI/Permanent Impairment
- **Functional Capabilities-** this is also a medical opinion that will rely on objective findings in a Functional Capacity Evaluation. If the doctor does not base this report on objective, measurable results, it will not hold up for the final impairment determination. This report is also provided on WCB form C-4.3.
- **Vocational Factors-** these will be summarized on WCB form VDF-1, Loss of Wage Earning Capacity Vocational Data Form. Vocational factors include work experience, knowledge of the English language, education level, and any other applicable data. This presumably would be filled out by the injured worker at the time of classification, but *NCA is advising its clients to gather this information with the initial report of accident, or if possible, at the time a new employee is hired*, when they are more forthcoming about their work experiences.

Once these three elements have been collected and analyzed by a WCB judge, he or she will determine the total percent loss of wage earning capacity. If a claimant has returned to work at a lower paying job, the loss of wage earning capacity would be a simple calculation of the difference in salaries. In the case where a claimant remains out of work, the guidelines stop short of providing a rule for how much weight the above three elements should be given when making the final loss percentage determination.