ADJUSTER NEWSLETTER
February 2007

To: Workers' Compensation Insurance Adjusters
Third Party Administrators
Self Insured Employers

From: Joyce A. Sewell, Director
Industrial Accidents Division

Re: How To Compute Average Weekly Wage

The Industrial Accidents Division receives numerous calls each year from injured workers who question the manner in which the employer or its insurance carrier arrived at the weekly rate they are being paid for temporary total while off work due to an on-the-job injury or illness.

Per Utah Statute, Workers' Compensation Act, 34A-2-409, the section that applies in most cases is 34A-2-409(1)(e), in which the worker is paid an hourly wage for the number of hours that the employee would have worked for the week if the accident had not intervened or 20 hours, whichever is greater.

If the employee is paid a weekly salary that amount becomes the average weekly wage. If paid by the month the monthly wage is to be divided by 4.33 weeks; and if the wages are fixed by an annual salary, that amount is to be divided by 52 weeks to determine the average weekly wage rate.

The Division has learned that some insurance carriers are averaging 13 weeks of past pay to compute the average weekly wage in every instance. Averaging 13 weeks of pay is only appropriate in a limited number of cases in which the employee is paid for piecemeal work; like a truck driver who is paid by the mileage or someone who works on commission, or when an employee regularly works overtime but it was not "scheduled" overtime**.** Each claim needs to be carefully evaluated since how the weekly wage is arrived at will affect an injured worker's compensation average weekly wage rate throughout their entire workers' compensation claim.

If the average weekly wage issue comes before the Commission it will review all of the records available from the employer and injured worker and, if need be, will use a method (per Section 34A-2-409(2)) based on those facts to fairly determine the employee's average weekly wage. A Commission determination will use the method that gives the employee the best outcome in computing the average weekly wage since workers' compensation is an exclusive remedy administrative system.

Attachment: 34A-2-409

34A-2-409. Average weekly wage -- Basis of computation.

(1) Except as otherwise provided in this chapter or Chapter 3, Utah Occupational Disease Act, the average weekly wage of the injured employee at the time of the injury is the basis upon which to compute the weekly compensation rate and shall be determined as follows:

(a) if at the time of the injury the wages are fixed by the year, the average weekly wage shall be that yearly wage divided by 52;

(b) if at the time of the injury the wages are fixed by the month, the average weekly wage shall be that monthly wage divided by 4-1/3;

(c) if at the time of the injury the wages are fixed by the week, that amount shall be the average weekly wage;

(d) if at the time of the injury the wages are fixed by the day, the weekly wage shall be determined by multiplying the daily wage by the greater of:

(i) the number of days and fraction of days in the week during which the employee under a contract of hire was working at the time of the accident, or would have worked if the accident had not intervened; or

(ii) three days;

(e) if at the time of the injury the wages are fixed by the hour, the average weekly wage shall be determined by multiplying the hourly rate by the greater of:

(i) the number of hours the employee would have worked for the week if the accident had not intervened; or

(ii) 20 hours;

(f) if at the time of the injury the hourly wage has not been fixed or cannot be ascertained, the average weekly wage for the purpose of calculating compensation shall be the usual wage for similar services where those services are rendered by paid employees;

(g) (i) if at the time of the injury the wages are fixed by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by 13 the wages, not including overtime or premium pay, of the employee earned through that employer in the first, second, third, or fourth period of 13 consecutive calendar weeks in the 52 weeks immediately preceding the injury; or

(ii) if the employee has been employed by that employer less than 13 calendar weeks immediately preceding the injury, the employee's average weekly wage shall be computed as under Subsection (1)(g)(i), presuming the wages, not including overtime or premium pay, to be the amount the employee would have earned had the employee been so employed for the full 13 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation.

(2) If none of the methods in Subsection (1) will fairly determine the average weekly wage in a particular case, the commission shall use such other method as will, based on the facts presented, fairly determine the employee's average weekly wage.

(3) When the average weekly wage of the injured employee at the time of the injury is determined in accordance with this section, it shall be taken as the basis upon which to compute the weekly compensation rate. After the weekly compensation is computed, it shall be rounded to the nearest dollar.

(4) If it is established that the injured employee was of such age and experience when injured that under natural conditions the employee's wages would be expected to increase, that fact may be considered in arriving at the employee's average weekly wage.