

99REPORT

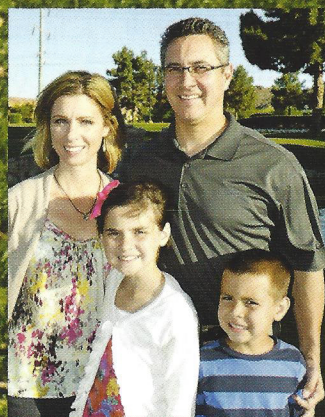
A VOICE for the Working Families of Arizona

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Saved by her brother

AMBER FERNANDEZ HAS BEEN CANCER-FREE FOR MORE THAN A YEAR, WITH HELP FROM THE LEUKEMIA & LYMPHOMA SOCIETY AND A BONE MARROW TRANSPLANT FROM HER BROTHER, BENJAMIN



THE FERNANDEZ FAMILY

Money raised for leukemia research • Members learn about retirement options

Is your Average Monthly Wage set correctly in your workers' compensation claim?

BY ADAM P. PALMER

Once your Arizona workers' compensation claim has been filed with the Industrial Commission of Arizona (the Commission) and accepted by the insurance carrier or self-insured employer, the Commission will set your "average monthly wage."

Establishment of the average monthly wage is extremely important to all injured workers, as it forms the basis on which you will receive compensation throughout your claim.

When an injured worker is temporarily totally disabled (TTD) due to his/her industrial injury, he/she receives two-thirds (66 2/3 percent) of his/her Average Monthly Wage (AMW)(ARS §23-1041).

When injured workers are released to modified or light-duty work by their doctors, they are entitled to receive 66 2/3 percent of the difference between what they are able to earn on modified or light duty and their AMW during this period of temporary partial disability (TPD).

PERMANENT PARTIAL DISABILITY

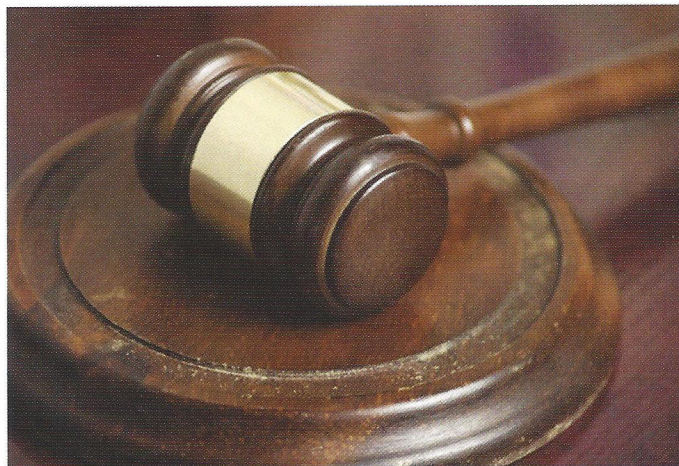
Once injured workers are on a permanent partial disability status (PPD) and suffer an unscheduled injury, they are entitled to receive 55 percent of the difference between their earning capacity and their AMW.

Since the average monthly wage affects all benefits received by you throughout your claim and period of disability, it is extremely important that the average monthly wage be set correctly.

Compensation and death benefits are generally based on the employee's AMW at the time of the industrial injury. The maximum average monthly wage has historically been a statutorily stated, specific amount.

The Legislature would, from time to time, amend the statute to provide for an increased amount. When the Legislature amended the average monthly wage statute in 2007 (ARS §23-1041), the Legislature added a provision that provided for an annual adjustment of the average monthly wage for injuries occurring on or after Jan. 1, 2010.

As of Jan. 1, 2013, the maximum wage an injured worker can earn is \$4,185.78 per month. What this means is that any injured worker in Arizona who earned more than \$4,185.78 per month would only receive two thirds of \$4,185.78, or \$2,790.65 per month, if temporarily disabled



and unable to return to work. This maximum wage changes every year, so it is important to also know the maximum wage for the year of your industrial injury.

At some point, the Commission will set the average monthly wage and, once set, this wage will be used forever throughout your claim to calculate all compensation in your case.

COMMISSION RECOMMENDATIONS

Although the workers' compensation insurance carrier or self-insured employer will make a recommendation to the Commission of what it believes your AMW should be, the Commission will independently set the AMW and issue a Notice of Average Monthly Wage establishing your wage. This notice becomes final 90 days after the date it is mailed to you from the Commission. If you disagree with the AMW set by the Commission, you must protest the notice before the 90 days expire.

Generally speaking, it is recognized that the 30 days before an employee's accident serve as the "presumptive wage base" so that an employee's actual gross or pre-tax earnings paid during this period constitute his or her AMW, unless that period fails to give an actual measure of pre-injury earning capacity.

PLEASE SEE NEXT PAGE

ADAM P. PALMER IS A CERTIFIED SPECIALIST IN WORKERS' COMPENSATION WHO REPRESENTS UNION MEMBERS AT DISCOUNTED RATES. YOU CAN REACH HIM THROUGH THE UNION LAWYER REFERRAL PROGRAM AT 1-800-244-0661.

More: Average Monthly Wage

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Several scenarios, however, may allow for either an “expanded wage base” or some other method of calculating the injured worker’s AMW should the 30-day period prior to the date of the industrial injury not accurately reflect the injured worker’s AMW. As the injured worker, it is your duty to ensure the Commission is using the correct period when setting your AMW.

MORE THAN ONE JOB?

Another consideration often overlooked by the Commission when setting the AMW, which results in the wage being set too low, is when the injured worker has more than one job at the time of the industrial injury. This is known as contemporaneous or “concurrent employment.”

In recent years, Arizona courts have routinely allowed for injured workers to include income based on earnings from wages of contemporaneous or concurrently held employment when calculating the AMW for the industrial injury [See *Lowry v. Industrial Commission of Arizona*, 195 Ariz. 398, 989 P. 2d, 152 (1999)].

Based on this and other similar court rulings, although a worker is injured at only one job, if he/she is unable to work either job due to his or her injuries, the court will allow all jobs held at the time of the industrial injury to be considered in calculating the AMW.

There is no limit to the number of jobs used in calculating the AMW, as long as the monthly wage does not exceed the maximum wage for the year of the injury.

FILED AND ACCEPTED CLAIM

Again, once you file a Worker’s Report of Injury and your claim is accepted, it is important that you disclose to the insurance carrier or self-insured employer and to the Commission the fact that you held more than one job at the time of your industrial injury.

You should provide wage statements or check stubs showing all of your concurrent job income so it will be considered by the Commission when it calculates your AMW, thereby providing you with the maximum amount of benefits possible under Arizona law.

If you believe your AMW has been set incorrectly, you should immediately contact a Certified Specialist in Worker’s Compensation to discuss your options. Usually, this initial consultation is free.