

Commutations and COLA's

Impact of State Average Weekly Wage Changes on Present Value

Presenter: T. Blair Megowan

DWC Statewide Training 2010

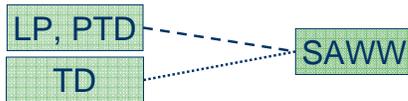


Overview

- SAWW
 - How State Average Weekly Wage changes impact WC benefits
- Requesting Commutations
 - There are many important options that can affect the outcome
- The Default Calculation
 - The way most attorney fees are calculated

AB 749 Amendments

- LC 4659(c) – linked LP and PTD payments to State Average Weekly Wage (SAWW)
- LC 4453(a)(10) – linked TD limits to SAWW



Are All Indemnity Benefits Affected?

- TD Maybe
- PD No
- LP Yes, eventually
- PTD Yes
- Death Maybe

Effect on TD

- TD paid 2 or more years after DOI is subject to minimum/maximum in effect at time of payment (LC 4661.5)
- Worker's TD benefits will increase if earnings are at or above statutory maximum

Effect on LP and PTD

- LP and PTD payments should be increased based on change in SAWW
 - Applies only for DOI's o/a 1/1/03
- But workers hurt after 1/1/03 will not be entitled to LP until at least 8 years after P&S
 - Is there any effect on these workers?



Duncan (formerly XYZZX) case

- Certified DCA opinion H034040
 - Filed 11/25/09
 - Held that SAWW adjustments of LP/PTD benefits commence on 1/1/04 and apply each year thereafter
 - Case is under appeal but still applies

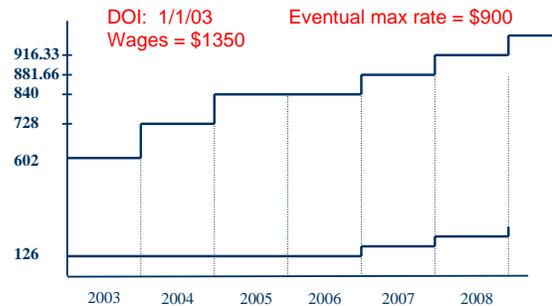
Duncan case example

- DOI = 2/1/08
- P&S = 2/1/10
- PD = 85% (673.25 weeks)
- Statutory LP rate = \$193.27
 - Associate \$193.27 with 2003
 - Apply known increases for 2004 through 2010
 - Apply estimated increases for 2011 through 2020
 - Estimated initial rate in 2020 = \$381.16
- Present value of LP will double

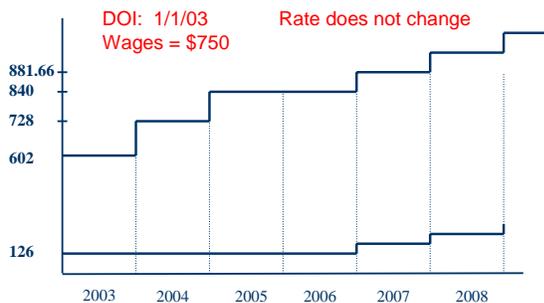
Impact of TD Adjustment on Death Benefits

- TD benefits are never commuted BUT...
 - Death benefits are paid in the same manner as TD (LC 4902) and are frequently commuted.
 - Adjustment impact varies depending on whether IW was a maximum earner
 - Adjustment applies to all DOI's, not just post-1/1/03

Death benefit – high wage earner



Death benefit – medium wage earner



Annual SAWW Adjustment

- Compare first quarter state average weekly wage for two prior years
- For 2010
 - SAWW as of 3/31/08 = \$956.20
 - SAWW as of 3/31/09 = \$984.83
 - Amount of increase = 2.9941%

SAWW Adjustments to Date

- 2004 0.0000%
- 2005 1.9747%
- 2006 4.0081%
- 2007 4.9593%
- 2008 3.9318%
- 2009 4.5484%
- 2010 2.9941%

Requesting Commutations

- How can you get the most satisfactory result?
 - Use the right form
 - Be clear about your wishes
 - Don't overlook available options

Commutation Request Form

- Request Form available at:
http://www.dir.ca.gov/dwc/forms/DEU_CommutationRequest.xls
- Fill out form and give to local DEU
- Narrative requests usually omit critical info
 - Using the form properly insures we have all necessary info, avoiding delay

Clear Wishes Make for Happy Raters

- Effective date of commutation
- XYZZX or Loya
- $\pm 15\%$ PD adjustment
- Attorney fee %
- Deduction method

Date of Commutation (DOC)

- DOC = Effective valuation date
 - It should match the day on which attorney's fees are paid
 - 3 weeks from request used by default
 - 2-3 weeks after hearing is another good option
 - Rate reductions for attorney's fees generally go into effect on the day after the DOC

XYZZX Case or Loya Case

- XYZZX/Duncan case
 - Automatically applied now, must tell us if you don't want it
 - Sets statutory rate to year 2003 and applies all subsequent increases
 - Results in much higher present values
- Loya case
 - Sets statutory rate to year in which benefit commences
 - Results in lower present values



LC 4658(d) Adjustment

- $\pm 15\%$ PD adjustment
 - Increases PD by 15% if no suitable job offered within 60 days of P&S
 - Decreases PD by 15% if suitable job is offered within 60 days of P&S
 - For DOI's o/a 1/1/05
 - Does not apply to employers with less than 50 employees

More Options

- Assumed SAWW percentage
 - 4.7% is used by default but any value acceptable to the parties is permissible
- Percentage used for attorney fee
 - Can be any number but 12-15% most common
- Deduction method used to generate fee
 - The type you choose can affect IW's benefits profoundly

Methods of Generating a Fee

- Method 1 – Uniform Reduction
- Method 2 – Increasing Reduction
- Method 3 – Far End Reduction

Method 1 – Uniform Reduction

- Best method for most situations
- Same amount subtracted from each biweekly payment
- Suitable for PD, LP, PTD and death benefits



Method 2 – Increasing Reduction

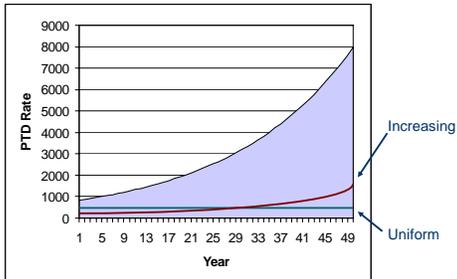
- Reduction is increased each year by the same fixed percentage, regardless of SAWW changes
- Suitable for PTD primarily
- Reduction grows roughly in proportion with PTD payment



Reduction Example

- 31-year old female, life expectancy = 50 yrs.
- Initial PTD rate = \$840
- Uniform reduction – remains at \$394/week
- Increasing reduction – starts at \$126 and grows at 4.7%/year

Uniform Reduction v. Increasing Reduction



Far End Reduction

- Suitable for PD only awards
- Creates a gap when used in combination with LP benefits



Other Factors that Affect Results

- Broken periods of PD
 - Extends remaining PD and increases present value
- Prior lump sum advances
 - Can be commuted from either PD or LP, or both

Default Calculation

