



Lost Personal Earnings

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Lost Earnings =

“But For” Earnings – (Actual + Expected
Future Earnings)

A “lost earnings analysis” requires analysis of the past, the present and the future.

Information helpful in establishing lost earnings:

- Historical actual annual earnings
- Historical information regarding job positions, performance ratings, salary, and benefits, including information on previous employment
- Employment status before the injury
- Actual or expected occupation or position
- The likelihood of future advancement
- Efforts to find alternative employment
- Actual or expected education level
- Actual earnings of individuals working in comparable positions
- Actual earnings of individuals working in similar industries

Sources of earnings data:

- Tax returns, W-2's, 1099's
- Company payroll and earnings records
- Depositions and interviews
- Government Surveys and Statistics
- Industry Publications
- Vocational Experts

Things to Consider:

- The most recent year's earnings may not be a representative base of earnings
- Self-employed individuals often have earnings from both wages and ownership
- Earnings from ownership of a business are not necessarily equivalent to "wages"
- Watch for "income shifting" in family owned businesses

Typical fringe benefits may include:

- Employer contributions to health, life, and disability insurance
- Employer contributions to retirement plans
- Expense account allowances
- Paid holidays
- Paid vacations
- Educational assistance
- Section 125 (Cafeteria) plans
- Child care assistance

Sources of Fringe Benefit Data:

- Employer records, benefit and retirement plan policies;
- Union Contracts
- *The Employee Benefits Survey* (Bureau of Labor Statistics);
- *U.S. Chamber of Commerce Employee Benefits Study*

Things to Consider:

- Benefits can vary widely from person to person
- Many benefits are already captured in historical earnings amounts
- Using a flat % of wages to estimate benefits can be misleading

Personal Consumption

The monetary amount that would have been used by, or on behalf of the decedent, and which does not benefit other family members.

A reduction for personal consumption is applied because the amount a deceased would have spent only for personal benefit is not considered a loss to the survivors.

Examples include:

- Food
- Clothing
- Personal Hygiene
- Entertainment

Calculating Personal Consumption:

- Analysis of actual spending by an individual
- Surveys & Studies
 - The Cheit Study
 - The Patton & Nelson Studies
 - Others

Things to Consider:

- Deductions for personal consumption are not allowed in all jurisdictions
- The decedent's consumption must be segregable from the survivor's consumption

Life & Worklife Expectancy

Life Expectancy = # of years the claimant would have lived but for the loss event.

The most commonly used data source for life expectancy is: “*Expectation of Life by Age, Race, and Sex, United States*” published by the Vital Statistics Division of the U.S. National Center for Health Statistics.

Life & Worklife Expectancy

Worklife Expectancy = # of years the claimant would have worked but for the loss event.

Common Reference Sources for Worklife Expectancy include:

- Bureau of Labor Statistics tables
- Markov Model
- Journal of forensic Economics 10(2), 1997, “*Median Years to Retirement and Worklife Expectancy for the Civilian U.S. Population*”

Things to Consider:

- Life and Worklife Expectancies are broad based averages. Individual circumstances may warrant adjustments
- Some “experts” try to calculate lost earning based on life expectancy rather than worklife expectancy

Discounting Losses to Present Value

- In order to state future losses at present value, a discount rate must be applied.
- The application of a discount rate across time in the future provides the mechanism to reduce each year's income differential to the present time; the sum of these discounted annual amounts provides the present value of future loss

Things to Consider:

- Discount rates can vary greatly depending on the circumstances: I.E. A wrongfully injured worker is entitled to a risk-free stream of future income to replace lost wages. Therefore a risk free discount rate should be applied.
- In “commercial cases” such as business interruption cases, intellectual property infringement, etc... it is necessary to recognize the uncertainty of business income and its inherent riskiness.

Questions?

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