

beginning of the work day or shift, in which case the date of injury is charged to COP;

(c) Any part of a day or shift (except for the day of the injury) counts as a full day toward the 45 calendar day total;

(d) Regular days off are included if COP has been used on the regular work days immediately preceding or following the regular day(s) off, and medical evidence supports disability; and

(e) Leave used during a period when COP is otherwise payable is counted toward the 45-day COP maximum as if the employee had been in a COP status.

(f) For employees with part-time or intermittent schedules, all calendar days on which medical evidence indicates disability are counted as COP days, regardless of whether the employee was or would have been scheduled to work on those days. The rate at which COP is paid for these employees is calculated according to § 10.216(b).

[63 FR 65306, Nov. 25, 1998; 63 FR 71202, Dec. 23, 1998]

**§ 10.216 How is the pay rate for COP calculated?**

The employer shall calculate COP using the period of time and the weekly pay rate.

(a) The pay rate for COP purposes is equal to the employee's regular "weekly" pay (the average of the weekly pay over the preceding 52 weeks).

(1) The pay rate excludes overtime pay, but includes other applicable extra pay except to the extent prohibited by law.

(2) Changes in pay or salary (for example, promotion, demotion, within-grade increases, termination of a temporary detail, etc.) which would have otherwise occurred during the 45-day period are to be reflected in the weekly pay determination.

(b) The weekly pay for COP purposes is determined according to the following formulas:

(1) For full or part-time workers (permanent or temporary) who work the same number of hours each week of the year (or of the appointment), the weekly pay rate is the hourly pay rate (A) in effect on the date of injury multiplied by (x) the number of hours worked each week (B):  $A \times B = \text{Weekly Pay Rate}$ .

(2) For part-time workers (permanent or temporary) who do not work the same number of hours each week, but who do work each week of the year (or period of appointment), the weekly pay rate is an average of the weekly earnings, established by dividing (+) the total earnings (excluding overtime) from the year immediately preceding the injury (A) by the number of weeks (or partial weeks) worked in that year (B):  $A \div B = \text{Weekly Pay Rate}$ .

(3) For intermittent and seasonal workers, whether permanent or temporary, who do not work either the same number of hours or every week of the year (or period of appointment), the weekly pay rate is the average weekly earnings established by dividing (+) the total earnings during the full 12-month period immediately preceding the date of injury (excluding overtime) (A), by the number of weeks (or partial weeks) worked during that year (B) (that is,  $A \div B$ ); or 150 times the average daily wage earned in the employment during the days employed within the full year immediately preceding the date of injury divided by 52 weeks, whichever is greater.

[63 FR 65306, Nov. 25, 1998; 63 FR 71202, Dec. 23, 1998]

**§ 10.217 Is COP charged if the employee continues to work, but in a different job that pays less?**

If the employee cannot perform the duties of his or her regular position, but instead works in another job with different duties with no loss in pay, then COP is not chargeable. COP must be paid and the days counted against the 45 days authorized by law whenever an actual reduction of pay results from the injury, including a reduction of pay for the employee's normal administrative workweek that results from a change or diminution in his or her duties following an injury. However, this does not include a reduction of pay that is due solely to an employer being prohibited by law from paying extra pay to an employee for work he or she does not actually perform.