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HOW TO APPLY GENERAL RULE 10 WHEN PAYING INDEMNITY BENEFITS

Mississippi Workers' Compensation Commission General Rule 10 was amended effective April 1, 2001 to provide a formula for computing the "daily rate" of compensation to be paid in situations where payment for less than a whole week is due. This Rule directs that the "daily rate" shall be computed by dividing the weekly compensation rate by five (5). **Importantly**, this Rule does not prescribe how one determines the number of days lost from work in the first instance. It merely establishes what the "daily rate" of compensation shall be after it has first been determined how many days of compensation are owed, and is subject to the statutory weekly maximum limit on compensation. Miss. Code Ann. §71-3-13(a), 71-3-17(a) - (c), (c)(25), 71-3-21, 71-3-25(c) - (f), (d) (Rev. 2000). In light of this change, questions have arisen as to the proper method for computing the amount of compensation due in cases where the use of the new "daily rate" formula would possibly cause the total payments due in any given week to exceed the maximum weekly compensation otherwise due.

In applying General Rule 10 it must be remembered that it is does not amend or override the statutory provisions for maximum compensation, but is instead subject to these provisions. Consequently, the compensation payable for up to seven (7) **consecutive calendar days** can not exceed the statutory weekly maximum in effect for the injury in question. This means, in effect, that in any case where you owe compensation for at least five (5), six (6) or seven (7) **consecutive calendar days**, you will pay no more than the maximum weekly benefit due on that claim. You do not, for example, have to pay for six (6) **consecutive calendar days** at the "daily rate" prescribed by General Rule 10 since this would result in compensation which exceeds the statutory weekly maximum. Your liability for a period of up to seven (7) **consecutive calendar days** is statutorily limited to the weekly maximum benefit in effect at the time of injury.

If, on the other hand, you owe indemnity benefits for a period of less than five (5) **consecutive calendar days**, then in that event you would pay using the "daily rate" prescribed by General Rule 10. You may also pay using the "daily rate" prescribed by General Rule 10 anytime you have recurring periods of disability which do not extend for at least five (5) **consecutive calendar days**. This would occur, for example, when an injured employee incurs days or periods of disability on an intermittent basis, such as one or two days per week over the course of several weeks. In this situation, the employee may have more than five (5) total days of disability extending over a period of several weeks, but because there would not be any period when the employee had at least five (5) **consecutive calendar days** of disability, payment might be made on a daily basis using the "daily rate" prescribed by General Rule 10.[1]

Example #1: Employee makes $500.00 per week, is injured January 1, 2002, and is out of work because

[1] You may also treat periods of intermittent disability such as that just described as temporary partial disability and pay according to Miss. Code Ann. §71-3-21 (Rev. 2000), in which case General Rule 10 would not apply.

of a compensable injury continuously from January 2, 2002 through January 24, 2002, and returns to work on January 25. If you use the "consecutive calendar day" method of counting lost time (i.e., you count all days, including intervening weekends and other non work days), then this person would have 23 consecutive calendar days of total disability. Applying General Rule 10 and the statutory weekly maximum, you would pay this person three whole weeks of benefits at the rate of $322.90[2] per week for the first twenty-one (21) consecutive calendar days, and you would pay this person for the last two (2) days using the daily rate prescribed by General Rule 10 ($322.90 ÷ 5 x 2 = $129.16).

Example #2: Same employee as above except that he misses time from work intermittently at the rate of two (2) days per week for eight (8) weeks. Consequently, he has sixteen (16) days of total disability for which he should be paid, but there is no period in which he incurred at least five (5) **consecutive calendar days** of disability. If you pay this person for sixteen (16) days of total disability at the "daily rate" prescribed by General Rule 10, you would pay $322.90 ÷ 5 x 16 = $1033.28.[3]

Example #3: Employee makes $300.00 per week, is injured January 1, 2002, and is out of work continuously due to a compensable injury from January 2, 2002 through January 28, 2002, and returns to work on January 29. If you use the "consecutive calendar day" method of counting lost time (i.e. you count all days, including intervening weekends and other non-work days), then this person would have 27 consecutive calendar days of total disability. Applying General Rule 10 and the statutory limits on compensation, you would pay this person three (3) whole weeks of benefits at the rate of $200.00 per week[4] for the first twenty-one (21) consecutive calendar days. For the remaining six (6) consecutive calendar days, you would pay this person an additional whole week of benefits at the rate of $200.00 per week since application of the "daily rate" prescribed by General Rule 10 would cause the compensation otherwise due for this six (6) day period to exceed the maximum weekly limit on compensation, and General Rule 10 is still subject to the maximum weekly limits set by statute.

Reporting Payments: Upon filing of the B-31, Notice of Final Payment Form, please report each full weekly payment as a "week" of benefits paid, whether that weekly payment covers a five (5), six (6) or seven (7) consecutive calendar day period. For example, you would report the payments in example #3 above as four (4) weeks of temporary total disability benefits. If, instead, you report this as three (3) weeks and six (6) days, and we can not tell whether the six (6) days were consecutive calendar days, we will assume the six (6) days were not consecutive calendar days. We will then figure the compensation due for these six (6) days using the "daily rate" prescribed by General Rule 10 ($200.00 ÷ 5 x 6 = $240.00).

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[2] Pursuant to Miss. Code Ann. §71-3-13(a), 71-3-17(b), this person is entitled to weekly compensation equal to the lesser of two-thirds of his average weekly wage ($333.35) or the weekly maximum in effect for 2002 ($322.90).

[3] This example serves only to illustrate how the statutory weekly maximum limits the compensation payable for any period of five (5) to seven (7) consecutive calendar days, and not for periods which, in the aggregate, are greater than five (5) days but are not consecutive calendar days. Lost time like in this example may also be paid as temporary partial disability pursuant to Miss. Code Ann. §71-3-21 (Rev. 2000), in which case General Rule 10 would not apply.

[4] Pursuant to Miss. Code Ann. §71-3-17(b), this employee's weekly compensation benefit is equal to two-thirds of his average weekly wage, "subject to the maximum limitations as to weekly benefits" as prescribed by Miss. Code Ann. §71-3-13(a).