

# USE SALARY CONTINUATION (IN LIEU OF BWC TEMPORARY TOTAL COMPENSATION)

## WORKERS' COMPENSATION CLAIMS MANAGEMENT TOOLS FOR OHIO MANUFACTURERS

The employer has the option at the onset of a lost time claim (a lost time claim is defined as a case involving 8 or more lost work days, not necessarily consecutive) to pay the worker's salary in lieu of Bureau of Workers' Compensation (BWC) temporary total disability compensation by completing a Salary Continuation Agreement (Bureau of Workers' Compensation Form C-55).

This allows the employer to pay regular full wages during periods of certified disability. You must notify the BWC within 7 days of filing a claim that you intend to pay wages in lieu of BWC compensation and the injured worker must not miss a pay check.

### Notes:

*The BWC C-55 form is to cover only the period of disability currently certified by the treating physician and is not to exceed a duration in excess of 45 days. As updates on the estimated return-to-work date are received, both parties should complete a new C-55 and forward to BWC in a timely manner (within 5 days of expiration of prior form).*

*The BWC will also require the employee's wage history (up to 52-weeks prior to injury). Use BWC form: Employer Report of Employee Earnings to report wage history.*

"Self-insuring" your lost time cost in lieu of BWC temporary total disability compensation will not prevent the establishment of a MIRA reserve on the claim. MIRA (Micro Insurance Reserving Analysis) is the method of calculating reserves that the BWC has adopted. A reserve is the estimated future cost of a claim at a point in time.

There are pros and cons of using salary continuation; contact your OMA Account Manager for advice. It can be used selectively to create employee-employer goodwill.

Employers are not authorized to pay any other types of compensation benefits (other than wages in lieu of temporary total) directly.

Salary Continuation is not available to employers enrolled in the BWC deductible programs.

See BWC Form C-55, Employer Report of Employee Earnings, and BWC Salary Continuation policy.



Instructions

- This form is used to acknowledge an agreement to pay salary/wage continuation in lieu of temporary total or living maintenance compensation.
• Regular (full) salary/wages includes any benefits which the employee would normally be entitled to if the employee was working.
• This form must be signed by the employee and the employer.
• Fax or mail this completed agreement to your local BWC service office.

Table with 3 columns: Employee name, Claim number, Employer name, Policy number, Employer telephone number

On the \_\_\_ day of \_\_\_, \_\_\_, \_\_\_, the employer and the employee named above executed the following terms and conditions pertaining to the payment of salary continuation.

The employer, since the inception of the employee's disability resulting from an accident/occupational disease suffered by the employee on \_\_\_/\_\_\_/\_\_\_, while in course of their employment, has been or is paying regular (full) salary/wages in lieu of temporary total or living maintenance compensation, to the employee during the period of disability as indicated below:

Continuation of regular (full) salary/wages and any benefits the injured worker would otherwise have been entitled to has been/will be paid. Salary continuation will be paid at the rate of \$ \_\_\_ per \_\_\_ (week, two weeks, etc.) for the period of time from \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_, (a period of time not to exceed 45 days per C-55 submission).

Does the amount paid include salary/wages from other employment? [ ] Yes [ ] No

Should salary continuation payment continue a new C-55 must be submitted within five days of the end date of this agreement. The employer must notify BWC immediately if salary continuation will be discontinued and/or if the injured worker returns to work.

Table with 2 columns: Employee signature, Date, Employer signature and title, Date



Instructions for the employer

Please note that if you report income to BWC to set wages but have not reported the income to the Internal Revenue Service (IRS) as wages, BWC may notify the IRS of the discrepancy.

You must complete the Seven-day worksheet section below. Then either complete and sign the Earnings statement worksheet (page two of this form), or submit a payroll report that includes the required information as described below.

- Report earnings for the employee beginning with the full-pay-period that ended prior to the date of injury or date of disability in an occupational disease claim using the actual end date of the pay period (not the date the payment was issued). Do not report wages earned on or after the date of injury or date of disability in an occupational disease claim.
BWC includes the information below in the calculation of wages. Include the following information in your report or worksheet:
All gross earnings prior to any deductions such as for taxes, insurance, deferred compensation, garnishment or employee contributions to retirement programs;
Paid holidays, vacation, personal or sick leave (this is payment for time off work, not cash out of unused leave);
Bonuses and commissions (you must indicate the period of time over which the bonus or commission was earned);
Allowance for meals, lodging, uniforms, tips, etc., paid in addition to wages, (report as other earnings with a description of the earnings).
Reimbursements made to the injured worker for meals, lodging, uniforms, travel, etc. (BWC does not consider these as earnings and so it does not include them in the calculation of wages.) DO not include them in your report or worksheet.
If you attach a payroll report that includes earnings that BWC does not consider gross earnings as defined above, please note on the payroll report or on a separate attached document.
Report any periods the injured worker did not work. If payment was made during those periods, report the amount and description of payment the injured worker received.

Seven-day worksheet

You must provide this information even if you are providing weekly earnings on a payroll report. Provide the information based on pay period begin and end dates, not payment dates.

Table with 2 columns: Field Name, Value. Fields include: Injured worker name, Claim number, Date of injury, Date of hire, Employer name, Employer phone number, Employer address, Employer email address.

If employed less than one full-pay period prior to the date of injury, provide the information below.

Number of hours scheduled the week of the injury: \_\_\_\_\_ Hourly rate: \_\_\_\_\_

If employed one full-pay period or longer prior to the date of injury or date of disability in an occupational disease claim, provide the information below using the actual end date of the pay period (not the date the payment was issued).

What was the BEGINNING date of the last pay period prior to the date of injury/disability? (DD/MM/YYYY) \_\_\_\_/\_\_\_\_/\_\_\_\_

What was the END date of the last pay period prior to the date of injury/disability? (DD/MM/YYYY) \_\_\_\_/\_\_\_\_/\_\_\_\_

Payment is (check one): [ ] Weekly [ ] Biweekly [ ] Bimonthly [ ] Monthly [ ] Other \_\_\_\_\_ (please explain)

- If the pay period was weekly, what was the amount of overtime earned? \$\_\_\_\_\_
If this pay period was not weekly, during the last seven calendar days of the pay period listed above, please provide the following:

Regular earnings the last seven calendar days of that pay period: \$\_\_\_\_\_

Overtime earnings the last seven calendar days of that pay period: \$\_\_\_\_\_

Signature Section

I certify the information provided is correct to the best of my knowledge. I am aware that any person who knowingly makes a false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain payment as provided by the BWC or who knowingly accepts payment to which that person is not entitled, is subject to felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine, imprisonment or both.

I am requesting BWC calculate or recalculate the full and/or average weekly wage in this claim and adjust previously paid compensation pursuant to RC 4123.52.

Table with 2 columns: Field Name, Value. Fields include: Name of the person completing this form (printed), Date, Signature, Title.

Fax the completed form to 1-866-336-8352, or send it to the BWC customer service office where the claim is assigned.

## Earnings statement worksheet

Injured worker name	Claim number
Date of injury	Date of hire
Employer name	Employer phone number
Employer address	Employer email address

**Please see the instructions for the employer for additional information before completing the worksheet.**

**Pay period end date:** The actual end date of the pay period, not the date the payment was issued. For example, the check was issued on Jan. 25, 2014, for the pay period Jan. 12, 2014, to Jan. 18, 2014. In this example, the pay period end date is Jan. 18, 2014. In addition, to determine the 52 weeks needed for this report, start with the end date of the last pay period prior to the date of injury then count back 52 weeks. For example, the date of injury is Jan. 2, 2014. The last pay period end date prior to the date of injury is Dec. 21, 2013. The injured worker was paid weekly. Therefore, the 52 weeks needed for the worksheet are the pay periods with end dates from Dec. 29, 2012, to Dec. 21, 2013. This range may vary depending on the frequency of payment.

**Gross regular earnings:** This is the hourly rate multiplied by the hours worked, or the regular salary.

**Other earnings:** Earnings NOT included in the gross regular earnings such as bonuses or allowances. You must include an explanation of the other earnings in the Description of exceptions and earnings column.

**Description of exceptions and earnings:** You may also provide other information for BWC to consider in the calculation of earnings such as periods the injured worker was laid off, on disability, etc.

Payment is (check one):  Weekly  Biweekly  Bimonthly  Monthly  Other \_\_\_\_\_ (please explain)

	Pay period end date	Gross regular earnings	Other earnings	Description of exceptions and earnings
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Injured worker name				Claim number
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	Pay period end date	Gross regular earnings	Other earnings	Description of exceptions and earnings
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Comments or other information

I certify the information provided is correct to the best of my knowledge. I am aware that any person who knowingly makes a false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain payment as provided by the BWC or who knowingly accepts payment to which that person is not entitled, is subject to felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine, imprisonment or both.

I am requesting BWC calculate or recalculate the full and/or average weekly wage in this claim and adjust previously paid compensation pursuant to RC 4123.52.

Name of the person completing this form (printed)	Date
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Signature <b>X</b>	Title
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**Fax the completed form to 1-866-336-8352, or send it to the BWC customer service office where the claim is assigned.**

# Salary Continuation

## What is salary continuation?

Salary continuation (wages in lieu of temporary total compensation) allows an employer of record (EOR) to pay an employee his or her regular full wages and benefits after a workplace injury or illness occurs.

The injured worker has the option to accept or reject payment of salary continuation unless there is a collective bargaining contract that states otherwise. If the injured worker rejects payment of salary continuation, BWC may pay temporary total compensation (TT). The EOR may pay the injured worker salary continuation until he or she or injured worker terminates payment. At that time, BWC may pay TT, if appropriate.

If BWC finds, at any time, the EOR is not paying the injured worker's regular full wages, BWC may begin paying TT if the injured worker has submitted a signed *Request for Temporary Total Compensation (C-84)* and supporting medical evidence.

This fact sheet provides an overview of the injured worker and EOR responsibilities and rights related to salary continuation. This list is not all-inclusive.

### The **injured worker's** responsibilities and rights

- o You are not required to accept salary continuation in lieu of TT unless a collective bargaining contract states otherwise.
- o You should not experience a break in service that impacts seniority or other benefits when your EOR pays salary continuation.
- o Your EOR cannot force you to use sick time over the same period that he or she pays salary continuation unless there is a collective bargaining contract that states otherwise.

### The **EOR's** responsibilities and rights

- o You must pay your injured worker a full paycheck at the next scheduled time after the injury or illness occurs. You cannot wait until BWC or the Industrial Commission of Ohio (IC) makes a determination. If you miss paying an injured worker at a scheduled time, you forfeit the right to pay salary continuation on the claim, and BWC may begin to pay TT if the injured worker has submitted a signed request for TT and supporting medical evidence.
- o You may not wait until the injured worker has missed 14 consecutive days to pay the first seven days of disability. You must pay salary continuation when it is apparent the injured worker will miss eight or more days due to the work-related injury or illness. Payment of eight or more days of salary continuation indicates a lost-time claim.
- o You are not required to pay salary continuation if the injured worker misses seven or fewer days due to a work-related injury or illness. If you pay salary continuation for less than eight days, the claim is a medical-only claim. If a medical-only claim subsequently becomes a lost-time claim and you wish to pay salary continuation, you must go back and pay all days at that time.
- o If you wish to pay salary continuation, you must notify BWC prior to BWC issuing the initial determination decision.
- o You cannot pay salary continuation once BWC has ordered TT unless a collective bargaining contract requires you pay salary continuation.
- o You must report in writing the injured worker's earnings. This earnings report must be for the 52-fully paid weeks prior to the date of injury – or whatever portion of that time the injured worker worked for your company. We use this information to determine the full and average weekly wage in the claim.

*Continued on next page*

- o You must submit a Salary Continuation Agreement (C-55) or equivalent information, signed by a representative of your company and the *injured worker*, for each period of salary continuation to be paid. This does not mean for each pay period but for each period of disability as identified on the C-55. You should base the end date of the payment of salary continuation on the expected period of disability as supported by medical documentation, not to exceed 45 days. Do not list "until return to work" or a vague future date on the form to avoid submitting additional C-55s.
- o You should pay salary continuation only for periods of disability related to the allowed conditions in the claim. BWC encourages you to review medical documentation to confirm the injured worker remains off work for the allowed conditions and to determine if return to work (light duty) is possible.
- o **Important note** – If BWC discovers the injured worker continues to work other jobs, BWC will notify you.
- o If the injured worker had more than one job at the time of the accident, you may choose to pay salary continuation for all of the injured worker's lost wages or cover only your company's portion of the injured worker's lost wages. If you choose to cover only your company's portion, if appropriate, BWC will pay TT to the injured worker for the difference between the net salary continuation payment up to the TT maximum in the claim, when he or she submits supporting evidence and a signed request. BWC will set an indemnity reserve in the claim if we pay TT. **However, you may choose to replace the earnings from the injured worker's other job(s).**
- o You may pay an injured worker the wage he or she earned prior to the injury even if the worker returns to work and is in a different position due to work restrictions.
- o You must notify BWC within 72 hours when you have discontinued the payment of salary continuation and/or when the injured worker returns to work. Failure to do so may affect your eligibility to participate in salary continuation.
- o Under salary continuation, you, BWC or the IC may schedule an independent medical exam (IME). The IME addresses issues such as return-to-work capability, functional limitations/restrictions, vocational rehabilitation potential, maximum medical improvement (MMI) and appropriateness of current treatment. However, BWC or the IC does not schedule an IME for the sole purpose of determining the issue of maximum medical improvement. A finding of maximum medical improvement has no impact on payment of salary continuation. In addition, BWC does not view salary continuation as TT for scheduling a 90-day exam.
- o BWC does not authorize you to pay salary continuation in lieu of wage loss, permanent partial, permanent total, death awards or any other awards of compensation.
- o You cannot pay salary continuation to an injured worker who no longer works for your company.
- o The payment of salary continuation will no longer suppress the claim reserve for claims with a date of injury on or after Jan. 1, 2011.
- o You are eligible to pay salary continuation if you are participating in the deductible program, effective July 1, 2012. However, you cannot pay salary continuation for claims with a date of injury prior to July 1, 2012, if you were enrolled in the deductible program.

If you have questions regarding our salary continuation policy, contact your claims service specialist or EOR services specialist at your local customer service office, or call **1-800-644-6292**.