



Oregon

Tina Kotek, Governor



Workers' Compensation Division

Department of Consumer and Business Services

BULLETIN NO. 342 (Rev.)

Feb. 7, 2024

TO: Workers' compensation insurers and self-insured employers

SUBJECT: Determination of "gainful occupation" for permanent total disability (PTD) evaluations

This bulletin:

- Provides examples of "gainful occupation" to be used to determine eligibility for PTD benefits under ORS 656.206.
- Updates the annual percentage of change in the federal poverty guidelines for a family of three that apply to Oregon residents.

This bulletin replaces Bulletin No. 342 dated Feb. 2, 2023.

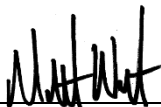
Under ORS 656.206, the worker's adjusted average weekly wage and the federal poverty guidelines that apply to Oregon residents for a family of three are key factors in determining what "gainful occupation" is and whether the worker is or remains permanently and totally disabled.

To determine the appropriate gainful employment earnings threshold for an injured worker:

STEPS	DOI before Jan. 1, 2006 EXAMPLE	DOI on or after Jan. 1, 2006 EXAMPLE
1. Find the most recent federal poverty value by accessing the US Department of Health & Human Services' website www.aspe.hhs.gov/poverty/ .	Date of injury before Jan. 1, 2006; closure date Jan. 26, 2023. Based on the date of closure, the federal poverty level is \$24,860.	Date of injury Jan. 4, 2018; closure date Feb.15, 2023. Based on the date of closure, the federal poverty level is \$24,860.
2. Determine the worker's average weekly wage from all employment: <ul style="list-style-type: none"> ▪ If employed continuously for 52 weeks, divide the yearly wage by 52. ▪ If employed less than 52 weeks, base the calculation on actual weeks of employment. ▪ If employed less than four weeks, use the wages intended at the time of hire. 	For this example, assume the worker's average weekly wage was \$470.	For this example, assume the worker's average weekly wage was \$600.

<p>3. If the date of injury is on or after Jan. 1, 2006, adjust the worker's average weekly wage by the percentage of any change in the federal poverty guidelines from the date of injury to the date of evaluation. (See chart attached to this bulletin.)</p>	<p>Do not adjust the wage because the injury is before Jan. 1, 2006.</p>	<p>Adjust the weekly wage using factors* in the attached chart: $\\$600 \times 1.01763 \times 1.02647 \times 1.01828 \times 1.01105 \times 1.04872 \times 1.07946 = \\730.45.</p> <p>*For the purpose of calculating adjustments, the percentage increase should be reported as a decimal and preceded by a 1. Example 2.647 percent would be written as 1.02647.</p>
<p>4. Multiply the worker's average weekly wage or adjusted weekly wage by 66.67 percent (.6667), then by 52 to arrive at the worker's adjusted yearly earnings.</p>	<p>Average weekly wage of \$470 x .6667 (66.67 percent) x 52 weeks, which is \$16,294.15.</p>	<p>Adjusted weekly wage of \$730.45 x .6667 (66.67 percent) x 52 weeks, which is \$25,323.53.</p>
<p>5. The gainful employment earnings threshold is: a. Injury before Jan. 1, 2006 – the lesser of the worker's <i>average</i> yearly earnings and the current federal poverty level at the time of claim closure. b. Injury on or after Jan. 1, 2006 – the lesser of the worker's <i>adjusted</i> yearly earnings and the current federal poverty level at the time of claim closure.</p>	<p>Select the lesser of the two yearly values (\$24,860 federal poverty level at the time of claim closure or \$16,294.15 average yearly earnings). In this case, the worker's average yearly earnings would be used when determining "gainful occupation."</p>	<p>Select the lesser of the two yearly values (\$24,860 federal poverty level or \$25,323.53 adjusted yearly earnings). In this case, the federal poverty level at the time of claim closure would be used when determining "gainful occupation."</p>

If you have questions about this bulletin, please contact the Appellate Review Unit at 503-947-7816.



Matt West, Interim Administrator
Workers' Compensation Division

Distribution: WCD-LY, GovDelivery electronic mailing lists

Attachments: Poverty guideline chart

Chart

Federal Poverty Guidelines for a Family of Three (US Department of Health & Human Services)		
Fiscal Year	Three-person family	Percentage increase
2-18-05 through 1-23-06	\$16,090	---
1-24-06 through 1-23-07	\$16,600	3.170%
1-24-07 through 1-23-08	\$17,170	3.434%
1-24-08 through 1-22-09	\$17,600	2.504%
1-23-09 through 8-02-10	\$18,310	4.034%
8-03-10 through 1-19-11	\$18,310	0.000%
1-20-11 through 1-25-12	\$18,530	1.202%
1-26-12 through 1-23-13	\$19,090	3.022%
1-24-13 through 1-21-14	\$19,530	2.305%
1-22-14 through 1-21-15	\$19,790	1.331%
1-22-15 through 1-24-16	\$20,090	1.516%
1-25-16 through 1-25-17	\$20,160	0.348%
1-26-17 through 1-12-18	\$20,420	1.290%
1-13-18 through 1-10-19	\$20,780	1.763%
1-11-19 through 1-14-20	\$21,330	2.647%
1-15-20 through 1-12-21	\$21,720	1.828%
1-13-21 through 1-11-22	\$21,960	1.105%
1-12-22 through 1-11-23	\$23,030	4.872%
1-12-23 through 1-10-24	\$24,860	7.946%
1-11-24 through (see note below)	\$25,820	3.862%

Note: The US Dept. of Health & Human Services (HHS) does not have a designated date on which the poverty guidelines are published each year. Insurers and self-insured employers must use the most recent federal poverty guideline that is published on the HHS website: www.aspe.hhs.gov/poverty/.