When your paycheck stops after an injury, the number that quickly takes center stage is your average weekly wage, often shortened to AWW. It is the anchor for almost every dollar that follows. Temporary disability checks are a percentage of it. Many permanent disability calculations start from it. Some settlements, vocational benefits, and even death benefits for a surviving family tie back to it. If the AWW is wrong by a little, your checks are light by a lot. A good workers compensation lawyer knows this, treats AWW as a core issue, and builds the number carefully rather than accepting whatever the insurer types into a form.

What average weekly wage actually means

Average weekly wage is the law's best effort to put a fair, realistic figure on what you were earning before you got hurt. At its simplest, it is the average pay per week over a defined lookback period. That definition hides a lot of nuance. States set their own formulas, and within those formulas are exceptions meant to reach fairness when the simple math would punish a worker with variable hours, seasonal cycles, or recent hire status.

There is no single national rule, but the architecture is similar across jurisdictions. Many laws start with a default method, then add an escape hatch a hearing officer or judge can use if strict application would be unjust. Most also set statewide caps and minimums on the benefit rate paid off that AWW. This is where professional judgment matters. A workers compensation lawyer does not just measure, they advocate for the method that most accurately reflects your real earnings.

First principles your lawyer keeps in mind

The goal is to approximate your true earning capacity at the time of injury, not to punish you for one slow week or reward an outlier surge. That means the calculation should:

- Capture the full scope of your pay, including wages, overtime if it was regular, shift differentials, and many forms of variable compensation such as commissions and tips.
- Exclude time you did not work for reasons that do not reflect your earning capacity, like unpaid medical leave or a plant shutdown far outside your control.
- Account for second jobs if the state recognizes concurrent employment.
- Avoid using post-injury hours to drive the average down.

States disagree on several pieces, especially overtime, per diems, and fringe benefits. Many include overtime if it was customary, but some strip it out or limit it. Most exclude the employer's contribution to health insurance and retirement, though a few treat certain cash allowances as wages if they can be spent freely. Because these lines vary, your lawyer's first move is to identify which rulebook applies, then gather proof that fits that rulebook's categories.

What your lawyer gathers before touching a calculator

Paper drives these cases. Memory helps, but numbers win. In a straightforward file, pay stubs and a wage statement from the employer may be enough. In a messy one, we have pulled bank records to corroborate cash tips, talked to coworkers about a regular overtime rotation, or compared timeclock logs to payroll when the two did not match. If you do not keep everything, do not panic. There are other ways to rebuild the picture.

Here is a short checklist that keeps the process moving quickly:

- The last 13 to 52 weeks of pay stubs and year-to-date totals
- Tax documents that show variable income, typically W-2s and, if you have side gigs, a 1099 and Schedule C
- Timecards or timeclock reports, especially where overtime is in dispute
- Any offer letter, union contract, or written policy that sets base rate, shift differential, bonus plans, or guaranteed hours
- Proof of concurrent employment, like pay stubs from a second job or a letter from that employer

A workers compensation lawyer will also request the official wage statement insurers rely on, often called a wage record or wage chart. Those forms can be incomplete. Comparing them to your records is how errors get caught.

How the baseline method works, and where it breaks

Many states begin with a simple average. For a long-term employee with steady hours, the rule often looks like this: take gross earnings for the 13, 26, or 52 weeks before the injury, divide by the number of weeks, and you have the AWW. If you worked a partial week, some laws count it as a week, others not. Some say skip any week where you earned nothing, others say count all weeks unless the absence was for a specific reason.

Imagine you work 40 hours at 25 dollars per hour. No overtime, no bonuses. Over 13 weeks, your gross is 13 weeks x 1,000 dollars, so 13,000 dollars. Divide by 13, and the AWW is 1,000 dollars. Most temporary total disability benefits pay roughly two thirds of that, subject to a statewide cap, so your weekly check might be about 666 dollars, maybe rounded, unless the cap forces it lower or the minimum nudges it higher. Those caps vary widely, often landing between about 700 and 1,500 dollars per week in recent years, depending on the state.

That tidy picture falls apart quickly for real workers. A paycheck can swing with weather, production schedules, holidays, and child care. If one of your 13 weeks was zero because you had the flu or because the machine was down, including that week drags the average. If you took a week of unpaid bereavement, same problem. Most statutes or case law give a path to exclude those anomalies. The trick, and part of the lawyer’s job, is to document why the week should not count and propose a corrected denominator.

Variable hours and seasonal rhythms

Retail staff, roofers, delivery drivers, and educators live by the season. Where the law recognizes seasonal work, lawyers build a record that your hour swings are part of a normal cycle with predictable peaks. One approach is to use a full year to capture the rhythm, eliminating the distortion of a single slow season. Another is to use a “fair approximation” clause many statutes include. If you were hired mid-season, some states let a lawyer use the wages of a similarly situated coworker to estimate what you would have earned if you had been there all season.

A grocery worker who averages 30 hours most of the year but spikes to 55 between Thanksgiving and New Year’s is a good example. If the injury happened in December, using only the prior 13 weeks might overstate earnings. If it happened in February, the 13-week average might understate. The fair approximation principle aims to even that out. The lawyer might propose a 52-week average that reflects both the crunch and the calm, then argue to exclude a week of unpaid jury duty or a week the store was closed by a snow emergency.

Overtime, shift differentials, and bonuses

Overtime triggers more fights than almost any other component. The question is not whether you worked it, but whether it is the type the law treats as part of AWW. The safest ground is “regular and recurring” overtime, the

kind built into the schedule, like a maintenance crew that always runs a Saturday shift or a hospital unit with a rotating mandatory extra day. Those hours are often included.

On the other hand, a one-off storm response or a single emergency outage may be characterized as sporadic and excluded by some states. Shift differentials, like an extra 1.50 dollars per hour for overnights, are commonly included, because they are part of the hourly wage. Bonuses are fact specific. A guaranteed attendance bonus paid every quarter looks more like wages. A discretionary holiday envelope may not.

Consider an equipment operator with a 22 dollar base rate, 1.50 dollar shift differential for nights, and consistent ten hours of overtime most weeks. Overtime is paid at time and a half on the base, which is 33 dollars. The differential often applies to all hours, depending on policy. In an average week with 50 hours all on nights, the math might look like 40 hours x 22 dollars equals 880 dollars, plus 10 hours x 33 dollars equals 330 dollars, plus 50 hours x 1.50 dollars equals 75 dollars. That is 1,285 dollars for the week. If those numbers hold over 13 weeks, the AWW will center there. If half those weeks are days without the differential, the average slides accordingly. The lawyer’s job is to show the pattern, not cherry pick.

Commissions, tips, and per diems

Sales and service income rarely fits neatly. Commissioned employees often earn low base pay with monthly or quarterly commissions, subject to chargebacks. A common approach is to spread commissions across the earning period they relate to. If you earned a 6,000 dollar quarterly commission, your lawyer argues for adding 2,000 dollars to each month’s wages for those three months, not dumping all 6,000 into one week and distorting the average.

Tips are wages. The problem is proof. POS reports, declared tips on pay stubs, and bank deposits help. In restaurants where cash reigns, we have used shift assignment logs and testimony about tip-out rates to build a conservative estimate that aligns with the law’s standard. Per diems and expense reimbursements usually do not count as wages if they are tied to actual expenses. A flat 60 dollar per diem that you keep regardless of receipts sometimes gets treated like wages. Again, documents and policy language matter.

Concurrent employment and side gigs

If you worked two jobs before the injury, tell your lawyer. Many states count both wages if both employers are covered by workers compensation. This can be the difference between keeping your rent paid and falling behind. We once represented a server who also stocked at a warehouse on weekends. The insurer ignored the second job at first, and her temporary checks were 30 percent lower than they should have been. Pay stubs from the warehouse and a letter from HR fixed it, and she received a retroactive adjustment.

Gig work adds complexity. If you drove rideshare or had a small landscaping business, the income may be on a 1099 or reported on Schedule C. The net, not the gross, is often what matters, so your lawyer will separate true business expenses from personal ones, then argue that your actual earning capacity included that net profit stream. It takes patience, but it is worth the time when the numbers move the benefit rate.

New hires, apprentices, and trainees

If you had not been on the job long enough to build a 13-week history, the law often provides an alternative. One common method uses the wage work injury benefits of a similarly situated employee. An apprentice electrician injured in week four should not be locked to a four-week average that includes two partial weeks of classroom

time. The lawyer can gather pay data from other apprentices on the same crew, or even from the collective bargaining agreement, to present a realistic AWW.

Overtime for trainees can also be a flashpoint. If the crew regularly works 48 hours once training ends, but trainees are capped at 40 for safety, the correct comparison is to other trainees at the same stage, not fully released journeymen. The more precisely we mirror your situation, the stronger the number holds up in a hearing.

What gets excluded and why

Not every week belongs in the denominator. Silence in the record usually helps insurers, because they will include every slow or zero week and move on. Lawyers go the other direction, documenting and removing weeks that do not reflect capacity:

- Weeks you missed work because of a prior injury or a medical condition not related to job performance
- A week the plant shut down unexpectedly or the jobsite closed by order of a public authority
- Weeks you were on unpaid leave for jury duty or bereavement where the law allows exclusion

Insurers sometimes argue that if you did not earn wages, the week still counts. This is where knowing the statute and case law pays off. Many jurisdictions say to exclude weeks where the absence skews the average unfairly. The hearing officer will want proof, so it is not enough to say the jobsite was closed. We gather the shutdown memo or a text from the foreman and attach it to the wage affidavit.

The actual math, step by step

Different states have different default periods, but the flow is similar. When I teach this to new paralegals, I use a simple sequence:

- Identify the correct lookback period under the statute, usually 13, 26, or 52 weeks before the injury date.
- Collect gross wages for each week in that period, then document and remove weeks that legally should not count.
- Add in includable compensation such as regular overtime, shift differentials, commissions spread across their earning periods, and documented tips.
- Divide by the number of counted weeks to get the AWW, then apply the state’s percentage for temporary disability and check it against the current maximum and minimum weekly benefit.
- Recalculate for competing methods if the statute allows alternatives, and select the fairest, best-supported figure.

This is not about gaming. It is about accuracy. Presenting two or three methods with clear documentation often persuades an adjuster to correct the number without a hearing. If not, you have a strong record ready for a judge.

How AWW drives your weekly checks

Most temporary total disability checks are a fixed percentage of AWW, commonly around two thirds, paid tax free. Some states use different percentages for partial disability or alternative formulas such as a share of the wage loss up to a limit. Many cap weekly benefits at a statewide maximum tied to the average wages in that state, and a few guarantee a minimum to protect the lowest earners.

Here is what that means in practice. If your AWW is 900 dollars, a two thirds rate produces 600 dollars per week. If the statewide maximum is 1,100 dollars, and your AWW is 2,000 dollars, your benefit may still cap at that 1,100. If

the minimum is 250 dollars and your AWW is 300 dollars, a two thirds rate would be 200, but the minimum lifts it to 250. An experienced workers compensation lawyer pays attention to annual updates because those caps often change on a set date, which can increase your check if your injury spans the change.

Partial disability benefits for light duty or reduced hours add another wrinkle. Many states pay a percentage of the difference between your pre-injury AWW and your post-injury earnings. If you return to a four-hour shift at light duty and earn 300 dollars, the benefit might be two thirds of the 600 dollar gap if your AWW was 900 dollars, with the same maximum cap applying. Insurers can miscalculate this by using the wrong post-injury earnings figure, such as including extra hours from a temporary accommodation. Your lawyer will watch for those mistakes.

Where disputes usually arise

The most common fights are simple: missing overtime, no credit for a second job, and inclusion of weeks you were out sick. Others are more subtle. Per diems can be mischaracterized as expense reimbursements when they are really disguised wages. Employer-paid health insurance rarely counts, but if you used to receive a cash allowance in lieu of insurance, that allowance might. Commission timing can be manipulated by the employer’s accounting cycle unless you pin down when the right to payment actually vested.

An anecdote stays with me. A machinist injured his shoulder in May. The insurer used a 13-week window that included a two-week unpaid shutdown in March when the company retooled. That dragged his AWW down by roughly 150 dollars. We pulled the retooling memo, payroll records showing zero hours for the entire shop, and testimony from a supervisor, then argued for exclusion under the fairness clause. The judge agreed, and the weekly benefit increased by nearly 100 dollars. Over nine months of payments, that correction meant thousands of dollars he otherwise would have lost.

Special situations that change the approach

- Cash pay or underreported tips: We can still build an honest number using bank records, POS data, and sworn statements. Accuracy matters more than any fear that the proof will cause tax trouble. The goal is compensation for the injury.
- Self-employment alongside W-2 wages: We separate business expenses from income to present a net profit history, then ask the judge to include it under the concurrent employment rule if the statute allows.
- Undocumented workers: In many states, immigration status does not change entitlement to wage loss benefits. Proof of earnings, even if informal, still drives AWW. The lawyer’s job is to protect privacy while proving the pay.
- School employees: For staff who work only the school year but receive pay spread over 12 months, we focus on the contract terms. Some states average over the contract period, not the calendar year, to avoid undercounting.
- Union contracts: Collective bargaining agreements often settle overtime rotation, shift differentials, and step increases. We use them as hard evidence to undercut insurer claims that overtime was unpredictable or a differential was discretionary.

Deadlines, updates, and the long tail of an early mistake

AWW usually gets set quickly, often within two to four weeks of the claim starting. That first number is not the last word. You can request a correction, and in many states you can ask for a hearing. There are deadlines. Missing them means living with the wrong number or fighting uphill to reopen the issue later. When a case moves from

temporary to permanent disability evaluation, the AWW is often pulled forward. An error at week three can echo into year two, shaving down a scheduled award or a loss-of-earning-capacity analysis.

Lawyers watch for annual cost of living adjustments where they exist, although many states do not apply COLA to workers compensation. We also watch for promotions or step increases just before injury. If your base rate changed shortly before you got hurt, a stale average can miss that. The safer presentation multiplies the new base rate by typical hours, then layers in the established overtime pattern to show the injury struck at a higher earning level.

Practical examples that show how the pieces fit

Picture a warehouse selector who earned 18 dollars per hour with significant overtime, averaging 48 hours most weeks. Over the 13 weeks before injury, he had one week at 30 hours after a family emergency and one week at zero when the facility closed to install new racking. The insurer’s worksheet showed total wages of 12,420 dollars divided by 13 weeks, an AWW of 955 dollars. We excluded the zero week, documented by the closure memo, and the 30-hour week, documented by a bereavement notice the employer policy treated as unpaid leave. That left 11 weeks and the same 12,420 dollars, lifting the AWW to 1,129 dollars. At a two thirds rate, the weekly benefit increased from roughly 637 to 753 dollars. Over six months, that difference paid the rent during a tough recovery.

Now take a retail sales lead with a 15 dollar base, a standing 1.75 dollar evening differential for the closing shift, and monthly commissions tied to store revenue. Commissions averaged 900 dollars per month over the six months before injury but paid in two lump sums because of accounting delays. We spread those commissions across the months they were earned, attached store revenue reports to support the pattern, and included the shift differential based on the published schedule showing she closed four nights a week. The insurer had only counted her base rate. The corrected AWW went from 600 dollars to 820 dollars, preserving a meaningful benefit for a worker who could not bear weight on her foot for eight weeks.

What to watch for on your own check

Read the explanation that comes with your first check. If it does not show the AWW and the weekly benefit rate, ask for it. Compare it to your pay stubs. If your overtime disappeared or a second job is missing, bring it up immediately. If you start light duty, save those pay stubs, because partial disability math depends on them. If a seasonal surge is coming, tell your lawyer in advance so the record reflects your upcoming earning potential, not just the quiet weeks.

Why the right lawyer makes a difference

A careful workers compensation lawyer brings three assets to this task: fluency in the statute as it stands this year, a working comfort with payroll math that turns a pile of stubs into a defensible figure, and the discipline to document every assumption. Insurers respond to clean records. Judges do too. The tone is not outrage, it is precision. Here is the rule, here are the numbers, here is why this week does not belong, and here is the fairest average that matches the law’s purpose.

People often come to us feeling behind. They have tried to recover quietly and hoped the checks would catch up. When we fix AWW, the relief is real and immediate. It is not just about a number. It is about time to heal without fearing the mailbox.

If you suspect your AWW is low, gather what you have and talk to a lawyer who handles workers compensation daily. A small correction now can prevent a big shortfall later. The math should honor your work, not erase it.