

**Fun With Numbers:**  
Interest, Present Value Calculations and Offsets

Presented by:

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Although math is not a subject that is offered at law school, it is something that comes into play on some level nearly every day in dealing with workers' compensation claims. I have set out below some examples of this reality and how to work through the basics. [DISCLAIMER: I was a Political Science major with a Literature minor in undergraduate school.]

***I. Interest***

Our workers' compensation system is intended to be self-effectuating. An employer's obligation to make payments following an injury is statutory, and interest is owed if those payments are not made on time. Pursuant to Iowa Code §85.30:

Compensation payments shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to the weekly compensation payments, interest at the rate provided in § 535.3 for court judgments and decrees.

Iowa Code §535.3 specifies that interest due pursuant to §85.30 "is due at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent."

Prior to July 1, 2017, Iowa Code §535.3 specified that interest owed pursuant to §85.30 was owed at ten percent.<sup>1</sup> Subsequent to July 1, 2017, in order to determine the applicable interest rate, the agency has held that the date on which benefits are owed controls. If you are dealing with benefits that were owed on or before July 1, 2017, then the applicable interest rate is ten percent; however, if you are dealing with benefits that were owed subsequent to July 1, 2017, then the variable interest rate that was in effect

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<sup>1</sup> Interestingly, the ten percent figure was implemented as a cost control measure because interest rates were much higher than ten percent at the time this figure was set.

on the date of injury should be used. Gamble v. A.J. Leader Technology, File No. 5054686 (App. Dec. 2018).

Example No. 1:

The date of injury is January 1, 2015. This is a denied claim that proceeded to hearing, went up to the Court of Appeals, and was recently decided on remand by the agency. Claimant was awarded 50 weeks of healing period benefits commencing on the date of injury and 75 weeks of permanency commencing on December 17, 2015. The rate of compensation is \$500 per week. Payment of all benefits is being made on October 11, 2023.

Healing Period:

Principal:  $50 \times \$500 = \mathbf{\$25,000}$

Step One Interest: Interest Multiplier (per the agency) is 2.3558

Multiplier times rate:  $2.3558 \times \$500 = \mathbf{\$1,177.90}$

Step Two Interest: Benefits payable from January 1, 2015 to December 16, 2015

Full principal of \$25,000 accrued as of December 16, 2015.

$I = \text{Principal} \times \text{Rate} \times \text{Time}$

$I = \$25,000 \times 10\% \times 408/52$

$I = \$2,500 \times 7.8461 = \mathbf{\$19,615.25}$

**Total Principal and Interest = \$45,793.15 (\$25,000 + \$1,177.90 + \$19,615.25)**

Permanent Partial Disability:

Principal:  $75 \times \$500 = \mathbf{\$37,500}$

Step One Interest: Interest Multiplier is 5.3365

Multiplier times rate:  $5.3365 \times \$500 = \mathbf{\$2,668.25}$

Step Two Interest: Benefits payable from December 17, 2015 to May 25, 2017

Full principal of \$37,500 accrued as of May 25, 2017

$I = \text{Principal} \times \text{Rate} \times \text{Time}$

$I = \$37,500 \times 10\% \times 332.7143 / 52$

$$I = \$3,750 \times 6.3984 = \mathbf{\$23,994}$$

**Total Principal and Interest = \$64,162.65 (\$37,500 + \$2,668.25 + \$23,994)**

Example No. 2:

Date of Injury July 2, 2016. This is also a denied claim that proceeded to hearing, but the course of proceedings was not quite as protracted. Claimant was awarded 52 weeks of healing period benefits commencing on the date of injury and 100 weeks of permanency commencing on July 2, 2017. The rate of compensation is \$500 per week. Payment of all benefits is being made on October 11, 2023.

Healing Period:

Principal:  $52 \times \$500 = \mathbf{\$26,000}$

Step One Interest: Interest Multiplier (per the agency) is 2.5500

Multiplier times rate:  $2.5500 \times \$500 = \mathbf{\$1,275}$

Step Two Interest: Benefits payable from July 2, 2016 to July 1, 2017

Full principal of \$25,000 accrued as of July 1, 2017

$I = \text{Principal} \times \text{Rate} \times \text{Time}$

$I = \$26,000 \times 10\% \times 327.5714/52$

$I = \$2,600 \times 6.2995 = \mathbf{\$16,378.70}$

**Total Principal and Interest = \$43,653.70 (\$26,000 + \$1,275 + \$16,378.70)**

Permanent Partial Disability:

Principal:  $100 \times \$500 = \mathbf{\$50,000}$

Step One Interest: (Per Excel spreadsheet or online multiplier) **\$863.39<sup>2</sup>**

Step Two Interest: Benefits payable from July 2, 2017 to June 2, 2019

Full principal of \$50,000 accrued as of June 2, 2019

$I = \text{Principal} \times \text{Rate} \times \text{Time}$

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<sup>2</sup> The ten percent interest multiplier would have been 9.1592 if applicable, so Step One Interest would have added up to \$4,579.60 ( $\$500 \times 9.1592$ ).

$$I = \$50,000 \times 2.59\%^3 \times 227.4286 / 52$$

$$I = \$1,295 \times 4.3736 = \$5,663.81^4$$

**Total Principal and Interest = \$56,527.20 (\$50,000 + \$863.39 + 5,663.81)**

## ***II. Present Value***

If you are owed a certain number of weeks at an established rate, the actual value of that stream of weeks is easy to calculate. In the second scenario above, for example, if you were to start at the beginning, the actual value of 100 weeks of permanency at \$500 per week is \$50,000.

Present value is a concept that values what it is worth to receive that entire stream of benefits in one lump sum as opposed to receiving it weekly. As I explain it to my clients, the present value is what it would take to generate the same actual value at the end of the benefit period if you had a lump sum of money and you invested it at the applicable interest rate. The interest rate applicable to present value calculations is the interest rate in effect at the time the calculations are being made.

The agency has promulgated life expectancy tables to provide guidance when performing present value calculations. If the parties have agreed to a commutation of benefits, the tables set out in IAC 876—6.3(1) and 876—6.3(3) control. If, however, you are doing present value calculations outside of the context of a commutation (see the “Offsets” section below), you are not bound by these tables.

### Example:

Date of injury is July 15, 2022. The rate of compensation is \$500 per week. The claimant was awarded 64 weeks of healing period benefits that were paid through October 5, 2023. The claimant was also awarded 300 weeks of permanency benefits commencing on October 6, 2023. The parties have agreed to a full commutation of the 300 weeks owed. The actual value of the remaining 300 weeks is \$150,000 (\$500 x 300). The present value is \$122,020.18. (See attached—Excel formula.)

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<sup>3</sup> Historical interest rates are available on the Iowa Judicial Branch website: <https://www.iowacourts.gov/iowa-courts/district-court/post-judgment-interest-table>.

<sup>4</sup> If the 10% interest rate were still in effect, Step Two Interest would have added up to \$21,868 (\$5,000 x 4.3736).

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1	PRESENT VALUE CALCULATION				
2					
3		<u>CURRENT</u>			
4					
5	NUMBER OF TOTAL WEEKS (INPUT)	300.0000			
6	CURRENT DISCOUNT RATE (INPUT)	7.4000%			
7	PRESENT VALUE OF TOTAL WEEKS	244.0404			
	WEEKLY COMPENSATION (INPUT)	\$500.00			
	COMMUTED PRESENT DOLLAR VALUE	\$122,020.18			

→ Formula =  $PV(B7/52, B5, 1)^*-1$

# IOWA JUDICIAL BRANCH

ADMINISTERING JUSTICE UNDER THE LAW EQUALLY TO ALL PERSONS.

## Post Judgment Interest Table

The Iowa Code provides that interest is allowed on all money due on court judgments and decrees as of the date of judgment at a rate equal to the one-year treasury constant maturity index published by the Federal Reserve *plus two percent*, unless the rate is fixed by contract. See Iowa Code sections 535.3(1) and 668.13.

For example, if the applicable constant maturity rate were 1.53%, the interest rate on the money due for a noncontractual dispute would be 3.53%.

State court administration provides these interest rates in compliance with Iowa code section 668.13(3). The Federal Reserve's H15 reports on which these interests are based can be found on the Federal Reserve's website at: <https://www.federalreserve.gov/releases/h15/>.

Date of Federal Reserve Auction	1-Year Treasury Constant Maturity (Interest) Rate
2023	
09/13/2023	5.40
08/09/2023	5.30
07/13/2023	5.44
06/08/2023	5.20
05/08/2023	4.59
04/10/2023	4.51
03/08/2023	5.22
02/07/2023	4.79
01/09/2023	4.78

Date of Federal Reserve Auction	1-Year Treasury Constant Maturity (Interest) Rate
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### **III. Offsets**

#### **(A) Short Term and Long Term Disability – Two Types of Offsets**

Many injured workers are covered by group disability insurance plans which provide short term and/or long term disability coverage. If that is the case with your client, then there are two potential offsets to keep in mind: (1) The Iowa Code §85.38 credit to the employer; and, (2) the potential repayment rights granted by the insurance plan.

##### *(i) §85.38 Credit to the Employer*

If your client receives benefits under a short term or long term disability plan and is later found to be entitled to workers' compensation benefits for the same period, then the employer is allowed to take a credit for the previous disability payments. However, before the employer can claim this credit, it must prove two things: (1) that the employer paid for all or a part of the premiums for the plan; and, (2) that the plan only covered non-occupational injuries.

#### **Practice Pointer:**

Since the employer is the party claiming the credit, it is incumbent upon the employer to prove that it paid a portion of the premiums and that the plan only covered non-occupational injuries. See, Reeves v. Seneca Corp., File Nos. 1054385 & 1134836 (Arb. Dec. 1998). Absent a stipulation or actual evidence of both facts, the credit is not applicable.

##### *(ii) Repayment Rights Granted by the Plan*

Most plans allow the disability carrier the right to recoup benefit payments if it turns out that the injured worker was entitled to receive workers' compensation benefits during the period when short term or long term disability benefits were being paid. And, unfortunately, most of these plans are qualifying ERISA plans, meaning they are governed by a set of federal statutes collectively known as that Employer Retirement Income Security Act. See, 29 U.S.C. §§1000 et. seq. The provisions of ERISA "supersede any and all State laws insofar as they may now or hereafter relate to any benefit plan." 29 U.S.C. §1144(a).

While ERISA does not contain a reimbursement requirement, it does grant plans the ability to create their own rights of reimbursement. See, Earl Mettler, Subrogation Rights of ERISA Plans, Trial

Magazine, September 2000, p. 57. There is, however, a “savings clause” which protects from preemption any state law which “regulates insurance, banking or securities.” 29 U.S.C. §1144(b)(2)(A). This “savings clause” applies with equal force to state legislation as well as common law. See, e.g., UNUM Life Ins. Co. of America v. Ward, 526 U.S. 358 (1999). The “savings clause” does not apply to self-funded plans (i.e., plans funded wholly by the employer or the employee organization rather than an insurance carrier). Id.; See also, Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985). So, if you are dealing with a self-funded plan, ERISA controls and pre-empts any potentially relevant state law.

There is no statutory right to reimbursement. See, Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204 (2002). Unless the plan language specifically provides for reimbursement, it has no such entitlement. Moreover, unless the plan language is specific enough to apply to your situation, there is no right to reimbursement. So, if you are dealing with a lump sum of benefits paid out pursuant to a compromise settlement, and the plan only provides for reimbursement of dollars paid for “weekly compensation benefits,” the plan likely does not have a valid right of reimbursement.

(B) Social Security Benefits---Different Programs/Different Implications

To understand the potential impact of benefits from the Social Security Administration, you first need to understand the different programs administered by that agency. From a basic standpoint, there are three programs: (1) Social Security Retirement, (2) Social Security Disability, and (3) Supplement Security Income. Each program has different goals and correspondingly different implications on any workers’ compensation recovery.

(i) *Social Security Retirement (SSR)*

The goal of this program is to provide income protection for people who have reached retirement age. An individual is eligible for Social Security Retirement benefits if they are fully insured, See, 20 C.F.R. § 404(b), they have reached at least early retirement age, and they have filed an application for Social Security Retirement benefits. 42 U.S.C. § 402(a); C.F.R. § 401.310. Individuals who do not apply for Social Security Retirement benefits until they have reached full retirement age may earn delayed retirement credits that will increase their benefit amount. 20 C.F.R. § 404.313.



Think of these benefits like a bank account from which you are allowed to draw a set monthly amount upon reaching at least your early retirement age. The amount that you draw each month is referred to as your Primary Insured Amount (PIA). The more you have paid into your account, the higher your PIA; likewise, the longer you wait to tap into your account, the higher your PIA.

(ii) *Social Security Disability (SSD/DIB)*

The Social Security Disability Act was passed in 1956 to provide assistance to disabled individuals who have paid into the Social Security system. Social Security Disability (SSD) benefits, also known as Disability Insurance Benefits (DIB), are available to any individual who is insured for disability insurance benefits, has not attained full retirement age, has filed an application, and has been found disabled under the act. 42 U.S.C. § 423(a); 20 C.F.R. § 404.315(a).

Unlike SSR, these benefits are affected by other sources of income. Federal guidelines limit the amount a person receiving SSD is entitled to receive in workers' compensation benefits during the same time period. That limit is based on a percentage of what that person earned in the years leading up to the onset of disability. See, 42 U.S.C. §§ 424(a) & (b) (1988). Here is how it works:

- i. The government has placed a "glass ceiling" on the amount of benefits an individual can receive each month between workers' compensation benefits and social security disability benefits.
- ii. The ceiling is equal to 80% of "average current earnings."
- iii. The "average current earnings" figure is the monthly average of an individual's highest year of earnings in the five years<sup>5</sup> prior to the date of disability.

- Example:
- (1) Claimant is found disabled in March of 2020.
  - (2) In the five years prior to the date of disability, his highest year of earnings was in 2019 when he made \$35,000.
  - (3) \$35,000 divided by 12 equals \$2,916.67---This is the claimant's "average current earnings" figure.
  - (4) \$2,916.66 multiplied by 80% equals \$2,333.33.
  - (5) \$2,333.33 is the most the claimant can receive each month between workers' compensation and SSD benefits.
- iv. Every combined dollar that exceeds the "glass ceiling" results in a reduction in the individual's monthly SSD entitlement.

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<sup>5</sup> An alternative method is the "high five" approach where you take the average of the claimant's highest five years of earnings throughout their lifetime if that produces a higher amount. In most cases, though, the highest year in the five years preceding disability will be what is used.

- Example:
- (1) The same claimant has a PIA of \$1,800.
  - (2) Claimant has been receiving weekly workers' compensation benefits for several years, and it is anticipated that he will continue to these benefits into the future.
  - (3) Claimant's weekly workers' compensation benefit is \$275 which translates into a monthly benefit of \$1,191.67.
  - (4) Between SSD benefits [\$1,800] and workers' compensation benefits [\$1,191.67] the claimant should receive a total of \$2,991.67 per month.
  - (5) Claimant's glass ceiling is \$2,333.33 which is \$658.34 [ $\$1,800 \text{ SSD} + \$1,191.67 \text{ WC} - \$2,333.33$ ] lower than his combined entitlement.
  - (6) During every month in which the claimant is entitled to both workers' compensation and SSD benefits, the SSA will reduce his benefits by \$658.34.

There are two ways that the Claimant can control this offset. First, in the case of an injured worker who is receiving weekly workers' compensation benefits, the offset does not apply to monies that are allocated to legal fees, past and future medical expenses, rehabilitation payments, penalty benefits, case costs or dollars paid to the injured worker's dependents. 20 C.F.R. §404.408(d). This may help shelter a portion of the claimant's dollars from the offset.

Second, it is possible to shelter some, or even all, of the claimant's dollars from the offset through the use of a closed filed settlement with appropriate social security offset language. According to the Social Security Administration's Programs Operations Manual System (POMS), lump sum payments are allowed to be prorated. The POMS further provide that proration will be performed in the following order of priority:

- (1) The rate specified in the lump sum award.
- (2) The periodic rate prior to the lump sum award (if no rate is specified in the lump sum award.)

There are four basic requirements of the offset language: (1) it is the parties' intention to settle the case fully and finally; (2) the amount being received in the lump sum is a conceptually being allocated to the entire period of the claimant's life expectancy; (3) an accepted indicator of projected life expectancy is used in the allocation process; and, (4) a conceptual weekly workers' compensation rate must be specified.

Example:

It is further agreed, by and between the parties, that this settlement was entered into with the understanding that the lump-sum payment of \$47,500 represents the final monetary payment the Claimant will receive from the Employer with respect to the workplace injury alleged herein. The settlement proceeds should, therefore, be allocated to that period of time extending from the date this agreement is approved by the Iowa Workers' Compensation Commissioner through the period of Claimant's life expectancy. According to the Life Expectancy Table promulgated by the Iowa Workers' Compensation Commissioner<sup>6</sup>, and contained within Chapter 6 of that agency's administrative rules, an individual who is 48 years old has a remaining life expectancy of 1,669 weeks. After taking into account the attorney fees he was required to expend in order to obtain this settlement, Claimant's net settlement proceeds amount to \$33,250. Dividing 1,669 weeks into this net settlement amount produces a weekly settlement rate of \$19.92, a weekly settlement rate envisioned by and stipulated to by the parties.

*(iii) Supplemental Security Income (SSI)*

The Supplemental Security Income program was enacted by Congress in 1972 to assist individuals who have attained age 65, or are blind or disabled, by setting a guaranteed minimum income level for such persons. Sullivan v. Zebley, 493 U.S. 521 (1990). Individuals are eligible for SSI benefits if they are elderly, blind, or disabled and meet the program's income and resource eligibility requirements. 42 U.S.C. §1382(a).

Since SSI benefits are resource dependent and are intended to provide only a "minimum" income level, there are significant offset implications. In most cases, the receipt of workers' compensation dollars---either weekly benefits or settlement dollars---will result in a dollar-for-dollar offset against SSI benefits. 20 C.F.R. §416.1100. These dollars are counted as "income" in the month received, and if they are retained, they will be counted as a "resource" in the following months. 20 C.F.R. §1207(d).

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<sup>6</sup> While the agency life expectancy table is used in this language, any accepted indicator of projected life expectancy can be used. Potential alternatives include the IRS Life Expectancy table contained in Appendix B of IRS Publication 590-B, /www.irs.gov/pub/irs-pdf/p590b.pdf, or the annual table published by the Centers for Disease Control and Prevention, /www.cdc.gov/nchs/nvss/life-expectancy.htm..

There is not much that can be done to allow the claimant to both hold on to their workers' compensation dollars and continue to receive SSI benefits. It is, however, possible for the claimant to mitigate this offset by "spending down" their workers' compensation dollars on qualifying items (e.g. a home or a primary automobile). See, 20 C.F.R. §§ 416.1212(b) & 416.1218(b).