

## LOSS OF EARNINGS IN NON-HOMICIDES (18 P.S. §11.103 and 37 Pa §411.42 & § 411.43)

### Who?

#### Victim:

- An employed victim who loses income from work as a result of the mental or physical injuries sustained in a crime;
- A victim whose Unemployment Compensation benefit terminated due to the crime injury;
- A victim who takes time off of work to attend or participate in criminal justice, court, or protection from abuse proceedings, and in efforts that aid the investigation ;
- A victim who is unemployed at the time of the crime but had been hired for employment or signed a contract for employment prior to the crime and is unable to start work due to his/her crime injuries.

#### Persons other than Direct Victim:

A family member or member of the victim's household who takes time off from work to accompany a minor victim or incapacitated adult victim to medical/counseling appointments or court proceedings and/or efforts to aid the investigation.

A family member or member of the victim's household who takes time off from work to provide the victim home healthcare or replacement services, such as child care, housekeeping, meal preparation, etc. (*See the "[HOME HEALTHCARE AND REPLACEMENT SERVICES](#)" for more information.*)

**Remember:** A claim must be filed by an eligible claimant. If the provider of service is not an eligible claimant, they may be paid as a provider under the eligible claimant's claim.

**Note: Criminal justice proceedings will include: trials (preliminary, sentencing, PFA, juvenile justice, and parole hearings, etc.) Efforts to aid the investigation will include: to report the crime; police interviews; police line-ups; and mug shots supported by the police report or advisement from official police personnel. Preparation for trial may also be considered if verified by an appropriate court official or advocate.**

### What?

- Up to \$15,000 for an employed victim who loses income as a result of the mental or physical injuries sustained in a crime. This \$15,000 falls under the \$35,000 cap.
- Loss of earnings paid to family members providing home healthcare or replacement services falls under the \$35,000 cap.
- Up to 10 days loss of earnings are allowable due to court appearances, filing a police report, PFA or a private criminal complaint, etc., and may incorporate both partial and full days lost. Exceptions may be considered. The maximum weekly award for loss of earnings may not exceed the weekly wage. This amount is determined annually by the Pennsylvania Department of Labor and Industry. The official Labor and Industry average

weekly wage determined at the time of the crime will be used to determine loss of earnings. To find the weekly wage:

- Go to this link [L&I Average Weekly Wage Information](#)
- Open the Average Weekly Wage By Calendar Year document
- Find the Calendar Year in which the crime occurred
- Take the average weekly wage listed for that calendar year and multiply that by 20% (.20) for taxes
- Subtract the 20% for taxes from the average weekly wage to get the average weekly wage VCAP will reimburse.

**EXAMPLE:** *A claimant files a claim for loss of earnings in March 2016 for a crime that occurred in December 2014. VCAP will reimburse at the 2014 rate. If the loss of earnings continued into a new rate period, it can be increased at that time.*

## **How?**

1. The full name, address and telephone number of the victim's/claimant's employer.
2. Copies of two pay stubs or other earnings records for period immediately prior to the crime, or a printout from the employer covering these pay periods. If not available, W-2 forms or most recently filed Federal IRS tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that no Federal tax returns were filed.
3. Documentation of any reimbursements received, such as sick, vacation, personal or disability pay, Unemployment Compensation or Workers Compensation. If unavailable, VCAP will attempt to verify with employer.
4. If the victim/claimant was unable to begin a new job due to the injury, VCAP may consider loss of earnings based on anticipated earnings that would have been received in the new position. The VCAP would require a letter from the employer, on company letter head, indicating the beginning date of employment, the hours per week to be worked, and the pay rate. The letter must also indicate the employer's federal identification number.
5. **If the claimant is self-employed**, the following is required:
  - Copy of the victim/claimant's most recently signed and filed tax return including Schedule C, E,F, or IRS 1099 Form, whichever is applicable. If unavailable, copies of all 1099s issued for the crime year and year immediately preceding the crime year.
  - If the victim/claimant was self-employed for less than a year at the time of the crime, and tax records are not available or do not accurately reflect income, wage earnings for the period immediately preceding the start of the business may be used as a basis for the loss.
  - If the business continues to operate during the period of disability, VCAP may consider the amount paid to others hired to perform services that were normally

- performed by the victim/claimant. Documentation needed would include the pay records for the entire period that the replacement worker(s) was hired for.
- If due to the crime injury, the claimant is unable to fulfill a contract which was negotiated and signed prior to the crime, the VCAP may consider the lost net income. Copies of full signed contract is required.

6. **Certification from a medical doctor, psychiatrist, psychologist, physician assistant, certified registered nurse practitioner (or dentist as appropriate) certifying the time the victim was unable to work due to the injury.** If a certification letter is not available, provide the full name, complete address and telephone number of a medical doctor, psychiatrist, psychologist, physician assistant, certified registered nurse practitioner or dentist (as appropriate) and VCAP will send out a verification form to them.

***Please Note: Certification for Loss of Earnings can only be accepted from a medical doctor, psychiatrist, psychologist, physician assistant, certified registered nurse practitioner or dentist.***

**EXCEPTION:** At VCAP's discretion, up to two weeks may be paid without a physician verification in personal injury cases for physical or mental injury.

**EXAMPLE:** *A person suffered from a gunshot wound and missed three weeks of work and files for loss of earnings. Given the injury, VCAP can pay the first two weeks without a doctor's certification. However, a certification would be required to process the additional week.*

**When filing for loss of earnings to attend scheduled court proceedings, in addition to the employer verification required,** a copy of the subpoena for eligible individuals who took time off work to attend scheduled court proceedings **or** a letter from an appropriate court official or advocate who accompanied the victim to the scheduled court proceedings. A doctor's certification is not required for verification of court attendance.

### *Loss of Earning in Non-Homicides Q & A*

**Q** A victim's cousin who does not live with the victims takes time off of work to administer her medications. Is her cousin eligible for her loss of earnings?

**A** *No. A cousin would only be eligible if the cousin lived with the victim. In this scenario, the cousin does not fall under the definition of family in the Crime Victims Act. However, VCAP could pay the cousin the \$8.00 hourly rate.*

*The definition of family as stated in the Crime Victims Act is—Anyone related to the victim within the third degree of consanguinity or affinity (includes step) (child, parent, sibling, grandchild, grandparent, niece, nephew, uncle, aunt, great-grandchild, great-grandparent). It also includes anyone residing in the same household with that individual.*

**Q** If both parents accompany their child to court, are they both eligible to receive loss of earnings?

**A** *Yes. VCAP will consider reimbursing both parents who lost time from work (if not reimbursed by their employers).*

**Q** Is a victim who was hired for a position but due to the crime-related injuries was unable to begin employment eligible for loss of earnings?

**A** *Yes. Submit an affidavit from the employer on company letterhead stating the beginning date of employment, the hours per week to be worked, and the pay rate along with the employer's federal identification number (FEIN#) certifying that the claimant was unable to begin because of the injury. VCAP may measure loss of earnings based on anticipated earnings that would have been received in the new position.*

**Q** Can lost overtime be considered?

**A** *Yes, if the claimant demonstrates a history of regular overtime pay.*

**Q** Is a victim required to use all of his/her vacation or sick leave benefits before being eligible for compensation for lost wages?

**A** *No. VCAP does not require that a victim utilize available leave, however, if a victim chooses to use the leave, VCAP will offset it from the award.*

**Q** A victim was injured in a crime while on the job and as a result receives Workers' Compensation. Can he/she be compensated for the difference between his/her regular pay and the Workers' Compensation payment?

**A** *Yes. Workers' Compensation pays 66 2/3 percent of the victim's regular salary and the Program will pay the difference (up to the average weekly wage as determined by the Department of Labor & Industry) if documentation is received from Workers' Compensation documenting the amount the victim receives on a weekly basis.*

- Q** A woman is receiving Unemployment Compensation at the time of the crime. It is terminated because of the crime, as she cannot work. Is she eligible for compensation?
- A** *Yes. A victim whose Unemployment Compensation benefit terminated due to the crime injury would be eligible to file for LOE to replace the suspended benefits, since an individual must be physically able to work in order to be eligible for Unemployment Compensation.*
- Q** Is someone “paid under the table” eligible for LOE?
- A** *They are eligible as long as they are paying taxes and their employer is willing to verify employment and any offsets received. A tax return must be submitted in order to consider LOE since they are not provided with a W-2 Form. A letter from their employer verifying the amount the victim was receiving prior to the crime cannot be accepted in place of a tax return. The tax return is needed to verify that the victim is reporting the income they received.*
- Q** The mother of a victim missed work to be at her 15 year old daughter’s bedside while her daughter was in the hospital as a result of her crime injuries. Is mom eligible for lost wages?
- A** *No, the Program is unable to pay lost wages in this case. However, once the victim is released and if mom provides homecare, she would be eligible at that point for her lost earnings.*
- Q** Same as above however mom is needed to make medical decisions for her daughter while she is in the hospital. Can mom receive lost earnings for being at the hospital to make the medical decisions?
- A** *Yes. Mom would be eligible for her lost earnings for the period of time she was needed for medical decisions for her daughter, as certified by the treating physician.*