



WorkCompAcademy - Ogilvie Worksheet

Wanda Ogilvie v. City and County of San Francisco, (2009) 74 Cal. Comp. Cases 248 (February 3, 2009) has established a method by which the DFEC Table contained in the 2005 Schedule for Rating Permanent Disabilities can be rebutted. The following worksheet will illustrate the method outlined in this case.

1. _____	Establish the <u>employee's actual earnings</u> in the three years following his or her injury...using the employee's EDD wage data or other empirical wage information....other empirical earnings information also may be used, including earnings records from the Social Security Administration. In cases of individual injured employees, however, a longer or shorter period of post-injury earnings may be appropriate.
2. _____	Examine EDD wage data or other <u>empirical wage information</u> to establish what "similarly situated employees" earned during the same three-year (or other) period....in the usual case, the earnings of "similarly situated employees" will have to be estimated. This may be accomplished in several ways. Often, empirical wage data on "similarly situated employees" may be gathered from EDD's Labor Market Information Division (LMID) website
Subtract item 1 from item 2 and enter value here: 3. _____	Determine the injured employee's <u>estimated earnings loss</u> . This is done by subtracting the actual or estimated post-injury earnings of the injured employee from the average earnings of his or her corresponding control group during the same three-year (or other) period.
Divide item 3 by item 2 and enter value here: 4. _____	Determine the injured employee's <u>proportional earnings loss</u> . This is accomplished by dividing his or her estimated earnings loss during the three-year (or other) post-injury period by the average earnings of his or her corresponding control group during the same period
5. _____	Determine the employees <u>WPI percentage</u> for this organ system from the AMA Guides and enter this on line 5.
Divide item 5 by item 4 and enter the value here: 6. _____	Take the injured employee's standard WPI rating and then divide this rating by his or her estimated proportional earnings loss, to come up with an individualized rating to proportional earnings loss ratio (<u>rating to loss ratio</u>)

(Please go on to second page)

Next, identify the PDRS scheduled FEC Rank (One to Eight) for the organ system that is injured. Using the value in line 6 above, determine if the value on line 6 is between the low and high value for the scheduled FEC rank, using Table A from the PDRS below.

Table A of 2005 PDRS, Page 1-7

Range of Ratios	High	FEC Rank	Adjustment Factor
1.647	1.810	One	1.1000
1.476	1.646	Two	1.1429
1.305	1.475	Three	1.1857
1.134	1.304	Four	1.2286
0.963	1.133	Five	1.2714
0.792	0.962	Six	1.3143
0.621	0.791	Seven	1.3571
0.450	0.620	Eight	1.4000

If the value in item 6 is between the Low and High, then the PDRS has not been rebutted, and the Adjustment Factor in column four still applies. If the value is not between the Low and the High for the correct FEC Rank, then compare the value in item 6 to the Low and High values of all other FEC Ranks until you can select the Rank that is correct. Use the Adjustment Factor for this new rank.

If the value in item 6 is lower than 0.450 (FEC Rank 8) or higher than 1.810 (FEC Rank 1) then continue to use the following formula to select an Adjustment factor that his higher or lower than any Adjustment Factor listed on Table A.

Alternative Formula ($[\frac{1.81}{a}] \times .1) + 1$	
7. _____	Divide 1.81 by the individualized rating to proportional earnings loss ratio in item 6 above and enter the value on line 7.
8. _____	Multiply the value in item 7 by .1 and enter the value on line 8.
9 _____	Add one to the value on line 8, and enter this on line 9. <u>The value on this line is the correct Adjustment Factor.</u>

Use the value from Table A or from the Alternative Formula line 9 as the case may be. Keep in mind however that individual employee should not be able to manipulate the proportional earnings loss calculation through malingering or otherwise deliberately minimizing his or her post-injury earnings. Similarly, motivational or other factors may play a role in determining whether a particular employee’s post-injury earnings accurately reflect his or her true post-injury earning capacity. Further, an employee may voluntarily retire or partially retire for reasons unrelated to the industrial injury. Temporary economic downturns or other factors may also come into play. Accordingly, the trier-of-fact may need to take a variety of factors into consideration.