What counts as lost earning capacity in a personal injury claim

How injury affects your income and what the law considers

When someone is hurt in an accident that was another person's fault, the financial harm often goes beyond the immediate medical bills. A broken leg heals, but the lost wages during recovery and the reduced ability to earn afterward can last much longer. The legal system recognises this through a category of damages called loss of earning capacity. It covers not just the pay you missed while off work, but the broader impact on your future income.

To understand what you may be entitled to, it helps to look at the different ways an injury can reduce your earnings. Salary, overtime, commissions, and benefits each get treated a little differently, and the evidence you need changes accordingly. The core idea is that the court tries to put you back in the financial position you would have been in had the accident not happened.

Salary and hourly wages: the straightforward part

Your base pay is the easiest element to prove. If you normally earn a set salary or an hourly rate, the time you missed from work can be calculated directly. Pay stubs, employer letters, and tax returns are the standard proof. The claim covers the period from the accident until you return to work, or until you reach what doctors call maximum medical improvement - the point where further recovery is unlikely.

But many people do not have a single steady job with a fixed schedule. Seasonal workers, part-time employees, and those in industries with variable hours may need to show an average of their earnings over several months or years. The court will look at your employment records and past tax returns to establish a baseline. If your income fluctuates, the claim becomes more about showing a pattern than a precise number.

Overtime: counting the extra hours you would have worked

Overtime pay can be included, but it requires proof that the overtime was regular and expected - not just occasional. If you routinely worked ten extra hours a week at time-and-a-half, and your employer confirms that those hours were available before the accident, that income loss is compensable. The key is showing a consistent history. If you only worked overtime during the holiday season or when a special project came up, the claim is weaker but still possible. Your attorney will ask for pay stubs and employer records that show your overtime pattern over at least a year.

Commissions: variable income that still has value

Commissions are trickier because they depend on sales, which can change for reasons unrelated to health. A salesperson who misses three months of work after a car accident loses not only the commissions they would have earned during that period but also the chance to build relationships that generate future commissions. The loss of earning capacity here includes the reduction in your ability to generate new business once you return. Vocational assessment experts sometimes help quantify this by looking at your past commission statements, the average performance of others in your role, and the specific demands of your job that the injury now prevents you from doing fully.

Employee benefits: the hidden part of your compensation

Benefits like health insurance, retirement contributions, paid time off, and even gym memberships are part of your total compensation. When you cannot work, you may lose employer-paid premiums or the accrual of pension credits. In some cases, you may have to pay for COBRA coverage out of pocket, which is an additional financial loss. The claim can include the value of these benefits, calculated from your employer's cost to provide them. Your HR department can supply a statement showing the monthly value of each benefit.

The phrase **income losses caused by injuries** covers all these categories together. Courts recognise that a person's financial well-being is not just about the paycheck but the whole package of earnings and protections that come from steady employment. Proving the full extent of these losses means gathering documents that show what you earned and what you would have earned, not just what you missed.

Work restrictions and partial disability

Sometimes you can return to work but not to your previous duties. A warehouse worker with a back injury may be placed on light duty at a lower rate of pay. A nurse with a shoulder injury may no longer be able to lift patients and might be moved to a desk job with a salary cut. In these situations, the loss of earning capacity is the difference between what you earned before the accident and what you can reasonably earn now, given your permanent restrictions. Medical records and a vocational assessment are the primary evidence. The vocational expert will evaluate your skills, the job market, and your physical limitations to determine what jobs you are realistically qualified for and what they pay.

How the court calculates future loss

Future loss of earning capacity is more speculative but still compensable. The court estimates what you would have earned over your expected working life, then subtracts what you are now

capable of earning. The calculation considers your age, occupation, education, work history, and the severity of your disability. It also accounts for inflation and the time value of money, usually by applying a discount rate to arrive at a present-day lump sum. This is where expert testimony from economists and vocational specialists becomes critical. They produce a report that shows the projected earnings loss in a detailed, numeric way that the court can use.

What you need to prove your claim

Building a strong claim for loss of earning capacity requires careful documentation. Here are the key pieces of evidence an attorney will typically gather:

- Pay stubs and tax returns for at least three years before the accident, to establish your earning history.
- Employment records that show your job duties, hours, and any overtime or commission structure.
- Medical records and a doctor's opinion on your permanent work restrictions.
- A vocational assessment report that analyses your transferable skills and earning potential in the open job market.
- A statement from your employer about the value of benefits lost and whether your previous position is still available.

Each piece of evidence strengthens the overall picture of how the accident changed your financial future. The more concrete the proof, the harder it is for the insurance company to argue that your losses are minor or temporary.

Loss of earning capacity is one of the most valuable parts of a personal injury claim, but it is also the most disputed. Insurance adjusters often try to minimise these damages by focusing only on the time you missed from work and ignoring the long-term effects. A lawyer experienced in personal injury law can help you present the full story: the income losses caused by injuries, the lost opportunities, and the reduced quality of life that comes from being unable to earn what you once could.

What this means for you

If you have been injured in a car accident or another incident caused by someone else's negligence, do not assume that lost income only covers the days you missed. Think about overtime you regularly worked, commissions you were on track to earn, and the benefits that came with your job. Consider whether you can still do the same work at the same level. If not, the loss is real and should be part of your claim. Gathering your pay stubs, tax returns, and

employment records early will make the process smoother. A consultation with a personal injury attorney can give you a clearer picture of what your specific situation may be worth.