

## WORKERS' COMPENSATION FUNDAMENTALS

### INTRODUCTION

The Workers' Compensation Act is a statute that provides administrative procedures and remedies for individuals who are injured in the course and scope of their employment. The following is a general description of the very basic provisions of the Act and is intended to offer a broad overview at the start of deeper inquiry into specific issues.

#### (A) Administrative Structure

Under the Act, the rights to compensability and to benefits are determined by an administrative entity known as the Workers' Compensation Commission. Decisions about compensability and benefits are made by an Arbitrator who sits in the role of a judge or fact finder. The Arbitrator's decision is reviewable by a panel of Commissioners. The Commissioners' decision can then be reviewable by the Circuit Court and the Appellate Court if the worker is not a State employee. (Section 19)

#### (B) Arising Out Of And In The Course of Employment

The basic threshold inquiry is whether an employee sustained an injury that arose out of and in the course of employment. Personal risks, or risks that relate strictly to the injured person are usually not compensable. Neutral risks, or risk of injury unrelated to work may or may not be compensable depending on the circumstances. Direct risks are those that arise out of employment. When an employee is injured as a direct result of a risk associated with their job or job tasks, that injury is generally compensable under the Workers' Compensation Act.

#### (C) Benefits

##### 1) TTD

There are 3 benefits to which an injured worker is entitled under the Workers' Compensation Act. The first is temporary total disability benefits. If an injury keeps an employee from being able to perform his job or job tasks, the employee is entitled to 2/3 of his average weekly wage tax-free until he is returned to work. (Section 8B)

If a worker is returned to work with restrictions and the employer cannot accommodate those restrictions, he is still entitled to TTD or maintenance (Section 8a). If the employer can accommodate restrictions but cannot pay the regular wage, the worker is entitled to temporary partial disability, or 2/3 the difference between what he was making before and what he makes at restricted or limited duty.

2) Medical

The second benefit to which an employee is entitled is to have bills for medical treatment relating to his work injury paid by the employer or the employer's insurer. (Section 8a) Payments under the Workers' Compensation Act are made through a Fee Schedule which is designed to limit and control what healthcare providers can charge for those medical services. (Section 8.2)

It is possible for an employee to have his medical paid by an employer-provided healthcare plan but under Section 8(j) of the Act the employer must hold the employee harmless for any claim to reimbursement or for any co-pay or deductible. Under the Workers' Compensation Act, the employee is not responsible for any co-pay or deductible and cannot be asked to pay any additional charges by the provider. (Section 8.2)

3) Permanency

A third benefit to which an employee is entitled is some kind of award or lump sum payment at the end of the case to reflect the worker's permanent partial disability. The evaluation of permanent partial disability is intended to reflect the extent to which the worker's injury has affected his work life and his ability to perform similar job tasks through his work life.

There are a series of five factors to be considered in assessing permanency under Section 8.1b of the Act. They include things like the age, training, and experience of the employee. They also allow the Commission to consider a medical report giving a numeric value to a physician's assessment of the employee's impairment based on American Medical Association Guidelines.

(a) PPD

In general, permanent partial disability represents an institutional rather than practical evaluation of the effects that the injury has on the employee. That means that the Commission tries to make consistent assessments and awards for individuals who have sustained similar injuries.

PPD awards are based on losses of specific body parts. (Section 8e) The Statute assigns a specific number of weeks of "permanency" to various body parts. An arm is worth 253 weeks of permanent partial disability. A hand is worth 205 weeks of permanent partial disability. An amputation of the arm above the elbow is worth 270 weeks. A leg is worth 215 weeks.

Some workers' injuries involve body trunk injuries and include disability to a body part other than specific things listed in the Statute. In the case of a lumbar or cervical injury, for example, the Statute does not identify a specific number of weeks associated with that particular defined body part. Rather, those kinds of injuries are based on an assessment of "the person as a whole". The worker as a whole is worth 500 weeks. The statute also references specific minimal recovery for certain person as a whole awards (Section 8(d)2)

Most undisputed cases wind up being settled based on a mutually agreed or projected assessment of an award that an Arbitrator would give if the case were tried. Most settlements include a specific agreement to pay or resolve outstanding related medical bills and are entered into after the employee has reached maximum medical improvement. If a case is tried, future medical remains open. If open medical is necessary for the client, trial becomes the best approach to move forward. On the other hand, if an employee has reached maximum medical improvement and further medical isn't necessary, the case is ripe for the parties to evaluate the injury, precedent of Commission awards for similar injuries, and they anticipated or projected results of trial. This process results in settlement in the vast majority of cases.

(b) Wage Differential

In addition to losses to those body parts, an injury may be so bad that some alternative compensation is necessary. These alternatives include vocational rehabilitation, a wage differential award, or permanent total disability. If a structural steel worker, for example, sustains a cervical injury which prevents him from ever returning to work in construction, it is possible that he may be entitled to vocational rehabilitation. If placed in a lesser paying job, he may be entitled to a wage differential. Workers who can't earn as much money going forward as they could prior to their injury are entitled to an award for 5 years or until age 67, whichever is later, of 2/3 the difference between their wage at the time of injury versus their new wage. (Section (d)1))

(c) Total Disability

Another possibility is that the worker can never go back to any job. The Statute provides for permanent total disability payments which equal 2/3 of the average weekly wage for life for a worker that cannot return to work in a stable labor market. (Sections 8(e)18, 8(f))

Temporary total disability benefits, permanency benefits, and permanent total benefits are based on a worker's average weekly wage. Under Section 10 of the Act, the average weekly wage is generally defined as the gross average earnings of the worker for the 52 weeks before the injury excluding bonus and overtime. There are alternative ways to calculate average weekly wage. For example, in the case of workers who have worked less than 52 weeks, the Statute provides for calculation based on less than a whole year. All benefits aside from medical are calculated based on average weekly wage. (Section 10)

The Act also provides payment of death benefits to dependents of workers' killed on the job. (Section 7)

(D) Procedure

A case is opened by filing an Application for Adjustment of Claim with the Workers' Compensation Commission. That can be done without filing fee. After an Application for Adjustment of Claim is filed, the Workers' Compensation Commission assigns a file number to the case. The file number then can be used in serving other documents and issuing subpoenas which will be dispositive of the matter.

Medical records can be collected and subpoenaed, and witnesses can be compelled to appear for trial. (Section 16) Work-related documents proving or disproving associated issues can be obtained at trial by subpoena. If the case is settled, the file number is used to register a settlement contract with the Commission. This is an important point. A workers' compensation claim cannot be settled unless a specific document containing specific information is completed, filed with the Commission, presented to an Arbitrator, and specifically approved. This is designed to protect the worker from having rights terminated without appropriate settlement benefits. Section 23)

Trials can be held in relatively summary fashion. (Section 19e)) The Act provides for the admission of documents. Deposition testimony can also be introduced into evidence. The Petitioner can testify. Proposed decisions are written for the Arbitrator to consider and the Arbitrator characteristically uses the proposed decisions of both parties to tailor fit a decision to the facts in the case.

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