

# MICHIGAN

## EMPLOYMENT LAW

### Workers Compensation – Employee Benefits



Michigan's Worker's Disability Compensation Act (WDCA) determines the benefits employees are entitled to receive for injuries and other conditions caused by their employment. Benefits under the WDCA include coverage for medical expenses and wage losses.

The Michigan [Workers' Compensation Agency](#) (WCA), part of the Michigan Department of Licensing and Regulatory Affairs (LARA), handles workers' compensation claims and resolves any benefit disputes in the state.

#### STATE RESOURCES

**Michigan Workers' Compensation Agency [website](#)**

#### **Employer Insurance Requirements**

The LARA provides general information about workers' compensation coverage in this [booklet](#).

#### **First Report of Injury**

Employers must use [Form 100](#) to report employees' work-related conditions.

#### **Workplace Posters**

The LARA provides [this poster](#) and [this poster](#) that employers may post in their employees' workplaces.

#### MEDICAL EXPENSES

Employers must promptly cover all reasonable and necessary treatment expenses made necessary by an employee's work-related injury or disease. The WDCA regulates the extent of coverage and the limits for these medical expenses.

An employee's medical benefits include medical care, surgical and hospital services, medicines and other attendance or treatment. Coverage generally only extends to services given by health care providers licensed by the state. However, attendant or nursing care provided by the worker's spouse, child, sibling, parent or the combined efforts of these individuals may be compensable up to for up to 56 hours per week. In addition, coverage for certain types of treatment, such as optometric and chiropractic care, is limited to the services listed in the Michigan Public Health Code.

Other than for emergency medical services, an employee must use an employer-approved physician for **the first 28 days** of medical treatment. After the 28-day period, an employee may be treated by his or her physician of choice as long as the employee notifies the employer and the employer's insurance carrier. An employee does not need to wait for authorization to switch physicians if his or her claim is not in dispute and the medical treatment is reasonable and necessary.

#### WAGE-LOSS BENEFITS

Wage-loss benefits are available to employees who are either unable to work or able to work but receive wages that are lower than their pre-injury earnings. To determine an individual's earning capacity, the individual's disability must be reduced to a percentage that indicates how much a work-related injury prevents the individual from performing his or her pre-injury (or similar) job.



A rating equal to 100 percent is considered total disability and any rating lower than 100 percent is partial disability. The WDCA provides different remedies for total and partial disability and also regulates the timing, range and formula to calculate them.

### ***AFTER-TAX AVERAGE WEEKLY WAGE (AWW)***

Wage-loss benefits are based on an employee's AWW. By December 1 of each year, the WDCA publishes tables to assist employers in calculating employee AWWs.

In general, an employee's AWW is the average amount he or she earned per week over the 39 highest-paid work weeks during the 52 weeks immediately before the date of injury, rounded to the nearest dollar. If the worker has been employed for less than 39 weeks, the AWW is the average amount the employee received for the weeks he or she actually worked for the employer, rounded to the nearest dollar.

AWW calculations must account for all forms of employee compensation, including overtime wages, premium pay and cost-of-living adjustments. However, AWW calculations must exclude fringe benefits and other benefits the employee continues to receive during the disability.

### ***MINIMUM AND MAXIMUM BENEFIT AMOUNTS***

An employee's benefit rates are subject to limits that are in effect on the date of injury. The WCA updates these limits annually. New rate limits become effective on January 1 of each year.

For injuries that occurred in **2018**:

- The maximum weekly compensation rate is **\$900**;
- The minimum weekly compensation rate for temporary disability, partial disability, and specific losses is **\$249.83**; and
- The minimum weekly compensation rate for death benefits is **\$499.66**.

For injuries that occur in **2019**:

- The maximum weekly compensation rate is **\$921**;
- The minimum weekly compensation rate for temporary disability, partial disability, and specific losses is **\$255.73**; and
- The minimum weekly compensation rate for death benefits is **\$511.46**.

### ***WAITING PERIOD***

Injured employees are not eligible to receive wage-loss benefits for the **first week** of their disability. However, if the injury results in **more than two weeks** of disability, benefits for the first seven days must be paid retroactively.

### ***TOTAL DISABILITY WAGE-LOSS BENEFITS***

To qualify for total disability benefits, an employee must show that a work-related condition prevents him or her from performing any job that pays the maximum wages available for work suitable to his or her qualifications and training (including work that may be performed using the employee's transferable work skills).

Total disability benefits are **80 percent** of the employee's AWW, subject to the weekly rate limits described above.



For total and permanent disability, an injured employee is generally entitled to receive benefits **for up to 800 weeks** from the time of injury. However, the recovery period can differ for:

- Total and permanent loss of sight in both eyes;
- Loss of both legs or both feet at or above the ankle;
- Loss of both arms or both hands at or above the wrist;
- Loss of any two of the members or faculties described above;
- Permanent and complete paralysis of both legs or both arms;
- Permanent and complete paralysis of one leg and one arm; and
- Incurable insanity or imbecility.

### ***PARTIAL DISABILITY WAGE-LOSS BENEFITS***

An injured employee has a partial disability if he or she is able to work at some level but his or her wages are less than the maximum wages available for work suitable to his or her qualifications and training.

Injured employees with a partial disability are entitled to receive wage-loss benefits equal to **80 percent of the difference between their pre-injury and post-injury AWW**. Partial disability benefits are also subject to the weekly rate limits described above.

Employees can recover partial disability benefits for the duration of their disability. However, the WDCA specifically indicates that establishing the existence of a disability does not automatically create a presumption that the employee has a reduced income. To qualify for partial disability wage-loss benefits, an injured worker must prove that his or her wages are lower because of the disability. If an injured employee is working and receiving wages equal to or higher than his or her pre-injury AWW, he or she is not entitled to receive wage-loss benefits for as long as he or she continues to receive these wages.

### ***SPECIFIC LOSS BENEFITS***

If a work-related condition causes the loss or loss of use of a body part or parts that are listed in the WDCA's "schedule," the employee may be entitled to compensation for the specific loss. Specific loss benefits are **80 percent** of the employee's AWW, subject to the limits described above.

The number of weeks for which these benefits are payable depends on the body part affected. The WDCA includes a number of weeks for each listed body part. If the employee's loss of the body part is total, the employee may receive benefits for the number of weeks listed. If the loss is only partial, the employee may receive specific loss benefits for the proportional number of weeks. An employee's ability to work is not considered in determining specific loss benefits.

### ***ADJUSTING BENEFIT AMOUNTS***

A variety of factors, such as a change in circumstances, may alter an employee's recovery and need for benefits. The WDCA provides guidance on how to adjust workers' compensation benefits in a variety of situations.

### ***PRE-EXISTING CONDITIONS***

When an employee's disability is aggravated, prolonged, accelerated or in any way affected by a pre-existing condition, the employee is entitled to receive workers' compensation benefits in proportion to how much the work-related injury contributes to his or her disability.



### ***SECURING REASONABLE EMPLOYMENT***

A workers' compensation magistrate may adjust the amount of benefits an injured employee is entitled to receive based on the employee's good-faith effort to secure reasonable employment. The WDCA allows for this adjustment because it imposes an affirmative duty on disabled employees to seek employment that enables them to earn a living within the limitations of their work-related disability.

### ***BENEFITS FOR INJURED MINORS***

If a minor was illegally employed at the time he or she sustained a work-related condition, the employer must pay **double the amount of compensation** that would otherwise be payable. A parent or legal guardian may enforce these rights in behalf of the minor.

### ***BENEFITS AFTER THE AGE OF 65***

Injured employees will see a **5 percent reduction** on their weekly benefits once they reach the age of 65. This reduction is reoccurring and will take place each year until the worker's weekly wages reach **50 percent** of the benefits they were entitled to receive before the age of 65. These reductions are also subject to the minimum weekly benefit rate described above.

This benefit reduction does not apply to individuals 65 years of age or older who are not otherwise eligible to receive Social Security benefits.

### ***ADDITIONAL INCOME***

Workers' compensation benefits depend upon the employee's wages and do not take into account any additional benefits, savings or insurance the employee may have secured independent of the employer's workers' compensation coverage. Additional income an employee may receive from these sources must not be considered when determining the employee's benefits under the WDCA.

However, an employee's benefits must be reduced by the amount of benefits he or she receives from another state.

Receiving pension, Social Security or similar benefits is not considered a loss of earnings or earning capacity for the purpose of calculating an individual's wage-loss benefits.

### ***CONTINUOUS DISABILITY***

If an injured employee's benefits are less than 50 percent of the state's average weekly wage (SAWW), the employee may be entitled to a one-time adjustment in benefits after two years of continuous disability. If the employee can prove that his or her earnings would have been expected to increase because of his or her education, training or experience, a workers' compensation magistrate may order a compensation increase of up to 50 percent of the SAWW of the year when the injury took place.

### ***DEATH AND BURIAL BENEFITS***

The WDCA requires employers to cover funeral expenses and provide income-replacement benefits for the dependents of a worker who died because of a work-related accident or occupational disease.

Under the WDCA, an employer must cover **up to \$6,000** of an employee's actual funeral costs.



The employee's surviving dependents are entitled to receive compensation amounting to **80 percent** of the employee's (AWW), subject to weekly compensation limits described above. These benefits are available to the worker's surviving dependents **for up to 500 weeks** from the date of death. A workers' compensation magistrate can:

- Extend the 500-week period if a surviving dependent has not reached the age of 21 at the end of the benefit period; or
- Reduce the 500-week period if the employee received wage-loss benefits before death.

The actual amount that surviving dependents receive is based on the number of dependents, the date of the injury and whether the dependents are full or partial dependents. The WCA takes into consideration an individual's age and physical or mental capacity when determining whether the individual is a full or a partial dependent.

Children under the age of 16 and mentally incapacitated dependents are conclusively presumed to be wholly dependent on the support of the parent with whom they live. If the injured worker's dependents are only partially dependent on his or her income, the benefits will be adjusted to **80 percent** of the amount the deceased worker contributed to the support of the partial dependents.

### **MORE INFORMATION**

Contact Heffernan Insurance Brokers or visit the WCA [website](#) for more information on workers' compensation laws in Michigan.