

EMPLOYMENT LAW SUMMARY

California: Workers' Compensation – Employee Benefits



Because You're Different

California workers' compensation laws require employers to provide certain benefits to employees who are injured in the course of employment. An injury qualifies for workers' compensation coverage if the damage or harm an employee suffers is the direct result of an accident or exposure to a hazardous environment in the normal course of employment.

Workers' compensation benefits include medical expenses, monetary payments, and retraining programs for injured employees. They also include death benefits and burial costs for survivors of employees who die as a result of work-related injuries. The [Division of Workers' Compensation](#) (DWC), which is part of the California Department of Industrial Relations, enforces the state's workers' compensation laws.

MEDICAL BENEFITS

Employers must cover all reasonable and necessary treatment expenses for employees who are injured in the course of employment. This includes expenses for medical, surgical and hospital treatment, along with several ancillary expenses, such as for nursing, medicine, supplies, physical therapy, chiropractic services and acupuncture. In addition, employers must pay for any necessary interpretive services and reimburse employees for any necessary travel expenses incurred to obtain treatment. Travel expenses include mileage, parking and tolls.

Employers have the right to choose the health care provider (or network of providers) that an injured employee must visit to receive medical treatment for a work-related injury. Employees who choose to receive treatment from an unauthorized health care provider may have to assume the costs of that treatment. However, employees may request one change of physician during the course of treatment, and employers have **five days** after receiving a request to grant the change.

MARRIAGE AND FAMILY THERAPY TREATMENT

Employers may be required to pay for any marriage and family therapy that a physician deems necessary to cure and relieve the effects of an employee's work-related injury.

If an employer refuses to provide this type of treatment, an injured employee may receive it on his or her own and seek an authorization from the DWC Appeals Board. Approval from the Appeals Board overrides an employer's refusal to provide this benefit and makes an employer responsible for the costs.

MONETARY BENEFITS

If an employee cannot return to work or sustains a permanent impairment due to a work-related injury, he or she may be entitled to receive weekly monetary payments (also called indemnity benefits). These benefits include compensation for temporary total disability, temporary partial disability and permanent disability. Monetary benefits may be paid directly to the employee, deposited in the employee's bank account or deposited into a prepaid card account (if the employee provides written consent).

AVERAGE WEEKLY WAGE

Monetary benefit rates are calculated as percentages of an employee's average weekly wage (AWW).

For an employee who works at least 30 hours per week for five or more working days, the AWW is the employee's weekly rate of pay at the time of the injury. If an employee was working for two or more employers at the time of an injury, his or her AWW may be calculated using the aggregate wages he or she received from all employers. However, the wages for employment other than the one that caused the injury may not exceed the hourly rate the employee received at the time of injury. If an employee works fewer than 30 hours per week, his or her AWW is calculated using all sources of income.

MINIMUM AND MAXIMUM BENEFIT AMOUNTS

Monetary benefit rates are subject to the limits that are in effect on the date of an employee's injury and that depend on the type of benefit. The DWC sets these limits, which become effective on Jan. 1 of each year.

| Date of Injury | Temporary disability (TTD & TPD) and Permanent total disability (PTD) | Temporary disability (TTD & TPD) and Permanent total disability (PTD) | Permanent disability (PD) | Permanent disability (PD) |
|-------------------------------|---|---|---------------------------|---------------------------|
| | Minimum | Maximum | Minimum | Maximum |
| Jan. 1, 2024 to Dec. 31, 2024 | \$242.86 | \$1,619.78 | \$160 | \$290 |
| Jan. 1, 2023 to Dec. 31, 2023 | \$242.86 | \$1,619.78 | | |
| Jan. 1, 2022 to Dec. 31, 2022 | \$230.59 | \$1,539.78 | | |

WAITING PERIOD

Employees are not eligible to receive monetary benefits for the **first three days** of their disability. However, if an injury results in **more than 14 days** of disability, or if an employee is hospitalized to treat a work-related injury, benefits for the first three days must be paid retroactively.

TEMPORARY TOTAL DISABILITY (TTD)

An employee qualifies for TTD benefits when a work-related injury prevents him or her from returning to work while he or she is still recovering. TTD benefits are **two-thirds of the AWW**, subject to the limits described above.

TTD benefits are available for **up to 104 weeks** in a five-year period or until the date of maximum medical improvement (MMI), whichever comes earlier. The MMI date is the date on which a qualified health care provider determines that an employee has reached the maximum recovery possible from a work-related injury. If an employee is not expected to make a full recovery after the 104-week period or the MMI date, the treating health care provider must conduct a permanent impairment assessment.

TEMPORARY PARTIAL DISABILITY (TPD)

In some cases, injured employees are able to return to work under medical restrictions while they are still recovering from a work-related injury. If the restrictions mean the employee must work fewer hours or receive wages that are lower than his or her AWW, the employee may be entitled to TPD benefits.

TPD benefits are **two-thirds of the difference** between the AWW and the post-injury wages. These benefits are reduced for individuals who receive unemployment compensation and extended duration benefits.

Like TTD benefits, TPD benefits are available to employees for **up to 104 weeks**. If an employee has not made a full recovery after this period, future benefits will depend on a permanent impairment assessment.

PERMANENT DISABILITY (PD)

PD benefits are available to injured employees who remain incapacitated after reaching MMI for a work-related injury. To receive PD benefits, an employee must first obtain an impairment rating and an apportionment determination from the physician who treated the injury. The apportionment determination is a percentage used to indicate how much of a disability was caused by the employment and how much was caused by other factors (prior and subsequent to the injury).

An employee may be entitled to PD benefits for either partial or total disability. An employee's permanent disability is total if his or her impairment rating is 100 percent or if he or she sustains any of the following:

- Loss of both eyes or loss of sight in both eyes;
- Loss of both hands or loss of the use of both hands;
- Practically total paralysis; or
- Brain damage leading to incurable mental incapacity or insanity.

Effective Jan. 1, 2013, an employer is not obligated to provide PD benefits to an employee unless:

- The DWC has issued an award for permanent disability; and
- The employer has offered the employee a position that pays **at least 85 percent** of his or her AWW or the employee already works in a position that pays at least 100 percent of his or her AWW.

Once the DWC authorizes an award for permanent disability, PD benefits must be paid retroactively starting with the earlier of either the date the employer paid the last weekly temporary disability benefit or the date on which the employee's disability became permanent and stationary.

SUPPLEMENTAL JOB DISPLACEMENT BENEFITS (SJDB)

An employee may be eligible for a SJDB voucher of **up to \$6,000** if he or she:

- Has a permanent partial disability; and
- Does not return to work **within 60 days** after the end of his or her temporary disability period.

These vouchers may be used for education-related retraining or skill enhancement (or both) at state-approved schools.

ADJUSTING BENEFIT AMOUNTS

A variety of factors may alter an employee's recovery and need for benefits. California law provides guidance on how to adjust workers' compensation benefits in situations where an employee's injury is the result of misconduct and where an employee is a minor at the time of injury.

MISCONDUCT

An employee's benefits may be **reduced by half** if the appeals board determines that he or she was injured because of willful misconduct. This reduction applies to most injuries, but **excludes** injuries:

- Caused by the employer's failure to comply with any provision of the law or any safety order of the Division of Occupational Safety and Health;
- Resulting in a permanent disability of at least 70 percent;
- Resulting in death; or
- Sustained when the employee was younger than 16 years of age.

An employee's benefits may be **increased by half** when the employee is injured because of the willful misconduct of the employer or its managing representative. "Employer" in this context includes members of a partnership, managing representatives or officers, superintendents and corporate executives.

To prove that an injury is the result of willful misconduct, an employee must show:

- The specific manner in which an order was violated;
- That the violation of the order was the immediate cause of the employee's injury; and either
 - That the violating party knew about the order; or
 - That the conditions leading to injury were obvious, created a probability of serious injury and that the failure to correct the condition constituted a reckless disregard for the probable consequences.

BENEFITS FOR INJURED MINORS

Employees under the age of 18 who sustain permanent injuries may be entitled to receive benefits based on an AWW that represents their future earning potential. If a future earning potential cannot be determined, these individuals are entitled to receive benefits at the maximum level.

If an employee under the age of 16 is illegally employed and injured on the job, the employer may be required to pay **150 percent of the compensation** the employee would otherwise be entitled to receive. This does not apply if the employer can prove that the minor provided a birth certificate, automobile driver's license or other reasonable evidence that he or she was over the age of 15, even if the documents were false.

DEATH AND BURIAL BENEFITS

If a work-related injury causes an employee's death, the employer must pay **up to \$10,000** to cover the employee's actual funeral expenses, plus weekly benefits to the employee's surviving dependents.

An employee's surviving dependents may be entitled to receive weekly benefits equal to **two-thirds** of the deceased employee's AWW. The maximum total compensation payable over time to an employee's surviving dependents is **\$320,000** for injuries occurring after Jan. 1, 2006. 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.

MORE INFORMATION

Please visit the DWC's [website](#) or contact Heffernan Insurance Brokers for more information on workers' compensation laws in California.

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