

EMPLOYMENT LAW SUMMARY

Florida: Workers' Compensation - Employee Benefits



Because You're Different

The Florida Workers' Compensation Law (WCL) governs the payment of benefits for employees who sustain work-related conditions in the state. In this context, work-related conditions include injuries, diseases and deaths that arise out of an in the course of employment in the state.

The [Division of Workers' Compensation](#) (DWC), which is part of the Florida Department of Financial Services (DFS), determines the benefits payable for each workers' compensation claim in the state. The benefits available include medical expenses and monetary payments to compensate for lost wages and permanent impairments. In cases involving an employee's death, benefits also include burial costs and monetary payments to compensate surviving dependents for their loss of support.

MEDICAL BENEFITS

Under the WCL, employers must cover all medical expenses necessary to treat an employee's work-related condition. This may include expenses for:

- Physician fees;
- Hospital bills;
- Prescription drugs;
- Medical and surgical supplies;
- Orthoses;
- Prostheses;
- Necessary apparatus;
- Remedial treatment and care;
- Personal attendance; and
- Accredited work-hardening or pain-management programs (when approved or requested by a physician).

CHOICE OF PHYSICIAN

Employers have the right to choose the health care provider (or network of providers) that an employee must visit to receive treatment for a work-related condition. An employee who chooses to receive treatment from an unauthorized health care provider may have to assume the costs.

However, employees have the right to request one physician change during the course of treatment, and employers have five days to grant these requests. If an employer fails to grant an employee's one-time request for a physician change within five days after receiving it from the employee, the employee may receive treatment from his or her choice of physician at the employer's expense.

In addition, if an employer fails to provide necessary initial medical treatment in an emergency situation, the employee may receive treatment from any health care provider at the employer's expense. To recover these costs, an employee must be able to show that the services were necessary and that his or her employer failed, refused or neglected to provide him or her with appropriate medical treatment within a reasonable time.

MONETARY BENEFITS

If an employee cannot return to work or sustains a permanent physical impairment due to a work-related condition, he or she may be eligible to receive various types of monetary compensation, which are often referred to as disability benefits.

Disability benefits are usually payable on a weekly basis and are immune from wage assignments, creditor claims, levies, executions, attachments and other remedies for the collection of debt, except for the collection of child support and alimony obligations.

AVERAGE WEEKLY WAGE

An employee's weekly benefit rate is calculated as a percentage of the average weekly wages (AWW) the employee earned at the time of the injury. The WCL provides four general methods to determine an employee's AWW. These four methods are summarized in the table below.

Employment	Average Weekly Wage
Actual 13 workweek period: The employee has worked for at least 13 weeks in the occupation for which he or she was employed at the time of the injury (for current or previous employer).	1/13th of the employee's total compensation for the 13-week period prior to the injury.
Equivalent 13 workweek period: The employee has not worked for at least 13 weeks in the position for which he or she was employed at the time of the injury.	1/13th of the total compensation an employee in a similar position would have earned during the 13-week prior to the injury.
Alternative 52 workweek period: The employee is a seasonal worker and can prove that the previous two 13-workweek-period methods are not applicable.	1/52nd of the employee's total compensation for the 52-week period prior to the injury.
Full time weekly wage: None of the previous methods are applicable.	Use the employee's full-time weekly wages as the employee's average weekly wages.

BENEFIT RATE LIMITS

Weekly benefit rates are subject to a minimum of:

- \$20 per week, if the employee earned \$20 per week or more before the injury; or
- The employee's full weekly wage if the employee earned less than \$20 per week before the injury.

Benefit rates are also subject to maximums, which depend on the date of injury. New maximum limits become effective as of Jan. 1 each year.

- For injuries that occurred in **2023**, the maximum benefit rate is **\$1,197**.
- For injuries that occur in **2024**, the maximum benefit rate is **\$1,260**.

WAITING PERIOD

Employees are not eligible to receive monetary benefits for the first seven days of their disability caused by a work-related condition. If an employee's disability continues for more than 21 days, however, benefits for the first seven days must be paid retroactively.

TEMPORARY TOTAL DISABILITY (TTD)

TTD benefits payable while an employee is recovering from a work-related condition and cannot return to work as a result. The TTD benefit rate is usually two-thirds of the employee's AWW, subject to the limits described above. TTD benefits are available for up to 260 weeks* or until the date of maximum medical improvement (MMI), whichever comes earlier.

***On June 9, 2016, the Florida Supreme Court struck down an FWCL provision that limited TTD benefits to only 104 weeks. The court also revived a provision from a previous version of the WCL, which allows for up to 260 weeks of TTD benefits. The court did not change the 104-week limit for TPD benefits.**

The MMI date is the date on which a qualified health care provider determines an employee has reached the maximum recovery possible from a work-related condition. If an employee is not expected to make a full recovery after the 260-week period or the MMI date, the treating health care provider must conduct a permanent impairment assessment.

Under certain circumstances, an employee may qualify for TTD benefits of up to 80 percent (instead of two-thirds) of his or her AWW for up to six months. To qualify for this increased amount, an employee must not be eligible for, entitled to or collecting permanent total disability (PTD) benefits and must have:

- Lost an arm, leg, hand or foot;
- Become paraplegic, paraparetic, quadriplegic or quadriparetic; or
- Lost the sight of both eyes.

Under these circumstances, TTD benefits are not subject the minimum or maximum amounts described above, but instead are subject to a maximum compensation of \$700 per week.

TEMPORARY PARTIAL DISABILITY (TPD)

An employee who is able to return to work while still recovering from a work-related condition is eligible for TPD benefits if his or her earnings are less than 80 percent of his or her pre-injury wages.

TPD benefits are 80 percent of the difference between the employee's pre- and post-injury wages, subject to a maximum limit equal to 66 and two-thirds percent of the employee's AWW.

An employee may receive TPD benefits 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 IMPAIRMENT (PI)

An employee has a permanent impairment if he or she still has some level of physical incapacity after reaching MMI for a work-related condition.

To receive benefits for a permanent impairment, an employee must first obtain an impairment rating from the physician who treated the injury. An impairment rating is a percentage used to quantify how much an injury has affected an individual's physical status. Because the FWCL assigns a number of weeks to certain ranges of percentage points, an employee's impairment rating also determines the duration for which he or she may receive PI benefits.

In general, PI benefits are 75 percent of the employee's TTD benefit rate, subject to the maximum described above. However, the PI benefit rate may be reduced by 50 percent if an employee earns income equal to or greater than his or her AWW.

PERMANENT TOTAL DISABILITY (PTD)

When an injury is so serious that it prevents the employee from ever working at all, the employee may receive benefits for the duration of his or her disability. This compensation provides employees two-thirds of their AWW, subject to the limits described above. To receive PTD benefits, an employee must prove that he or she is physically unable to work, even on a sedentary position, within a 50-mile radius of his or her residence or that the injury caused:

- Second- or third-degree burns of 25 percent or more of the total body surface;
- Severe brain or closed-head damage;
- Spinal cord damage involving severe paralysis of an arm, a leg or the trunk;
- The amputation of an arm, hand, foot or leg;
- Third-degree burns of five percent or more of the face and hands; or
- Total or industrial blindness.

An employee who receives PTD benefits may be required to submit to vocational evaluations once a year to determine any change in his or her ability to work. The FWCL also allows an employee receiving PTD benefits to undertake a trial reemployment period to determine his or her earning capacity.

DEATH AND BURIAL BENEFITS

If an employee dies within one year of a work-related accident or within five years following a continuous period of disability that resulted from a work-related accident, the employer must pay up to \$7,500 to cover the employee's actual funeral expenses. Employers must pay this benefit within 14 days of receiving a request from a deceased employee's representative.

A deceased employee's surviving dependents may also be entitled to receive weekly death benefits of up to 66 and two-thirds percent of the employee's AWW. These benefits are subject to an aggregate maximum of \$150,000.

The actual amount that surviving dependents may receive is based on the number of dependents, their marital status, and whether any surviving children are under the age of 18 (or 22 for full-time students). In addition to weekly benefits, a surviving spouse may be entitled to receive compensation to cover up to 1,800 classroom hours of instruction at any community college during the first seven years after the employee's death.

STATE RESOURCES

Florida Division of Workers' Compensation (DWC)

[DWC website](#).

Key Coverage and Exemption Eligibility Requirements

This DWC [brochure](#) provides detailed information about WCL coverage requirements for employers.

Workplace Poster

Employers must display this WCL [poster](#) in their employees' workplaces.

First Report of Injury

Employers must use [Form DWC-1](#) to report work-related conditions to their insurance carriers or to the DWC.

MORE INFORMATION

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

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