

# EMPLOYMENT LAW SUMMARY

## Kentucky Workers' Compensation – Employee Benefits



Workers' compensation is a system of no-fault insurance that provides monetary and medical benefits to employees or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Kentucky Workers' Compensation Act (WCA) establishes the benefits available to employees in the state. The Kentucky Department of Workers' Claims (DWC) is responsible for administering workers' compensation claims and awarding benefits under the WCA.

In general, an employee will be eligible for the workers' compensation benefits if he or she sustains any injury or disease arising out of and in the course of employment. However, the WCA includes special provisions for certain work-related conditions, such as coal-related occupational pneumoconiosis and hearing loss, which are not addressed in this Employment Law Summary.

### MEDICAL BENEFITS

Employers must pay all medical expenses necessary to cure and relieve the effects of an employee's work-related injury. Employers are prohibited from making employees contribute to these expenses through any copayments or deductibles.

An injured employee has the right to choose his or her own physician to provide the necessary treatment. The designated physician must supervise all medical services for the injury, with the exception of emergency medical care. The employee may change the designated physician one time for any reason, but he or she must show reasonable cause before making any subsequent physician changes.

The WCA imposes strict limits on the amounts that medical providers may charge for services. As of July 14, 2018, the WCA also imposes newly defined limits on how long and employer may be required to continue paying medical benefits.

Previously, an employer's obligation to pay medical expenses continued for as long as an employee required treatment for a work-related condition, regardless of whether the employee received any other benefits under the WCA. Under the amended law, an employer's obligation to pay medical benefits could be capped at 750 weeks for most types of permanent partial disability (PPD) claims. The table below further describes the new limits and how they apply.

If employee has:	Employer must pay medical benefits for:
Been awarded permanent total disability (PTD) benefits	As long as the employee is disabled, regardless of how long the employee receives income benefits.

If employee has:	Employer must pay medical benefits for:
A permanent partial disability (PPD) claim involving: <ul style="list-style-type: none"> <li>Amputation or partial amputation of an arm, hand, leg or foot;</li> <li>Hearing loss;</li> <li>Tooth loss;</li> <li>Permanent paralysis; or</li> <li>Eye enucleation</li> </ul>	
Any other PPD claim	Up to <b>780 weeks</b> from the date of injury or date of last exposure.

However, an employee may receive additional medical benefits beyond the 780-week period described in the table above if the employee:

- Files an application for continued benefits within 75 days before the end of the 780-week period;
- Demonstrates that continued medical treatment is reasonably necessary and related to the compensable condition; and
- Obtains an order from an administrative law judge for additional time.

Another change to the WCA, which also became effective July 14, 2018, limits how many urine drug screens an employer may be required to pay for while an employee undergoes treatment for a work-related condition. The new limits depend on an employee's risk level, as determined by the treating medical provider. The table below provides an overview of the new limits.

If employee is considered:	Employer's obligation to pay for urine drug screens is limited to:
Low Risk	One per year
Moderate Risk	Two per year
High Risk	Four per year

However, an employer may be required to pay for one urine drug screen at each office visit under certain circumstances. Specifically, this may be required if an employee shows aberrant behavior that is demonstrated by any of the following:

- Multiple lost prescriptions;
- Multiple requests for early refills of prescriptions;
- Multiple providers prescribing or dispensing opioids or opioid substitutes;
- Unauthorized dosage escalation; or
- Apparent Intoxication.

## INCOME BENEFITS

If an employee cannot return to work or sustains permanent physical impairment because of a work-related injury, he or she may be entitled to receive weekly payments called income benefits (also called disability or indemnity benefits).

Income benefits are also available to an employee's surviving dependents if a work-related injury causes the employee's death. All income benefits are immune from wage assignments and creditor claims, except in certain cases involving child support.

Employees are not eligible to receive income benefits for **the first seven days** of their disability. However, if the injury results in **more than two weeks** of disability, benefits for those first seven days must be paid retroactively. The following table provides an overview of the income benefits available to an injured employee.

Income Benefit	Payable if the employee:
----------------	--------------------------

Income Benefit	Payable if the employee:
<b>Temporary Total Disability (TTD)</b>	<ul style="list-style-type: none"> <li>• Is recovering from the injury; and</li> <li>• Is not able to work due to the injury.</li> </ul>
<b>Temporary Partial Disability (TPD)</b>	<ul style="list-style-type: none"> <li>• Is recovering from the injury; and</li> <li>• Has returned to light-duty or restricted work.</li> </ul>
<b>Permanent Partial Disability (PPD)</b>	<ul style="list-style-type: none"> <li>• Has recovered from the injury, which is established by a physician's opinion that he or she has reached maximum medical improvement (MMI);</li> <li>• Has a permanent physical impairment due to the injury; and</li> <li>• Retains the ability to perform work.</li> </ul>
<b>Permanent Total Disability (PTD)</b>	<ul style="list-style-type: none"> <li>• Has reached MMI for the injury;</li> <li>• Has a permanent physical impairment due to the injury; and</li> <li>• Lost the ability to perform any kind of work due to the injury.</li> </ul> <p>or Sustained an injury resulting in any of the following:</p> <ul style="list-style-type: none"> <li>• Total and permanent loss of sight in both eyes;</li> <li>• Loss of both feet at or above the ankle;</li> <li>• Loss of both hands at or above the wrist;</li> <li>• Loss of one foot at or above the ankle and the loss of one hand at or above the wrist;</li> <li>• Permanent and complete paralysis of both arms, both legs, or one arm and one leg;</li> <li>• Incurable insanity or imbecility; or</li> <li>• Total loss of hearing.</li> </ul>

### **BASIS FOR INCOME BENEFIT RATES – EMPLOYEE'S AVERAGE WEEKLY WAGE (AWW)**

The amount an employee (or his or her surviving dependents for cases of death) may receive per week in income benefits depends on the AWW the employee earned at the time of the injury (or, for occupational diseases, as of the last date of injurious exposure before disability or death).

The WCA outlines several methods for establishing an employee's AWW. Certain factors may increase an employee's AWW after the applicable calculation. For example, the DWC may adjust the AWW for an employee who was a minor, apprentice or trainee when injured, if his or her wages would have been expected to increase during a period of disability. The DWC may also adjust the AWW for an employee who was injured while working in an occupation that does not ordinarily involve working five full days in every week.

The applicable method generally depends on how the employee was paid during his or her employment, as summarized in the table below.

If, at the time of the injury, the employee was:		AWW Calculation
<b>Paid in wages that were fixed:</b>	By the week	The fixed weekly wage
	By the month	$[\text{The fixed monthly wage} \times 12] \div 52$
	By the year	$\text{The fixed yearly wage} \div 52$
	By the day, hour or output	The highest wages earned (not including overtime or premium pay) during any period of 13 consecutive calendar weeks of the year immediately preceding the injury (or if the employee was not employed for 13 or more weeks, the wages that would have been earned) $\div 13$
<b>Paid in unfixed wages</b>		The usual weekly wage for similar services where the services are rendered by paid employees

If, at the time of the injury, the employee was:

## AWW Calculation

**Employed in an exclusively seasonal occupation**

1/50 of the total wages earned from all occupations during the 12 calendar months immediately preceding the injury

### WEEKLY INCOME BENEFIT RATES AND LIMITS

All income benefits available to injured employees are **66 and two-thirds percent** of the AWW per week, subject to limits in effect on the date of the injury (or the last date of injurious exposure before disability resulting from an occupational disease).

The weekly rate limits are based the state average weekly wage (SAWW), which is calculated by the Kentucky Education and Workforce Development Cabinet using wages earned by all employees in the state. The DWC uses the SAWW from two years previous to set the benefit rate limits.

New workers' compensation benefit rate limits become effective as of Jan. 1 each year. The most recent limits are listed in the table below.

Weekly Limits			
Date of injury	Temporary Total Disability (TTD) and Permanent Total Disability (PTD)		Permanent Partial Disability (PPD)
	Maximum	Minimum	Maximum
2024	\$1,180.43	\$214.62	\$885.32
2023	\$1,118.43	\$203.35	\$838.82
2022	\$1,074.12	\$195.29	\$805.59

### PERMANENT PARTIAL DISABILITY (PPD)

Unlike for TTD and PTD, determining an employee's weekly PPD benefit rate is not as simple as just calculating 66 and two-thirds percent of the AWW and ensuring the resulting number falls within the limits. Several additional steps and calculations are necessary to determine the weekly PPD rate.

An initial step involves obtaining a **permanent impairment rating**. This is a percentage that a physician must assign to establish the level of physical impairment the work-related injury caused to the employee's body as a whole. The physician must also establish whether the employee retains the physical capacity to return to the type of work he or she performed at the time of the injury.

The WCA lists ranges of impairment ratings and assigns factors to them in a table. Finding the applicable **WCA factor** from this table is the next step in determining the weekly amount the employee will receive in PPD benefits.

The next step is to calculate the **permanent disability rating** by multiplying the permanent impairment rating by the applicable WCA factor. If the resulting permanent disability rating is:

- 50 percent or less, the employee will receive PPD benefits for **425 weeks**; or
- Greater than 50 percent, the employee will receive PPD benefits for **520 weeks**.

Finally, the following calculation(s) determine the amount the employee will receive each week, for a total of either 425 or 520 weeks, subject to the maximums in the PPD table above:

- If the employee retains the physical capacity to return to the type of work he or she performed at the time of the injury, the PPD rate is calculated by multiplying 66 and two-third percent of the AWW (subject to a maximum of 75 percent of the SAWW) by the permanent disability rating.
- If the employee does **not** retain the physical capacity to return to the type of work he or she performed at the time of the injury (and does not perform any other work for an equal or greater weekly wage), the weekly PPD rate is calculated by:

- Multiplying 66 and two-third percent of the AWW (subject to 100 percent of the SAWW) by the permanent disability rating; and
- Multiplying the result by three. This tripling multiplier may be subject to one or more increases based on the employee’s educational background and age at the time of the injury.

## DEATH BENEFITS

If a work-related injury or illness results in an employee’s death, surviving dependents may receive weekly income benefits as summarized in the table below. However, the aggregate weekly amount paid to all surviving dependents may not exceed the maximum amount that was or would have been payable to the employee for TTD or PTD.

Employee Survivor*	Benefit Recipient	Benefit Amount**	Termination of Benefit***
<b>A spouse but no dependent children</b>	The surviving spouse	50 percent	Remarriage. Spouse may receive a lump-sum payment equal to two years’ worth of income benefits.
<b>A spouse and dependent children</b>	The surviving spouse	45 percent (or 40 percent if the children do not live with spouse)	Remarriage. Spouse may receive a lump-sum payment equal to two years’ worth of income benefits.
	Each surviving dependent child	15 percent (pooled and divided equally among them if more than two)	Death, marriage, reaching age 18 (or 22 if enrolled as a full-time student) or otherwise ceasing to be actually dependent.
<b>Dependent children but no spouse</b>	Each surviving dependent child	50 percent for one child and 15 percent for each additional child, divided equally among them.	Death, marriage, reaching age 18 (or 22 if enrolled as a full-time student) or otherwise ceasing to be actually dependent.
<b>Dependent siblings or grandparents</b>	Each surviving dependent sibling or grandparent	25 percent (pooled and divided equally among them if more than one)	Death, marriage, reaching age 18 (or 22 if enrolled as a full-time student) or otherwise ceasing to be actually dependent.
<b>Dependent parents</b>	Each surviving dependent parent	25 percent	Death, marriage or ceasing to be actually dependent.

\* Employee survivors are determined at the time of injury or last exposure.

\*\* The amount of benefits is based on the deceased employee’s AWW or the applicable SAWW.

\*\*\* Termination of benefits takes place when income benefit duration limit (discussed below) takes place or when one of the conditions described in this table takes place, whichever takes place first.

In addition, as long as the employee’s death occurred within four years of the date of injury and as a direct result of the injury, a lump-sum that depends on date of death must be paid to the deceased employee’s estate to pay burial costs.

## INCOME BENEFIT DURATION LIMIT

Effective July 14, 2018, all income benefits terminate on the later of either:

- The date the employee turns age 70; or
- Four years after the employee’s injury or last exposure to the hazards of an occupational disease.

## VOCATIONAL REHABILITATION BENEFITS

Employees may be entitled to retraining and job placement services for up to **52 weeks**, if a work-related injury leaves them unable to obtain any job suited to their previous education and experience. These benefits may include the reasonable cost of the employee’s board, lodging and travel.

## MORE INFORMATION

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

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2024 Zywave, Inc. All rights reserved.