

EMPLOYMENT LAW SUMMARY

Massachusetts: Workers' Compensation – Claims Process



Because You're Different

Workers' compensation is a system of no-fault insurance that provides monetary and medical benefits to employees (or their survivors) for work-related injuries and diseases. State workers' compensation laws govern the claims process for most individuals who sustain work-related injuries and illnesses.

The [Massachusetts Department of Industrial Accidents](#) (DIA) investigates and handles workers' compensation claims throughout the state. The processing of a claim typically begins with a notice of injury and may end up in administrative or judicial appeal.

EMPLOYER'S NOTICE OF INJURY

If a work-related injury results in an employee's inability to earn wages for five or more calendar days, the employer must report the injury to the DIA **within seven calendar days** (excluding Sundays and legal holidays) after the employee's fifth full or partial day of disability. Employers must use Form 101 and file the report electronically. The DIA does not accept paper versions of the form. Employers must also provide a copy of the form to both the employee and the employer's insurance carrier, if applicable.

EMPLOYER'S ELIGIBILITY DETERMINATION

Employers must investigate each injured employee's eligibility for benefits and, at the earliest practicable time, admit or deny the employee's claim for compensation. An employer that denies a claim must provide a letter to the employee **within 30 days** stating the reasons for denying the claim. Otherwise, the employer must begin paying benefits to an employee **within 14 days** after receiving notice of the employee's injury or claim for benefits.

Employers can pay a claim for **up to 180 days** following the initial injury or illness without accepting liability for the claim. During this 180-day period, employers can stop or modify benefit payments after providing a seven-day notice to the DIA and the injured employee. This 180-day period can be extended for an additional 180 days. Thereafter, employers can modify and cease payment only if approved by the DIA.

EMPLOYEE'S CLAIM FOR BENEFITS

An injured employee can file a claim with the DIA if:

- The employer denies his or her request for benefits;
- The employer fails to respond to a request for benefits within 30 days; or
- He or she is not receiving all benefits to which he or she is entitled under state law.

To file a claim, an employee must submit Form 110 to the DIA **within four years** of when the employee first learns of the connection between his or her incapacity and his or her employment.

After it receives a claim, the DIA will notify the affected employer and any other applicable party.

CONCILIATION PERIOD

Once filed, claims enter a **15-day conciliation period**, during which a conciliator is appointed to encourage the parties to settle the dispute through informal negotiations.

At the end of the conciliation period, any unresolved claim will be referred to a more formal review process, unless:

- The party who brought the claim fails to appear before the conciliation unit or fails to provide any information requested by the conciliator;
- The conciliator authorizes an extension of the conciliation period (any affected party may appeal an extension with the DIA); or
- The parties agree, using a specified form, to submit their claim to arbitration proceedings.

If a dispute involves an employee's claim for additional compensation or an employer's desire to discontinue or modify compensation payment, conciliators will wait until each party has given written notice before referring the dispute to the DIA.

Conciliators may impose a time limit for the parties to submit their offers for settlement. They may also assign a default offer for any party that fails to submit an offer within the time limit. Conciliators will identify any default offers they enter when referring a claim to the DIA.

- The default offer for **an employee** is the last best offer he or she made or the maximum compensation rate allowed by the state.
- The default offer for **an employer** is its last best offer made or zero.

Insurers (including self-insured employers) are required to pay a fee equal to **65 percent** of the state average weekly wage (SAWW) for each claim that is referred to the DIA. The fee increases to **130 percent** of the SAWW if the insurer fails to appear at a scheduled conciliation session. The DIA will excuse an employer that fails to appear for reasons that are beyond its control.

CONFERENCES

After a claim is referred to the DIA, the parties must participate in a pre-hearing conference, which is an informal proceeding before an administrative judge. During the pre-hearing conference, the parties may be required to present reports of injury, signed employee and witness statements, medical records and any other evidence that supports their cases.

The DIA will issue a written order within **seven days** of the conference. The order may require or deny the claimed payment, modify benefits or terminate benefits. Any party adversely affected by a DIA order may appeal the order within **14 days** of when the order was issued. Exceptions may be allowed for parties who fail to file the appeal due to mistake, accident or other reasonable cause. The appeal hearing must take place within 28 days of when the appeal is filed. The DIA's order becomes final if no appeal is filed within 14 days or if a timely-filed appeal is withdrawn.

ALTERNATIVE DISPUTE RESOLUTION

The parties to a dispute can agree to participate in **mediation** at any time during the dispute resolution process. Mediation does not postpone or stay any ongoing proceedings or waive the parties' rights.

Alternatively, the parties to a dispute can submit their claim to independent arbitration. Independent **arbitration** is a final and binding process that can determine all questions regarding a claim. Parties that wish to participate in arbitration must:

- Submit their dispute to arbitration at least six days before a DIA conference;
- Select an independent arbitrator (the arbitrator must not have represented either of the parties for at least one year prior to arbitration); and
- Sign the agreement to arbitrate.

The DIA will not accept additional claims or complaints related to an injury or condition that is the subject of an ongoing arbitration proceeding. However, the DIA will accept additional claims and complaints to an arbitrated injury or condition after it receives the arbitrator's award or after both parties submit a written arbitration withdrawal.

Once an arbitration decision is made, the parties must abide by the findings and awards ordered by the arbitrator. The DIA will enforce arbitration awards as if they were DIA orders. Any party wishing to vacate, modify or appeal an arbitration award must follow the guidelines and channels established for the review of DIA orders.

HEARINGS

Hearings are formal proceedings held before an administrative judge. During a hearing, the DIA may hold inquiries, investigations and depositions to obtain any information necessary to issue a decision on a disputed claim. The DIA will give notice to any interested party of the date, time and location of a hearing. Under normal circumstances, the DIA will issue a decision no later than **28 days** after a hearing takes place.

APPEALS

Any party affected by a DIA decision may file an appeal with the Reviewing Board within **30 days** from the time the decision was issued. If approved by the DIA, the filing period may be extended for up to one year for a party who fails to file a timely appeal by mistake, accident or other reasonable cause. The appealing party will be required to pay a fee equal to **30 percent** of the SAWW. This fee may be waived for indigent claimants.

The Reviewing Board may:

- Reverse a DIA decision, but only if it determines that the decision is beyond scope, arbitrary, capricious or contrary to law;
- Recommit a case to the DIA for further findings of fact; or
- Issue a summary judgment affirming the decision without a discussion of the issues raised on appeal.

The Reviewing Board also has authority to award reasonable attorneys' fees, proceeding costs and other appeal-related expenses to an injured employee who wins the appeal.

An appeal of the Reviewing Board's decision may be filed with the Massachusetts Appeals Court **within 30 days**.

MORE INFORMATION

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

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