

EMPLOYMENT LAW SUMMARY

New York Workers' Compensation - Employee Benefits



Because You're Different

Workers' compensation is a system of no-fault insurance that provides medical benefits and compensation for lost wages and permanent physical impairments to employees who sustain work-related injuries. New York's Workers' Compensation Law (WCL) determines the benefits that injured employees are entitled to receive for these injuries. An employee qualifies for workers' compensation coverage if the damage or harm he or she suffers is the result of an accident or of exposure to a hazardous environment in the normal course of his or her employment.

When the WCL applies, benefits include medical expense coverage and weekly payments to replace lost wages or compensation for permanent impairment. In cases involving an employee's death, benefits include weekly payments to surviving dependents and burial cost coverage. The New York Workers' Compensation Board (WCB), part of the New York Department of Labor (NYDOL), investigates and handles workers' compensation claims in the state.

MEDICAL BENEFITS

Under the WCL, an employer must promptly pay all reasonable and necessary treatment expenses incurred to cure or relieve their employees' work-related injuries and diseases. Medical benefits may include payments for medical, dental, surgical and optometric treatment. They may also include payments for nurse and hospital services, medicines, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices and apparatus for recovery.

Except in situations involving emergency medical services, an employee may receive medical benefits only if he or she uses employer-approved or WCB-approved facilities, procedures and physicians. The WCB maintains a list of approved facilities, physicians and treatment guidelines that, in its view, provide adequate care for work-related injuries. Employees who wish to be treated by their own personal physicians must ask their employers for an exception to this rule. An employer that refuses or neglects to provide medical care for an injured employee may be ordered to pay any treatment expense the employee incurs while seeking medical care on his or her own.

MEDICAL EXAMINATION

Employees receiving benefits under the WCL may be required to submit to independent medical examinations and have the right to request the presence of their own physicians at these examinations. An employee's failure to submit to a mandatory medical evaluation may jeopardize his or her right to receive benefits under the WCL.

MONETARY BENEFITS

If an employee loses wages or sustains a permanent impairment as the result of a work-related injury, he or she may be entitled to receive weekly payments as compensation under the WCL. These payments are often referred to as disability benefits. In general, weekly WCL benefits are immune from wage assignments, creditor claims, levies, executions, attachments and other remedies for the collection of debt. However, the WCB may make an exception to allow liens and assignments for current and overdue support obligations to a spouse or child. These cases are determined on an individual basis. Several different types of monetary benefits are available under the WCL. An employee's entitlement to these various benefits depends on certain factors, such as whether the employee is still recovering from the work-related condition and the extent to which he or she has lost the ability to earn full wages.

AVERAGE WEEKLY WAGE (AWW)

For most WCL benefits, the weekly amount an employee may receive is determined based on his or her AWW. An employee's AWW is calculated as fraction of his or her annual average wage, which is equal to:

- 300 times the average daily wage for a six-day worker; or
- 260 times the average daily wage for a five-day worker.

The average daily wage depends on how long the employee has been employed in a particular trade or occupation, and not on how long he or she has worked for a particular employer. For an employee who has been working in a trade or occupation for at least one full year prior to an injury, the AWW is calculated using his or her actual average daily wages. For an employee who has been working in a trade or occupation for less than one full year, the AWW is calculated using the average daily wage paid to a typical worker in the employee's (or a similar) trade or profession at the employee's place (or a neighboring place) of employment.

MINIMUM AND MAXIMUM BENEFIT AMOUNTS

All WCL monetary benefits are subject to weekly rate limits. These limits depend the date of an employee's work-related injury or disability. For any work-related condition sustained on or after May 1, 2013, the minimum weekly benefit amount is \$150. However, if an employee's AWW is less than \$150, the employee may receive only the AWW amount in weekly benefits. The maximum weekly benefit amount changes as of July 1 each year. For injuries that occurred on or after July 1, 2023, the maximum benefit rate is \$1,145.43 per week. For injuries that occur on or after July 1, 2024, the maximum benefit rate is \$1,71.46 per week.

WAITING PERIOD

Employees are not eligible to receive disability benefits for the first seven days of their disability resulting from a work-related injury. However, if an injury results in more than 14 days of disability, benefits for the first seven days must be paid retroactively.

TEMPORARY TOTAL DISABILITY (TTD)

TTD benefits are payable if a work-related condition prevents an employee from earning any wages while he or she is recovering from the condition. Weekly TTD benefits are 66 and two-thirds percent of an employee's average weekly wage (AWW), subject to the minimum and maximum benefits described above.

TEMPORARY PARTIAL DISABILITY (TPD)

TPD benefits are payable if an employee who is still recovering from a work-related condition can return to work with medical restrictions that prevent him or her from earning the same wages he or she earned prior to the injury. This would be the case, for example, where an employee can only work a reduced number of hours or must perform a different job for lower wages. In these situations, an employee may receive TPD benefits equal to two-thirds of the difference between his or her pre-injury and post-injury wages. TPD benefits are also subject to the limits described above.

PERMANENT PARTIAL DISABILITY (PPD)

PPD benefits are available to employees who sustain a permanent impairment as a result of a work-related condition. Permanent impairment may be assigned only after a treating physician has determined that an employee has reached the maximum level of medical improvement possible for his or her work-related condition. Weekly PPD benefit amounts depend on the nature and extent of the assigned impairment.

PERMANENT TOTAL DISABILITY (PTD)

PTD benefits are payable if an employee's work-related injury results in his or her complete and permanent inability to earn wages after he or she has reached maximum medical improvement. An employee who is permanently and totally disabled may receive 66 and two-thirds percent of his or her AWW—subject to the maximum and minimum amounts described above—for as long as the total disability lasts. The loss of both hands, arms, feet, legs, or eyes, or the loss of any two of these members, is presumed to be a PTD.

DEATH AND BURIAL BENEFITS

If an employee dies as the result of work-related condition, the WCL requires the employer to cover the deceased employee's funeral expenses and also pay weekly benefits to the employee's surviving dependents. In this context, dependents include the deceased employee's spouse, domestic partner or child. An employer's liability for funeral expenses generally depends the county in which a burial takes place.

A deceased employee's surviving dependents may be entitled to receive weekly payments equal to two-thirds of the deceased employee's AWW, subject to the maximum limit discussed above. The actual amount surviving dependents may receive is adjusted based on the number of dependents, the date of the injury and whether the dependents are full or partial dependents. The WCB takes into consideration an dependent's age and physical or mental capacity when determining whether his or her dependency is full or a partial.

ADJUSTING BENEFIT AMOUNTS

A variety of factors may alter an employee's recovery and entitlement to WCL benefits. The WCL provides guidance on how to adjust workers' compensation benefits in certain situations.

EARNING CAPACITY

When an employee who is younger than 25 years of age sustains a permanent impairment, the employer must consider the employee's future earning capacity and adjust his or her benefits accordingly. Earning capacity adjustments are based on an assumption that employees under age 25 do not receive the full level of wages available to an experienced worker in their occupations and, therefore, their wages would have been likely to increase had they not sustained a permanent impairment.

BENEFITS FOR INJURED MINORS

If an injured employee is a minor who was illegally employed under New York laws at the time of his or her work-related injury, the employer must pay double the weekly amount that would otherwise be payable under the WCL. The employer alone—not its insurance carrier—must cover this additional compensation.

ADDITIONAL INCOME

Workers' compensation benefits depend on 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, unless the worker is a public employee, firefighter or law enforcement officer.

MORE INFORMATION

For more information on workers' compensation laws in New York, visit the Workers' Compensation Board website or contact your official Heffernan Insurance Brokers representative.

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