

EMPLOYMENT LAW SUMMARY

Texas: Workers' Compensation - Employee Benefits



Because You're Different

The Texas Workers' Compensation Act (TWCA) regulates the type and extent of benefits employees may receive for work-related injuries. While participation in Texas' workers' compensation system is optional, employers that choose to participate must comply with the TWCA. Workers' compensation benefits include payment for medical treatment, lost wages and permanent impairment. The Division of Workers' Compensation (DWC), which is part of the Texas Department of Insurance (TDI), investigates and handles workers' compensation claims in the state.

MEDICAL BENEFITS

Injured employees are entitled to receive timely and reasonable medical care. Reasonable medical treatment must be tailored to cure the injury, promote recovery and enhance the employee's ability to retain, or return to, his or her employment. An employee's right to medical benefits may not be waived, altered or terminated. If an employer and an employee want to reach a settlement regarding the amount of payable benefits, the agreement must comply with TWCA guidelines.

APPROVED TREATMENT

Except for emergency situations, injured employees must receive medical treatment from a physician chosen from the DWC's list of approved health care providers. However, the DWC may authorize an injured employee to receive treatment from a physician who is not on the approved list. To receive this authorization, an injured employee must submit a written request stating the reasons for selecting an alternate physician. Injured employees may not request to change physicians solely to obtain a new impairment rating or medical report. Employees that fail to abide by these guidelines may lose their entitlement to medical benefits.

MONETARY BENEFITS

Monetary benefits compensate an employee (or his or her survivors, in cases of death) for lost earnings and physical impairments resulting from a work-related condition. Unless otherwise authorized by the DWC, these benefits must be paid weekly. Employers may be required to pay interest on any delayed benefits. Monetary benefits are generally exempt from garnishment, attachment, judgment and other collection actions or claims. However, the benefits may be assigned to a party other than the injured employee if approved by the DWC. The DWC may approve liens or claims against workers' compensation benefits if they are for unpaid attorney's fees, court-ordered child support obligations or any another interests approved by the DWC.

An employee's entitlement to receive monetary benefits ends either upon recovery from the work-related injury, after 401 weeks or upon death. Benefits include temporary income benefits, impairment income benefits, supplemental income benefits and lifetime income benefits. The TWCA also prescribes the waiting period and the minimum and maximum amounts for these benefits.

AVERAGE WEEKLY WAGE (AWW)

Most monetary benefits are calculated as percentages of an employee's AWW. The AWW for a full-time employee is the average compensation he or she received during the 13 weeks preceding his or her injury. If the employee has not been working for at least 13 weeks, the AWW is the usual wage the employer pays to other employees in a similar position or the usual wage paid in that vicinity for services similar to those provided by the employee. The TWCA provides guidance for calculating the AWW in cases where an employee only worked part-time and where other special circumstances exist. The DWC has the authority to review and determine an employee's AWW when an issue arises regarding irregular employment or time lost due to illness, weather and other circumstances beyond the employee's control.

MINIMUM AND MAXIMUM BENEFIT AMOUNTS

Most monetary benefit rates are subject to limits, which become effective as of Oct. 1 each year. The applicable limits depend on the date of injury (or determination of illness) and the type of benefit. Once determined, an employee's benefit rates generally remain constant throughout his or her compensation period.

Date of injury	Type of benefit	Minimum	Maximum
Oct. 1, 2023 – Sept. 30, 2024	Temporary income benefits	\$176	\$1,174
	Lifetime income benefits		
	Death benefits	None	\$822
	Impairment income benefits	\$176	
	Supplemental income benefits	None	
Oct. 1, 2022 – Sept. 30, 2023	Temporary income benefits	\$167	\$1,112
	Lifetime income benefits		
	Death benefits	None	\$778
	Impairment income benefits	\$167	
	Supplemental income benefits	None	

WAITING PERIOD

An employee must be disabled from work for at least one week before he or she can receive monetary benefits. However, benefits for the first week are payable retroactively if the disability extends beyond two weeks.

TEMPORARY INCOME BENEFITS (TIB)

An employee is entitled to receive TIB if he or she is disabled from work, in whole or in part, while recovering from a work-related injury. An employee is still recovering until a treating physician determines that he or she has reached maximum medical improvement (MMI). The weekly TIB rate is 70 percent of the difference between the employee's AWW and post-injury wages. The TWCA allows for an increased benefit amount (75 percent) if the employee earned less than \$8.50 per hour. TIB benefits are subject to the minimum and maximum amounts described above, and may not exceed the employee's actual earnings for the previous year. An employer is free to continue paying an injured employee his or her AWW instead of providing this benefit.

IMPAIRMENT INCOME BENEFITS (IIB)

IIB payments are available to individuals who have a permanent physical impairment after reaching the MMI for a work-related injury. These benefits are 70 percent of the employee's AWW, subject to the minimum and maximum amounts described above. The number of weeks an employee may receive these benefits depends on the injured employee's impairment rating. The impairment rating is a percentage used to quantify the physical damage caused by an injury. An employer may dispute the impairment rating and request a re-evaluation of an employee's rating by a DWC-certified physician. Employers may pay IIB based on what they believe is the appropriate impairment rating until the new and final impairment rating is issued. An employer may reduce an employee's IIB if the employee has returned to work for at least three months and earns at least 80 percent of his or her AWW. Choosing to reduce IIB payments prevents employees from receiving additional income benefits for a compensable injury.

SUPPLEMENTAL INCOME BENEFITS (SIB)

An injured employee may receive SIB payments if, at the expiration of the impairment benefit period, he or she has:

- An impairment rating of at least 15 percent;
- Not returned to work or has returned to work and is earning less than 80 percent of his or her pre-injury wages because of the impairment;
- Not elected to reduce a portion of his or her impairment benefits; and

- Been actively engaged in work-search efforts.

The DWC calculates the amount of SIB payments for eligible individuals on a quarterly basis. When calculating these benefits, the DWC takes into consideration an employee's AWW and post-injury wages. An employee's qualification for these benefits may be adjusted within the year immediately after an injury. An individual must be actively engaged in work-search efforts to receive SIB payments. To prove this, an individual must be able to show his or her:

- Participation in a vocational rehabilitation program conducted by the Texas Workforce Commission or a private rehabilitation provider;
- Participation in work-search efforts through the Texas Workforce Commission; or
- Documented direct work-search efforts and job application initiatives.

Any interested party may ask the DWC to review the status of an employee's SIB once every year to determine whether the employee's unemployment or underemployment is a direct result of the compensable injury. An employee who refuses to cooperate with the Texas Workforce Commission becomes ineligible to receive these benefits. Employers may contest an employee's SIB within 10 days of when impairment income benefits expire or within 10 days after receiving a statement informing them of supplemental benefits.

LIFETIME INCOME BENEFITS (LIB)

An injured employee qualifies for LIB if a work-related injury results in his or her complete and permanent inability to earn wages or if he or she sustains any of the following:

- Total and permanent loss of sight in both eyes;
- Loss of both feet at or above the ankle;
- Loss of both hands at or above the wrist;
- Loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
- Permanent and complete paralysis of both arms, legs or one arm and one leg as the result of a spinal injury;
- Brain trauma resulting in incurable insanity or imbecility;
- Third-degree burns that cover at least 40 percent of the body and require grafting; or
- Third-degree burns that cover the majority of either both hands or one hand and the face.

The LIB rate is 75 percent of the AWW. These benefits increase by 3 percent each year.

ADJUSTING BENEFIT AMOUNTS

A variety of factors may alter an employee's recovery and his or her need for benefits. On occasion, a change in circumstances may require an adjustment of medical or monetary benefits. The TWCA has provided some guidance on how to adjust these benefits when employers need to consider contributing or subsequent injuries. The amount of supplemental and impairment benefits may be reduced for an employee who suffered an injury due to an earlier compensable injury. The reduction must be proportional to how much the earlier compensable injury contributed to the injury in question. The DWC will take into account the cumulative effect of all compensable injuries when authorizing a reduction in wage-replacement benefits. If an injured employee suffers a subsequent injury, the employee is entitled to monetary benefits only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The DWC maintains a subsequent injury fund for the payment of compensation and to reimburse employers (or their insurance carriers) for any overpaid income benefits.

DEATH AND BURIAL BENEFITS

Under the TWCA, employers must pay up to \$10,000 plus reasonable transportation costs to cover an employee's actual funeral expenses, if the employee's death is the result of a compensable injury. The employee's surviving dependents are also entitled to receive compensation of up to 75 percent of the employee's AWW. The actual amount that surviving dependents receive is based on the number of dependents, their marital status, their age and whether they have special needs, physical impairments or mental disabilities. The TWCA also allows a deceased worker's parents, brothers, sisters and grandchildren to receive compensation if the employee leaves no surviving spouse or children. Death benefit claims must be filed within one year of the time of death. Failure to claim these benefits within one year may cause a surviving dependent to forfeit this compensation, unless the dependent:

- Is a minor;
- Has been deemed legally incompetent; or
- Can show that there is good cause for a late filing.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the DWC website for more information on workers' compensation laws in Texas.

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