

# EMPLOYMENT LAW SUMMARY

## Wisconsin Workers' Compensation – Employee Benefits



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

In Wisconsin, worker's compensation benefits are prescribed by the Wisconsin Worker's Compensation Act (WCA). The Wisconsin [Department of Workforce Development](#) (DWD) resolves any disputes about benefits.

### MEDICAL BENEFITS

The WCA requires employers to cover all reasonable and necessary medical expenses for an employee's work-related injury or disease. This includes:

- Doctor and hospital bills;
- Medicines;
- Medical and surgical supplies;
- Crutches and artificial limbs, including training for use; and
- Travel expenses for treatment or examinations.

Employers must cover these costs even if an employee's work-related condition does not result in lost wages or disability.

As of April 29, 2021, an employer's liability for treatment expenses for mental injuries are limited is limited to 32 weeks from the day the injury was reported.

### MONETARY BENEFITS

If a work-related injury results in an employee's inability to earn his or her full wages or causes permanent impairments, the injured employee may be entitled to receive weekly payments as compensation for the lost wages and capacities. These cash payments, called disability benefits, are paid at a rate of up to two-thirds of the employee's pre-injury wages. Disability benefits are immune from income taxes and wage assignments, except in cases involving child support.

### AVERAGE WEEKLY WAGE

Weekly workers' compensation benefit rates are based on the average weekly wage (AWW) that the injured or deceased employee earned as of the date of his or her work-related injury. For occupational disease claims, the "date of injury" for this purpose is either the first day the employee became disabled from work due to the condition or the employee's last day of employment at the last job that contributed to the disease.

An employee's AWW is usually calculated in one of two ways, whichever yields the highest number. The first method is to take the employee's total earnings over the 52 weeks prior to the date of injury and divide it by 52. The second method is to multiply the employee's base hourly rate by the normal weekly hours worked. For part-time employees, the number of hours worked is expanded to full-time (usually 40 hours per week) so that the AWW reflects what the part-time employee would have earned for full-time work.

Other calculation methods may apply if an employee:

- Did not work for at least six out of the 52 weeks before his or her work-related injury;
- Only worked on a seasonal basis;
- Is part of a regularly-scheduled class of part-time workers and meets other specific requirements for using part-time hours, rather than expanding the hours to reflect full-time work;
- Restricted his or her availability to part-time work and was not employed elsewhere; or
- Was under age 27 at the time of the injury.

### BENEFIT LIMITS

All weekly disability benefit rates are subject to maximums that are determined by the date of injury and the type of benefit. The DWD sets these limits each year based on the average wages of all workers in the state. New rate limits become effective on Jan. 1 of each year. The table below provides the most recent maximum limits.

Maximum Weekly Benefit Rates				
Date of injury	Temporary Total Disability	Permanent Total Disability	Death	Permanent Partial Disability
Jan. 1, 2024 - Dec. 31, 2024		\$1,296		\$430
Jan. 1, 2023 - Dec. 31, 2023		\$1,247		\$430
Jan. 1, 2022 - Dec. 31, 2022		\$1,159		\$415

### AVERAGE ANNUAL EARNINGS

Some workers' compensation benefits are subject to aggregate maximums based on the injured employee's average annual earnings. An employee's average annual earnings is determined by multiplying the AWW by 50. If the resulting number exceeds the limit for the date of injury, the maximum applies.

The following table provides the most recent maximum limits.

Date of injury	Maximum Average Annual Earnings
2024	\$97,200
2023	\$93,525
2022	\$86,925

### TEMPORARY DISABILITY BENEFITS

An employee may receive temporary disability benefits if a work-related injury or disease prevents him or her from earning his or her pre-injury wages while he or she is recovering from the condition. With exceptions, temporary disability benefits are only available during the **healing period**, which ends when a physician indicates that the employee has reached **maximum medical improvement** (MMI).

### WAITING PERIOD

Injured employees are not eligible to receive temporary disability benefits for the **first three days** of their disability from work after an injury occurs. However, if the injury results in at least **seven days** of disability, benefits for the first three days must be paid retroactively. Sundays are excluded from these calculations unless the employee normally worked on Sundays.

### TEMPORARY TOTAL DISABILITY (TTD)

TTD benefits are payable if, due to a work-related condition, an employee is still in recovery and:

- Is unable to perform any work; or
- Is able to perform limited work, but the employer cannot provide work within the restrictions set by the treating physician.

TTD benefits are **two-thirds of the AWW**, capped at the maximum described above. If an employee only misses a fraction of a week, the TTD benefit is payable at one-sixth of the TTD rate per day.

### TEMPORARY PARTIAL DISABILITY (TPD)

An employee is eligible to receive TPD benefits if he or she is in the healing period and has only a partial wage loss that is due to medical restrictions on:

- The number of hours he or she can work; or
- The type of work he or she can perform.

In contrast to TTD benefits, TPD benefits vary based on how much the employee earns from working each week.

The TPD rate is the **proportion of the TTD rate that the employee’s actual wage loss bears to the AWW**. In other words, the TPD rate is based on how much the injured employee’s wages have decreased for each week. This is calculated using the following equation for each week of restricted work:

TPD Weekly Rate Calculation			
Step 1	AWW	- Wages Earned	= Actual wage loss
Step 2	Actual Wage Loss	/ AWW	= Percentage of wage loss
Step3	Percentage of Wage Loss	x TTD Rate	= TPD Rate

### TEMPORARY DISABILITY BENEFIT RATE ADJUSTMENTS

An employee’s TTD and TPD rates may be increased if the employee:

- Has returned to work for at least ten days; and
- Has a renewed period of temporary disability that commences more than two years after the date of injury.

When these conditions are met, the maximum rate limit that is in effect as of the first day of the renewed period of disability applies (instead of the maximum for the date of injury).

### PERMANENT PARTIAL DISABILITY (PPD) BENEFITS

If a work-related condition partially affects an employee’s physical abilities or capacity to earn wages on a permanent basis, the employee may be eligible to receive PPD benefits. These benefits are only available after the employee has reached MMI for the work-related condition.

#### SCHEDULED PPD

The WCA includes a PPD “schedule” that lists several body parts, each of which is assigned a specific number of weeks. In general, the PPD schedule includes every body part other than the head and torso. If an employee sustains an amputation, other loss or loss of ability to use of any of these body parts, he or she may be entitled to PPD benefits for up to the number of weeks listed in the schedule.

An employee that has only a partial loss or impairment to a scheduled body part is entitled to a proportionate number of weeks as the percentage of loss bears to the maximum number of weeks listed in the schedule.

An employee’s percentage of loss is determined by an authorized medical provider’s impairment rating, which must be based on guidelines provided in the WCA. These guidelines do not consider any effect an injury may have on an employee’s ability to work. Instead, the scheduled impairment ratings are based purely on physical, or functional, impairment alone. Thus, an employee may receive PPD benefits even if he or she returns to his or her pre-injury job earning the same or higher wages. As an illustration, consider the following example of an employee who has permanent impairment to his or her shoulder.

Scheduled PPD Example – Injury to shoulder			
0.5	x	500	= 250

Scheduled PPD Example – Injury to shoulder		
<u>Impairment rating</u> (Physician determines shoulder is impaired by 50 percent)	<u>WCA PPD Schedule Maximum</u> (WCA Schedule assigns value of 500 weeks for complete loss of arm at shoulder level)	<u>Number of PPD weeks payable</u> (Employee is entitled to 250 weeks of PPD benefits)

The PPD benefit rate is **two-thirds of the AWW**, up to the maximum described above. The PPD maximum is noteworthy because it is relatively low, especially compared to the TTD rate. Due to this, most injured employees (though not all) receive the **maximum PPD** rate.

### UNSCHEDULED PPD

An employee who has an injury to a body part that is not listed on the WCA’s PPD schedule (generally, the torso, the head or the body as a whole) may be eligible for up to **1,000 weeks** of unscheduled PPD benefits for any permanent physical impairment. These benefits are payable at the **same weekly rate as scheduled PPD benefits**.

The number of weeks for which unscheduled PPD benefits may be payable is determined by a physician’s impairment rating for the body as a whole, multiplied by 1,000 weeks. Like scheduled PPD benefits, unscheduled PPD benefits are payable even if the employee returns to his or her pre-injury work after reaching MMI.

As an illustration, consider the following example of an employee who has returned to the pre-injury work but has permanent physical impairment to his or her neck.

Unscheduled PPD Example – Injury to neck				
0.3	x	1,000	=	300
<u>Impairment rating</u> (Physician determines neck injury caused 30 percent impairment)		<u>WCA PPD Maximum</u> (WCA assigns value of 1,000 to body as a whole)		<u>Number of PPD weeks payable</u> (Employee is entitled to 300 weeks of PPD benefits)

### LOSS OF EARNING CAPACITY (LOEC)

An employee may be eligible for LOEC benefits if he or she has an **unscheduled** injury (i.e., to the head, neck or torso) and the employer does not provide him or her with work that pays **at least 85 percent** of the pre-injury wages. These benefits are also payable at the **PPD rate**.

Unlike other PPD assessments, however, impairment ratings for LOEC include considerations about the employee’s ability to work. Thus, an employee who makes an LOEC claim may need to obtain not only a physician’s impairment rating, but also an expert opinion from a vocational specialist as to the work-related condition’s effect on his or her ability to earn wages in the labor market.

The number of weeks for which an employee may receive LOEC benefits is determined by multiplying either the physical impairment rating or the percentage of earning capacity loss (whichever is higher) by 1,000 weeks. For example:

- If an employee has a 5 percent physical impairment rating for a neck injury and the employer provides work paying only 80 percent of the employee’s pre-injury wages, the employee could be entitled to 200 weeks of PPD benefits for the 20 percent LOEC (instead of the 5 percent for physical impairment), which is based on the actual wage loss.
  - If the employer does not offer the employee any work, a vocational expert may determine that physical restrictions left the employee capable of earning only 40 percent of his or her pre-injury wages in the open labor market. In this case, the employee would be entitled to 600 weeks of PPD benefits for the 60 percent LOEC.
  - However, if the employer provides work paying 85 percent or more of the pre-injury wages, the employee would not be entitled to any LOEC benefits. Instead, the employee would receive 50 weeks of PPD benefits for the 5 percent physical impairment alone.

### ADDITIONAL PPD BENEFITS

In addition to the PPD benefits described above, an employee may receive an increased number of weekly PPD payments for:

- Injuries to the dominant hand; and
- Injuries to multiple body parts.

The number of additional weeks for which PPD benefits may be payable for these injuries depends on the specific body parts injured and the nature and extent of the conditions.

## PERMANENT TOTAL DISABILITY (PTD) BENEFITS

An employee may be eligible to receive PTD benefits if:

- A physician or other authorized medical provider determines that he or she is physically unable to perform any work on a permanent basis; or
- A vocational expert determines that a work-related condition prevents him or her from performing any job for which there is a reasonably stable labor market (this is called the "odd-lot" doctrine).

In general, PTD benefits are available only for unscheduled injuries (i.e., injuries to the head, neck or torso). However, the WCA specifically includes the following as permanent total disabilities:

- Loss of both eyes;
- Loss of both arms;
- Loss of both legs; and
- Loss of an arm and a leg.

A permanently and totally disabled employee is eligible to receive **weekly benefits at the TTD rate** for life.

## DEATH AND BURIAL BENEFITS

When an injury results in the employee's death, the employer (or its insurer) must cover the actual expenses of **up to \$10,000** for the burial and funeral.

Dependents of the deceased employee may also receive weekly death benefits to compensate for the loss of support. Weekly death benefits are payable at the **TTD rate**. Surviving dependents usually may receive these benefits for **up to 1,000 weeks**. The total amount payable for these benefits is also subject to a maximum. This limit is equal to the employee's **average annual earnings (subject to the maximum described above) multiplied by four**.

## OTHER BENEFITS

### DISFIGUREMENT

If a work-related condition causes permanent disfigurement to an area of the employee's body that is exposed in the normal course of employment, the employee may be entitled to compensation for any potential or actual wage loss the disfigurement may cause.

The DWD determines the amount of this compensation based on the appearance of the disfigurement along with consideration of the employee's age, education, training and other vocational factors. However, awards for disfigurement may not exceed the employee's **average annual earnings**, which is subject to the maximum described above.

### VOCATIONAL REHABILITATION

An employee who has permanent work restrictions after reaching MMI from a work-related condition may be eligible for vocational rehabilitation benefits. These benefits are available only if the employer does not provide the employee with work that pays at least **90 percent** of the pre-injury wages.

Vocational rehabilitation benefits may include the services of a vocational specialist, who can either help the employee find a new job within his or her work restrictions or develop a retraining plan for alternative employment.

Retraining plans may require the employer to pay all costs for tuition, books, meals, and transportation. In addition, an eligible employee may receive **TTD benefits** while participating in an instructional retraining program. Although the DWD has authority to award additional sums, retraining benefits are usually available for **up to 80 weeks**.

Effective March 2, 2016, the DWD is authorized to award vocational rehabilitation benefits to an employee on a prospective basis. This means that employers may be ordered to pay for an employee's schooling before the employee enrolls. Prior to the 2016 changes to the WCA, an employee had to actually begin the instructional program before the DWD could order the employer to pay for it.

Also effective March 2, 2016, an employee who is enrolled in a covered instructional program is allowed to work for **up to 24 hours** per week without having these wages affect his or her TTD benefits. Any wages the employee earns for more than 24 hours of work per week will reduce the employee's weekly TTD payments. These two provisions had previously been in effect but had expired on April 30, 2014. The changes that are effective March 2, 2016, reinstated the provisions with no expiration date.

### **TOXIC OR HAZARDOUS EXPOSURE**

An employee may be eligible for **up to \$13,000** in workers' compensation benefits if he or she has a wage loss related to a condition caused by exposure to toxic or hazardous substances in the workplace.

### **BENEFITS DECREASES AND DENIALS**

An employee may lose his or her right to receive TTD benefits under limited circumstances, such as incarceration (when the employee is not available to work during the healing period) or certain cases of employee suspension or termination where the employee has allegedly committed a crime or when the employee has violated the employer's drug policy.

Effective March 2, 2016, an employer also may deny TTD benefits based on an employee's suspension or termination that is due to the employee's **misconduct** or **substantial fault**. These additions to TTD disqualifications are significant because the definitions of "misconduct" and "substantial fault" are relatively broad.

The WCA allows an employer to reduce an employee's workers' compensation benefits by **15 percent**, up to a maximum of \$15,000, if the employee's work-related injury was caused by the employee's failure to:

- Use safety devices that the employer provided, adequately maintained and enforced the use of by employees; or
- Obey any reasonable safety rule that the employer adopted, reasonably enforced and provided notice of to the employee.

Traditionally, this reduction in benefits also applied to cases of employee alcohol intoxication or the use of controlled substances. Effective March 2, 2016, however, an employee may lose his or her right to receive **all** workers' compensation benefits (except medical expenses) if:

- The employee violates the employer's policy concerning drug or alcohol use; and
- The violation is causal to the employee's injury.

### **MORE INFORMATION**

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

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