

# Coordination of Worker's Compensation Benefits

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## Temporary Total Disability (TTD)

- These are weekly benefits paid to an employee when the employee is: 1) totally disabled from working and 2) when that disability is temporary in nature.
- The first weekly installment of TTD benefits is due 14 days after the disability begins.

## Example of TTD

- An employee slips in some spilled oil, falls and breaks her wrist. With her broken wrist, the employee cannot perform her regular job or any other job that her employer has available. Accordingly, she is totally disabled. In addition, although her disability is total, it is temporary in nature because her wrist will heal. For the time that the employee cannot work because her broken wrist is healing, she is entitled to TTD benefits because she is (1) totally disabled, and (2) her condition is temporary in nature.

## TTD Rates

Date of Injury	Maximum Average Weekly Wage	Maximum TTD Benefit
7/1/07 to 6/30/08	\$930.00	\$620.00
7/1/08 to 6/30/09	\$954.00	\$636.00
7/1/09 and after	\$975.00	\$650.00

TTD rates are  $66 \frac{2}{3}$  percent of the employee's average weekly wage. AWW is calculated as total pay during the 52 weeks prior to the date of the accident divided by 52.

## Permanent Partial Impairment

- PPI benefits are intended to compensate injured employees for any permanent bodily loss or loss of use that they sustain as a result of a workplace injury.
- PPI benefits have nothing to do with an employee's ability to do his or her job. The impairment rating expresses solely the doctor's judgment concerning the employee's loss of bodily use or function.
- The percentage of impairment as assessed by the physician is translated into degrees which have assigned statutory values.

## Degrees of Permanent Partial Impairment

Type of Loss	Degrees	Type of Loss	Degrees
Hand below the elbow	40	Ring (third) finger	6
Arm above the elbow	50	Little finger	4
Foot below the knee	35	Big toe	12
Leg above the knee	45	Second toe	6
Loss of one eye	35	Third toe	4
Loss of hearing (one ear)	15	Fourth toe	3
Loss of hearing (both ears)	40	Little toe	2
Body or whole person	100	Loss of one testicle	10
Thumb	12	Loss of both testicles	30
Index (first) finger	8		
Middle (second) finger	7		

## Value of Each Degree of Impairment\*

7/1/2008 – 6/30/2009

Degrees	Per Degree
1 to 10	\$1,365
11 to 35	\$1,570
36 to 50	\$2,525
51 to 100	\$3,200

7/1/2009 – 6/30/2010

Degrees	Per Degree
1 to 10	\$1,380
11 to 35	\$1,585
36 to 50	\$2,600
51 to 100	\$3,300

7/1/2010 - after

Degrees	Per Degree
1 to 10	\$1,400
11 to 35	\$1,600
36 to 50	\$2,700
51 to 100	\$3,500

### EXAMPLE

Injury date: 8/15/2010

25 degrees of impairment

10 x \$1,400 = \$14,000

15 x \$1,600 = \$24,000

TOTAL                \$38,000

\*The amount of PPI is doubled if there is an amputation.

## Allocation of PPI benefits

- If the employee's average weekly wage was greater than \$975.00 per week, his weekly benefit rate is \$650.00 per week. The PPI benefits would be allocated to a period of approximately (58) weeks after the date of the accident.
- $\$38,000 \div \$650.00$  (AWW) = 58.46 weeks
- Allocation is important to determine time limitation on re-opening a claim (2 years from last date for which compensation was paid).

## Permanent Total Disability

- Total and permanent disability does not mean that an employee simply cannot return to his or her pre-injury job. To qualify for total and permanent disability, the employee must be unable to perform any gainful employment given claimant's functional capacity, education and work experience.
- In cases of total and permanent disability, worker's compensation provides 500 weeks of benefits at the TTD rate.

## Permanent Total Disability

- In the case of a work-related death, the employee's presumptive dependents or dependents in fact are entitled to 500 weeks of worker's compensation benefits at the TTD level.
- Second Injury Fund benefits are available for life at claimant's TTD rate after the expiration of PTB benefits.

## Non-WC Medical/Disability Benefits

- Group medical and short term and long term disability benefits are often provided through an insurance policy provided by employer.
- Social Security Disability (SSD) benefits are available to individuals with permanent total disability.
- Medicare benefits are available 24 months after entitlement to SSD.
- Medicaid benefits are available for individuals with limited income and assets.

## Coordination of Benefits

- **ERISA liens**
  - Employer health insurance plans are usually covered by ERISA (Employees Retirement Income Security Act of 1974). These plans usually have a lien for reimbursement against WC settlements.
- **Medicaid and Medicare liens**
  - Medicare has a lien for conditional payments.
  - Medicaid has a payment lien (potentially subject to proportional reduction based on uncollectability of full value of WC claim)

## Coordination of Benefits

- **Social Security Disability**

- When an entitled SSD beneficiary is also receiving workers' compensation, the law provides for a reduction in SSD benefits.
- The reduction is made in the SSD benefit when the total amount of the WC and SSD benefit payments exceed 80% of worker's "average current earnings" (ACE) before becoming disabled. (ACE is the highest income year in 5 years before date of disability.)

## Medicare Set-Asides

- Medicare Set-Asides (MSAs) require documentation showing the amount of money being "set aside" from a worker's compensation settlement which resolves issues of future medical care. Set-aside funds must be used for coverage of future medical expenses that Medicare would otherwise pay.
- Mandatory for claimants currently eligible for Medicare or if a settlement is greater than \$250,000 and claimant will be Medicare-eligible within 30 months of settlement.
- Medicare's interest must be considered in all WC settlements.

## Maximizing WC Recovery

- Calculate WC and non-WC benefits
- Calculate liens
- Win/Win Solutions
  - Lowest acceptable MSA
  - Compromise liens (private and governmental)
  - Compromise outstanding medicals