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Managing the Risk of Litigation in Mississippi

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Mississippi Workers' Compensation 2023 Quick Tips

Compensability

To be compensable, injuries must arise out of and occur in the course and scope of employment although current interpretations tend to blend the two tests. An injury can be compensable if the medical condition is contributed to, aggravated by, or accelerated by the employment in a significant manner.

Calculating Average Weekly Wage

An IW's Average Weekly Wage (AWW) is based on a 52-week period before the injury date. If IW worked less than 52 weeks before the injury, take the average of the weeks worked. If IW has worked less than 4 weeks, use a wage record of a similar employee.

Calculating Benefits

Disability benefits are based on two thirds of the Injured Worker's (IW) average weekly wage (referred to as IW's "compensation rate") subject to the minimums and maximums set forth in the chart below. The date of injury determines the applicable maximum and minimums for that claim.

Effective Date	Weekly Minimum	Weekly Maximum	Dollar Maximum	Mileage Rate
January 1, 2023	\$25.00	\$585.82	\$263,619.00	\$0.655 per mile
July 1, 2022	\$25.00	\$551.02	\$247,959.00	\$0.625 per mile
January 1, 2022	\$25.00	\$551.02	\$247,959.00	\$0.585 per mile
January 1, 2021	\$25.00	\$523.16	\$235,422.00	\$0.56 per mile
January 1, 2020	\$25.00	\$505.43	\$227,443.50	\$0.575 per mile

Temporary Total Disability (TTD)

TTD is paid until a release to return to work or maximum medical recovery.

- Waiting period is 5 days that disappears after 14 days lost time.
- Lost time is paid on an assumed 5-day work week (i.e. divide weekly compensation rate by 5 to get the daily rate.)
- Calculated as $2/3 \times$ AWW subject to weekly max.

Temporary Partial Disability (TPD)

TPD is paid at two-thirds of the difference in IW's pre-injury average weekly wage as compared to his/her partial wage-earning capacity following the injury.

- E.g., where IW is released to return to light duty work before maximum medical recovery but is making lower wages than before the injury.
- Weekly minimums do not apply to partial disability claims, but the same maximums are applicable.

Permanent Partial Disability (PPD) for Scheduled Members

- PPD is calculated separately from scheduled member injuries as opposed to the "body as a whole" cases (or those not listed in the schedule). As an example, 100% loss of an arm would be 200 weeks at IW's compensation rate. 10% PPD to the arm would be 20 weeks (200 x 10%) at the IW's compensation rate. The rating is the minimum amount payable, and an IW can get more than the impairment rating since the real issue is the industrial loss of use of the scheduled member.
- Industrial loss of use of a scheduled member is measured by the IW's ability to perform the substantial acts of his usual employment. If an IW cannot perform the substantial acts of his/her usual employment, 100% loss of the scheduled member is payable. See the below chart for calculating most scheduled member losses (MCA § 71-3-17(c)).

Arm	200 weeks	Eye	100 weeks	Second finger	30 weeks
Leg	175 weeks	Thumb	60 weeks	Third finger	20 weeks
Hand	150 weeks	First Finger	35 weeks	Fourth finger	15 weeks
Foot	125 weeks	Great toe	30 weeks	Toe other than great toe	10 weeks

“Body as a Whole” Cases

- For the “body as a whole” cases (or those cases not covered by the schedule), benefits are based on two thirds of the loss of wage-earning capacity paid out over 450 weeks. As an example, with an AWW of \$500 and a 15% loss of wage-earning capacity, multiply the \$500 AWW times the 15% rating (= \$75) times two-thirds (= \$50), multiplied by 450 weeks (= \$22,500).
- Remember that the real issue in PPD cases is based on the concept of lost earning capacity and one must always consider IW’s age, education, training, work experience, transferrable work skills, and post injury earnings and work history to evaluate the effect of the PPD rating on his ability to earn wages on the open labor market in order to determine the actual value of the PPD claim.

Permanent Total Disability (PTD)

- Permanent Total Disability (PTD) is loss of both arms, hands, legs, feet, eyes, or any combination and *in other cases as the facts appear*.
- A PTD case, representing total loss of wage-earning capacity, can come from any kind of injury.
- Benefits are not lifetime but are paid for a maximum of 450 weeks and at the applicable maximums in the chart on page 1.
- It is possible to have a PTD claim flow from a scheduled member injury when the injury, viewed from the perspective of the injured worker’s age, education, training, transferrable work skills, work experience, and geographical area where he/she lives, is unable to perform *any* reasonable employment.

Death Claims

Death Benefits are not lifetime but subject to the same 450 week and dollar maximums in the chart on the reverse side.

- Surviving spouses and minor children are *conclusively* presumed dependent. Children are paid to age 18 or up to age 23 if a full-time student or incapable of self-support due to mental or physical impairment.
 - Surviving Spouse: \$1,000 immediate lump sum payment and 35% of the decedent’s AWW.
 - Children: If surviving spouse exists, each child receives 10% of AWW, but increases to 15% if spouse dies or remarries; however, if there is no surviving spouse, then each child gets 25% of the decedent’s AWW.
 - Parents, siblings, and others: Any immediate family members who are dependent on the decedent can also get 15% of the decedent’s AWW but only if the spouse and children take less than 66 2/3% of the decedent’s AWW.
- All dependents combined collectively cannot receive more than a maximum of 66 2/3% of the decedent’s AWW.
- A funeral allowance benefit of \$5,000 is due.
- MWCC Second Injury Fund Payable to MWCC: \$500 if there are no death beneficiaries or \$300 if there are death beneficiaries.

Medical Benefits

- There is a MWCC fee schedule in effect for medical cost containment efforts. This fee schedule can be found online at <https://mwcc.ms.gov/#/medicalFeeSchedule>
- Medical benefits can be for the IW’s lifetime.
- Medical case management is permissible but not required. *Ex parte* (or one-sided) communications with Injured Worker’s (IW) treating physicians are not permitted in controverted claims.
- IW’s choice of physician is limited to acceptance of the physician tendered by the employer or choosing his own. Once the choice is made *in writing*, that chosen physician may refer IW to one physician in as many specialties as necessary but cannot make referrals to multiple physicians in the same specialty. The MWCC can allow a change of physician even after the choice has been made in writing; *however*, for injuries after 7-1-2012, being treated by a physician for 6 months, or undergoing surgery by a physician, makes the physician an IW’s physician choice.
- The Employer/Carrier can have IW examined by a physician of their choice (called Employer’s Medical Examination or EME). The procedure is to set up the appointment, give the IW and the MWCC notice in writing of the appointment, and prepay IW’s travel expense to the appointment. A copy of the report must be sent to the MWCC and the IW.
- Travel expenses to and from medical treatment are reimbursable at no minimum travel distance. The rate changes regularly and generally will follow the IRS published rate. Current rates can be found in the chart on the reverse side.

Statute of Limitations

There are two statute of limitations to remember and they are mutually exclusive:

- Where no compensation is paid (other than medical), an IW has two years from the date of injury to make a claim. The time bar applies to both indemnity and medical benefits.
- Where compensation benefits are being paid, IW has one year from the date the Form B-31 was properly filed with the MWCC to make further claim. Paying benefits after a B-31 is filed tolls the running of the statute and a new B-31 has to be filed to start the time running again. Once the year has run, the time bar applies to both indemnity and medical benefits.