

# Workers' Compensation Law Overview

## COMPENSATION

### Average Weekly Wage (AWW)

Average weekly wage is usually derived by taking the gross wages earned by the employee in the employment during the 52 weeks immediately prior to the injury and dividing by 52. If the employee did not work for more than seven consecutive days at any time during the 52 weeks, the earnings should be divided by the number of weeks remaining after those days have been deducted. Where employment prior to the injury is less than 52 weeks, the AWW is generally determined by dividing the earnings during the period worked by the number of weeks worked.

### Compensation Rate

The compensation rate is 66 and 2/3 percent of the AWW. The minimum compensation rate is \$30.00 per week.

### Maximum Compensation Rates

2015.....	\$920.00
2016.....	\$944.00
2017.....	\$978.00
2018.....	\$992.00
2019.....	\$1,028.00
2020.....	\$1,066.00
2021.....	\$1,102.00
2022.....	\$1,184.00
2023.....	\$1,254.00

### Permanent Partial Disability (PPD)

Permanent Partial Disability is payable at the employee's compensation rate based on the following schedule, which sets forth the number of weeks of compensation paid for a total 100 percent loss of the affected body part:

Thumb.....	75 weeks
First Finger.....	45 weeks
Second Finger.....	40 weeks
Third Finger.....	25 weeks
Fourth Finger.....	20 weeks
Great Toe.....	35 weeks
Any Other Toe.....	10 weeks
Hand.....	200 weeks
Arm.....	240 weeks
Foot.....	144 weeks
Leg.....	200 weeks
Eye.....	120 weeks
Back.....	300 weeks

### Disfigurement/Damage to Internal Organs

Where no compensation is payable as PPD, the Commission, in its discretion, may award

compensation up to but not to exceed the following:

1. Loss of or permanent injury to organ or part of body.....\$20,000/per organ
2. Serious head or facial disfigurement ..... \$20,000
3. Serious bodily disfigurement.....\$10,000

### North Carolina Industrial Commission Processing Fees

The North Carolina Industrial Commission charges Processing Fees for Compromise Settlement Agreements (CSAs, "clinchers"), Form 26A Agreements and Report of Mediator submissions. When clinchers and Form 26A's are submitted electronically, they must be accompanied by a Certification of Payment form showing that the payment has been issued.

The current Processing Fee schedule follows:  
 CSAs/Clinchers: \$400.00  
 Report of Mediator: \$200.00

### Temporary Total Disability (TTD)/Waiting Period

Temporary Total Disability benefits are paid weekly at the employee's compensation rate after the employee has missed seven days of work. Compensation is not due for the first seven days after the injury, unless the injury results in a disability lasting more than 21 days.

### Election of Benefits

An employee is NOT entitled to payment for PPD and TTD/TPD at the same time. The employee may elect to receive whichever form of compensation (TTD/TPD or PPD) provides the more favorable payout.

### Limitations on TTD and TPD:

- Claims arising on/after 6/24/11: 500 week cap on TTD benefits (subject to an application for "extended compensation" after 425 weeks from the date of first disability).
- Claims arising before 6/24/11: There is no cap on the duration of TTD benefits.
- Claims arising on/after 6/24/11: 500 week cap on TPD benefits (in no case shall the employee receive more than 500 weeks of TPD and any TTD payments made shall be deducted from the 500 weeks of TPD payments available).

- Claims arising before 6/24/11: 300 week cap on TPD (the 300 weeks begins to run from the date of injury).

### Communicating with Medical Providers

Employers are permitted to communicate with medical providers via the following methodology:

1. Obtain Records - Whether or not the claim is accepted, an employer is entitled to obtain the employee's medical records containing relevant medical information from the employee's health care providers without the express authorization of the employee. The employer must provide the employee with contemporaneous notice of the written request and, upon request, provide the employee with a copy of any records within 30 days of receipt.
2. Written Communication - An employer may write to the employee's authorized health care provider to obtain relevant medical information not contained in the employee's medical records without the express authorization of the employee. The employer must provide the employee with contemporaneous notice of the written communication and provide the employee with a copy of any response within 10 business days of receipt.
3. Oral Communication - An employer may call the employee's authorized health care provider to obtain relevant medical information not contained in the medical records or available in written communications only after giving notice and an opportunity to participate in the call to the employee. If the employee does not participate in the call, the employer must provide the employee with a summary of the oral communication within 10 business days of the call.

### Death Benefits

Burial expenses are to be provided, not to exceed \$10,000. Death benefits are payable to the employee's dependents and, if none, to the next of kin, at the compensation rate for 500 weeks from the date of death. When a minor is the recipient, the benefits should be paid for 500 weeks or until the minor turns 18, whichever period is longer. If the surviving spouse is physically or mentally disabled as of the date of

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the employee's death, death benefits are payable to the spouse for life or until remarriage.

## **INJURY BY ACCIDENT**

### **Injury by Accident Defined**

An accident involves the interruption of the work routine, which introduces unusual conditions likely to result in unexpected consequences. An injury that occurs while the employee is performing regular duties in the usual and customary manner is NOT compensable (except in the case of back injuries or hernias, as defined below).

### **Back Injuries Treated Differently in North Carolina: Specific Traumatic Incident**

There need not be an "accident" for a back injury to be compensable. It is sufficient if the back injury is the result of a "specific traumatic incident". Back injuries or other conditions that occur gradually over long periods of time are not the result of a specific traumatic incident and are NOT compensable. Events or incidents which occur contemporaneously, during a judicially cognizable time frame, and which result in a back injury or hernia, may constitute a specific traumatic incident.

### **Arising out of the Employment**

The accident must be the result of a risk involved in, or incident to the employment or the conditions under which the employment is required to be performed. There should be a

causal relationship between the accident and the employment, although the employment need not be the sole causative factor.

### **In the Course of the Employment**

Generally, this requirement refers to the time, place, and circumstances under which the injury occurs. The time includes reasonable periods before work begins, after work ends, and for rest and refreshment. The place includes the premises of the employer and other locations where the employee is situated at the direction of and for the benefit of the employer. The circumstances include actions of the employee which he is authorized to undertake and which are calculated to further the employer's business, directly or indirectly. (Note: Restroom or smoke breaks may be included.)

## **OCCUPATIONAL DISEASES**

### **Occupational Diseases Defined**

For diseases specifically listed in N.C. Gen. Stat. §97-53, only a causal connection to the employment must be proven. For all other conditions, the employee must establish all the following criteria for compensability:

- There must be a causal connection between the disease and the employment.
- The disease must not be an ordinary disease of life to which the public is equally exposed.

- The disease must be characteristic of persons engaged in a particular trade or occupation.

### **Last Injurious Exposure**

The employer (and its carrier at the time) in whose employment the employee was last injuriously exposed to the hazards of an occupational disease is wholly liable for the benefits owed.

### **Terminating Benefits**

**Form 28: Return To Work:** Employee has returned to work at same/greater wage and no restrictions.

**Form 28T: Notice of Termination of Compensation by Reason of Trial Return To Work:** Employee has returned to work at lesser wage and/or some restrictions.

**Form 24: Terminating Benefits: Application to Terminate or Suspend payment of Compensations:** Used to stop paying TTD for any reason other than a Return To Work, including unjustified refusal of suitable employment. Filing the Form 24 itself does not allow the employer/carrier to immediately stop benefits, but does trigger a telephonic hearing with the Industrial Commission, and a decision regarding whether or not benefits can be stopped (along with any credits for overpayments while the Form 24 was pending).

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## **IMPORTANT DEADLINES**

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**Employer's Report of Accident to the Industrial Commission (Form 19)**

Filed within five days from actual knowledge IF the injury causes absence from work for more than one day or the medical compensation is greater than \$4,000.

**Admission or Denial of Compensability of Claim (Forms 60, 61, or 63)**

Filed within 30 days of notice from the Commission of the filing of a claim.

**Report of Compensation & Medical Compensation Paid (Form 28B or Form 28C)**

Filed within 16 days from final payment of compensation.

**Response to Hearing Request (Form 33R)**

Filed within 45 days from receipt of Form 33.

**Designation of Mediator (Without Having One Appointed by the Industrial Commission)**

Filed within 55 days from the Industrial Commission's receipt of Form 33.

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