

## INDIANA WORKERS' COMPENSATION LAW

**OVERVIEW:** Claims for worker's compensation benefits are adjudicated by the Worker's Compensation Board of Indiana (the "Board"). An employee may bring a claim for benefits by filing an Application for Adjustment of Claim with the Board. The Board consists of a Chairperson and six Hearing Members, who are chosen by gubernatorial appointment. Each Hearing Member hears and decides cases within his or her geographic district located throughout the state. Generally, Hearing Members will not hear a claim until all of the issues to be decided at the hearing are ripe. To that end, the Board schedules periodic pretrial conferences for the purposes of allowing Hearing Members to monitor ongoing claims and to decide preliminary issues, such as discovery disputes, that may be addressed before the final hearing. After the hearing of a matter, the Hearing Member issues his or her Award, which may be appealed to the full Board by filing an Application for Review by Full Board within 30 days. An appeal of the full Board's decision can be taken to the Indiana Court of Appeals.



**COMPENSABLE INJURIES:** In order to obtain benefits, an employee (or a deceased employee's dependents) must show both that the employee sustained an injury or death by accident "arising out of" the employment and that the injury or death occurred "in the course of" employment. Generally speaking, an injury arises out of the employment when it is caused by the employment and an injury is considered to have occurred in the course of employment when the injury occurs during the period of employment. For purposes of determining whether an injury arose out of employment, Indiana courts have classified injuries into three categories: (1) injuries that are created by a work-related risk; (2) injuries that are created by a personal risk (for example, a pre-existing condition); and (3) neutral risks, which are neither work-related nor personal in nature. Generally, injuries sustained by work-related and neutral risks are compensable, while injuries caused by a risk personal to the employee are not.

**TEMPORARY DISABILITY BENEFITS:** An employee is entitled to temporary total disability ("TTD") benefits during the period that he or she is unable to work due to a compensable injury. Benefits begin on the 8th day of disability and the employee is only entitled to benefits for the first 7 days of his or her disability if the disability period lasts longer than 21 days. If an employee is able to continue working but is only able to work less hours or in a position that pays a lower wage, the employee may be entitled to temporary partial disability ("TPD") benefits.

**CALCULATION OF AVERAGE WEEKLY WAGE AND TEMPORARY TOTAL DISABILITY BENEFITS:** An employee's TTD rate is based on 66<sup>2/3</sup>% of the employee's average weekly wage ("AWW"). Normally, an employee's average weekly wage is calculated by dividing the employee's gross earnings in the year preceding the work-related injury

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by 52 weeks. In the event that the employee worked less than 52 weeks, the employee's gross earnings may be divided by the number of weeks that the employee worked if it is fair to the employer and employee. An employee's AWW is subject to minimum and maximum amounts, which amounts depend on the date in which the compensable injury occurred. For example, for injuries incurred between July 1, 2010 and June 30, 2014, the maximum AWW is \$975.00. Thus, an employee with gross earnings greater than \$975.00 per week would receive TTD benefits at the rate of \$650.00 per week (66<sup>2/3</sup>% of \$975.00).

**TERMINATION OF TEMPORARY TOTAL DISABILITY BENEFITS:** Generally, an employee is entitled to TTD benefits until the employee reaches maximum medical improvement ("MMI"), the employee is able to resume his or her employment or resumes employment of a similar kind or character, or the employee's temporary total disability becomes a temporary partial disability (and the employee's TTD benefits are reduced to TPD benefits). However, the Worker's Compensation Act provides for circumstances in which the employer may terminate or suspend TTD benefits, such as where the employee dies or refuses to undergo a medical examination.

Once an employee reaches MMI, an employer may terminate TTD benefits by sending the employee (or the employee's attorney if he or she has legal representation) a Report of Temporary Total Disability Termination (State Form 38911). The employee then has 7 days after receipt of the State Form 38911 to object to the MMI determination and termination of TTD benefits by filing the State Form 38911 with the Worker's Compensation Board. If the parties cannot resolve the disagreement, the employee is entitled to an independent medical examination ("IME") at the employer's cost to determine whether the employee is at MMI.

**PERMANENT PARTIAL IMPAIRMENT BENEFITS:** Once an employee reaches MMI, the employer is obligated to furnish the employee with the assessment of a permanent partial impairment ("PPI") rating. Although many physicians convert PPI ratings for specific body parts to "whole body" ratings, the Worker's Compensation Board uses the PPI rating specific to a particular body part.

**CALCULATION OF PERMANENT PARTIAL IMPAIRMENT BENEFITS:** To determine the value of a PPI rating, the PPI rating is multiplied by the number of degrees assigned to the body part by the Worker's Compensation Act. See table on next page of Degrees by Body Part:

Degrees by Body Part	Number of Degrees
Thumb	12
Index finger	8
Middle finger	7
Ring finger	6
Little finger	4
Hand below the elbow	40
Arm above elbow (includes elbow injuries)	50
Big toe	12
Second toe	6
Third toe	4
Fourth toe	3
Fifth toe	2
Foot below knee	35
Leg above knee (includes knee injuries)	45
Loss of eye or reduction in sight to 1/10th of normal vision	35
Hearing loss, one ear	15
Hearing loss, both ears	40
Loss of testicle	10
Loss of both testicles	30
Loss of both hands, both feet, sight in both eyes, or combination of the two	100
Disfigurement that impairs future usefulness or opportunities (unless compensation is payable elsewhere)	40
Shoulder	100
Back	100
Hip	100

For example, a 10% PPI rating to the elbow is multiplied by 50 degrees (.10 x 50) and equals 5 degrees. These 5 degrees are then multiplied by the dollar value assigned to the number of degrees in the chart below. In this example, if the elbow injury occurred between July 1, 2010 and June 30, 2014, the value of the PPI rating would be \$7,000.00 (5 degrees x \$1,400.00). If the elbow injury occurred between July 1, 2014 and June 30, 2015, the value of the PPI rating would be \$7,585.00 (5 degrees x \$1,517.00).

Value of degrees from July 1, 2010 to June 30, 2014		Value of degrees from July 1, 2014 to June 30, 2015	
Degrees 1 – 10	\$1,400.00	Degrees 1 - 10	\$1,517.00
Degrees 11 – 35	\$1,600.00	Degrees 11 – 35	\$1,717.00
Degrees 36 – 50	\$2,700.00	Degrees 36 – 50	\$2,862.00
Degrees 51 – 100	\$3,500.00	Degrees 51 - 100	\$3,687.00
Value of degrees from July 1, 2015 to June 30, 2016		Value of degrees from July 1, 2016 forward	
Degrees 1 – 10	\$1,633.00	Degrees 1 - 10	\$1,750.00
Degrees 11 – 35	\$1,835.00	Degrees 11 – 35	\$1,952.00
Degrees 36 – 50	\$3,024.00	Degrees 36 – 50	\$3,186.00
Degrees 51 - 100	\$3,873.00	Degrees 51 - 100	\$4,060.00

**PERMANENT TOTAL DISABILITY BENEFITS:** In some instances, an employee’s injury may be so severe that the Board will rule that the employee is unable to engage in reasonable employment for the remainder of his or her life and that the employee has sustained a permanent total disability. In making this determination, the Board will consider the employee’s injury, education, work experience, job skills, and the availability of suitable employment. An employee that is ruled to have a permanent total disability is entitled to 500 weeks of disability benefits at the same rate as the employee’s TTD benefits.

**LIMITATIONS OF ACTIONS:** Generally, the statute of limitations in a claim for worker’s compensation benefits is 2 years after the date of injury or, if compensation is paid (for example, the employee receives TTD benefits), 2 years after the date that compensation was last paid. For purposes of determining the statute of limitations, the payment of medical expenses does not count as the payment of compensation and thus does not extend the statute of limitations.

**DEFENSES:** It is the employee’s burden to demonstrate that he or she sustained a compensable injury. Available defenses include that the injury was caused by “horseplay” (where the horseplay was mutual), that the injury was self-inflicted, that the injury was caused by intoxication, and that the injury was caused by the employee’s “knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work.”

**SUBROGATION RIGHTS/LIEN REDUCTION:** A worker’s compensation insurer has a statutory right to recover a portion of its lien from a claimant’s recovery in a tort lawsuit. Indiana law prescribes a formula for mandatory reduction of the lien for the following: 1) the insurer’s share of the claimant’s attorney’s fees and litigation expenses and 2) a claimant’s inability to recover the full value of his/her case due to inadequate tortfeasor liability insurance/assets, the claimant’s comparative fault, non-party fault, and other considerations. Maximizing lien recovery often requires establishing the claimant has recovered the full “true value” his/her claim or a high percentage thereof. Skillful negotiation with a claimant’s counsel is critical to maximizing lien recovery. If a claimant and the lien holder cannot agree on the lien reduction, the claimant can request a hearing where each side presents its position to a judge, who then determines the reduced amount to which the lienholder is entitled.

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