

WEST VIRGINIA WORKERS' COMPENSATION

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Claims Decision Time Frames

Claim Decisions – non Occupational Pneumoconiosis.....15 working days
 Claim Decisions – Occupational Pneumoconiosis non-medical.....90 days
 Medical Decisions15 working days
 PPD Awards30 days after receipt of IME

Statutes of Limitation

File claim related to an injury6 months
 File claim related to an occupational disease3 years from the date of last exposure or the date the claimant knew or should have known that he/she suffered from the occupational disease, whichever is later.
 Reopening a claim5 years from the date on which the claim was closed for TTD benefits in which no PPD was awarded; or the date on which the initial PPD award was granted. For no-lost-time claims, the application must be received within 5 years from the date of injury.

Compensable "Injuries"

Personal injuries that occur in the course of and resulting from the employment. The injury must occur as a result of an isolated and fortuitous event. *West Virginia Code §23-4-1(b)*.

Compensable "Diseases"

A disease that occurs in the course of and resulting from the employment that is not the result of an isolated fortuitous event, but rather develops over a period of time due to exposure to a specific hazard or working condition. *West Virginia Code §23-4-1(f)*.

Medical Benefits

A claimant is entitled to care that is medically necessary or reasonably required to treat the work-related injury or disease. *West Virginia Code §23-4-3(a)*.

Request for medical treatment must be acted upon within 15 working days of the date of receipt. In order to satisfy this requirement some action must be taken within the 15-day period. Acted upon does not mean that the request must be ruled upon within 15 days.

Rule 20 (85 C.S.R. 20) sets forth the guidelines for treatment of different injuries and diseases. The treatment contained in Rule 20 is presumed to be medically reasonable. Treatment not contained in Rule 20 is presumed not to be medically reasonable.

In a claim where significant medical or any type of rehabilitation service has not been rendered for a period of five (5) years, no payment or request for additional payment shall be granted.

Average Weekly Wage

A claimant's average weekly wage is the higher of either the claimant's daily rate of pay on the date of injury or the weekly average derived from the best quarter of earnings out of the preceding four quarters.

Temporary Total Disability Benefits

Temporary total disability (TTD) benefits are limited to 104 weeks. *West Virginia Code §23-4-6(c)*.

The claimant must be disabled for more than three (3) days to qualify.

The claimant must be disabled for more than seven (7) days to receive TTD benefits for the first three (3) days of disability.

TTD benefits are calculated as 66 2/3% of the claimant's average weekly wage wherever earned. TTD benefits are not to exceed 100% of the state average weekly wage. The minimum TTD benefit is 33 1/3% of the state average weekly wage. *West Virginia Code §23-4-6(b)*.

Permanent Partial Disability Benefits

Permanent partial disability (PPD) benefits based upon whole body medical impairment under the AMA guidelines, Fourth Edition.

PPD benefits are paid in monthly installments or in a lump sum at the discretion of the carrier.

If the treating physician recommends a permanent partial disability award in excess of 15%, the carrier shall refer the claimant to a physician of its selection for an independent evaluation prior to the entry of a permanent disability award. *West Virginia Code §23-4-7a(c)(2)*.

West Virginia Code §23-4-6(f) contains scheduled awards.

Terminating Temporary Total Disability Benefits

Temporary total disability benefits may be terminated for the following reasons:

- The claimant is released to return to work
- The claimant reached maximum medical improvement
- The claimant returns to work
- When evidence justifies a finding that the claimant has engaged or is engaging in abuse, including, but not limited to, physical activities inconsistent with his/her workers' compensation injury.

Steps for terminating TTD benefits:

- The claimant must be given notice that their TTD benefits are suspended, and will be terminated unless the claimant produces evidence justifying continued benefits within a reasonable time (generally 30 days).
- If the claimant fails to submit sufficient evidence, a protestable decision closing the claim for TTD benefits should be issued. The decision must state that the claim is closed for TTD benefits, the reason for the closure, that the claimant has a right to request a permanent partial disability evaluation within five (5) years, and "protestable language."



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Temporary Partial Rehabilitation Benefits

If the claimant returns to employment as part of a rehabilitation plan, and the employee's average weekly wage is less than the average weekly wage earned by the claimant at the time of the injury, he/she shall receive temporary partial rehabilitation benefits calculated as seventy percent (70%) of the difference between the average weekly wage earnings at the time of the injury and the average weekly wage earnings earned at the new employment.

West Virginia Code §23-4-9(d)

Temporary partial rehabilitation benefits shall only be payable when the claimant is receiving vocational rehabilitation services in accordance with a rehabilitation plan.

Guidelines for vocational rehabilitation are contained in Rule 15 (85 C.S.R. 15).

Non-Awarded Partial Disability Benefits

Non-awarded partial disability (NAP) benefits are payable when the claimant has not returned to work and the evidence indicates that permanent disability exists. NAP benefits are paid until the claimant returns to work or a PPD award is entered. NAP benefits are paid at the same rate as PPD benefits. The carrier is entitled to a credit against the PPD benefits awarded for NAP benefits previously paid. In the event that the NAP benefits paid exceed the granted PPD award, the claimant is entitled to no further benefits. The overpayment may be recovered by withholding future disability benefits.

West Virginia Code §23-4-7a

Scheduled Injuries

<u>Bodily Loss</u>	<u>Percent Disability</u>
Great toe.....	10%
Other toe.....	4%
All toes25%
Foot35%
Leg45%
Little or fourth finger.....	5%
Ring or third finger.....	5%
Middle or second finger.....	7%
Index or first finger.....	10%
Thumb20%
Hand50%
Arm60%
Eye (total loss of sight).....	.33%
Hearing (total loss in one ear).....	.22.5%
Hearing (total loss in both ears).....	.55%

West Virginia Code §23-4-6(f).

Mileage

As of July 20, 2011 – 47.0 cents per mile

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West Virginia Offices of the Insurance Commissioner:

<http://www.wvinsurance.gov>

Contents of Orders

Whenever a decision is made an Order must be issued. Decisions requiring orders include those denying or approving requested medical treatment.

Orders must be in writing, dated, and state the issue being decided.

Orders must state the decision being made and the basis for the decision.

Any order pronouncing a final decision must give notice to the parties of the time allowed for filing a protest ("protest language").

An example of an appropriate protestable clause is as follows:

Any party to this claim may protest this decision within 60 days from the date of receipt of this order. The protesting party must send a written protest, along with a copy of this decision, to the Office of Judges, P.O. Box 2233, Charleston, WV 25328, and must serve a copy of any protest upon all parties to this claim.

Workers' Compensation Attorney Team

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Questions

If you have any questions regarding any of the information contained in this document, or any other issues concerning West Virginia workers' compensation law, please contact Barney Mecom in the Christiansburg Virginia office at:

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