



**INDIANA AFL-CIO
GUIDE TO
WORKER'S COMPENSATION**

Revised April 2, 2000

WHY THIS BOOKLET?

The INDIANA AFL-CIO GUIDE TO WORKER'S COMPENSATION was developed as a helpful reference for Indiana employees and will be updated whenever the Indiana General Assembly makes significant changes in the Worker's Compensation Act and the Occupational Diseases Act. Areas highlighted in yellow indicate the most current changes in the Act. It also calls attention to important information concerning reimbursement of lost time wages, employees working through a temporary employment agency and important telephone numbers.

If you have questions or would like additional information about the impact of any changes with regard to worker's compensation issues, please contact the Board directly at:

WORKER'S COMPENSATION BOARD OF INDIANA
Indiana Government Center South
402 West Washington Street, Room W-196
Indianapolis, Indiana 46204-2753
(800) 824-2667 or (317) 232-3808.

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BACKGROUND

The Indiana Worker's Compensation Act and the Indiana Occupational Diseases Act were passed to relieve the hardship caused by occupational injury and disease. An employee who is injured while working receives a percentage of his average weekly wage while disabled, compensation for permanent loss of function, and the payment of reasonable medical expenses. However, the employee is unable to collect money for pain and suffering. If the injury is fatal, benefits are paid to the employee's dependents.

Before the Workers Compensation Act was enacted, an employee injured while working could not recover if:

- (1) His injury was caused by his own, or a fellow employee's, negligence;
- (2) He was injured as a result of certain risks and hazards associated with his job, it being presumed that he had assumed the risks of the employment;
- (3) He was disabled or died from an occupational disease.

Throughout this booklet, the Worker's Compensation Act and the Indiana Worker's Occupational Diseases Act will be referred to as the "act".

Citations are to the Indiana Code. Copies of these Acts may be obtained by writing or telephoning:

Lexis Law Publishing
PO Box 7587
Charlottesville, VA 22906
(800) 562-1197

OVERVIEW

Like most states, Indiana has a private insurance worker's compensation system, which means that employers must carry an insurance policy in order to cover liability under the worker's compensation law. A small number of employers are "self-insured," meaning they have received special approval from the Worker's Compensation Board to pay claims out of their own funds.

The Worker's Compensation Board has exclusive jurisdiction to hear claims for personal injury or death by accident arising out of and in the course of employment. Worker's compensation provides limited benefits to injured workers in the form of medical treatment, compensation for lost wages and for permanent impairment. If an employee dies in a workplace accident, the employee's dependents may become eligible to collect death benefits.

When a compensable injury occurs, the insurance company for the employer will handle the claim. The employee should receive immediate medical treatment if necessary. If the employee is unable to work because of the injury, he or she is considered disabled and may receive limited wage-replacement compensation. The employee may be placed on light duty or on a reduced schedule, in which case partial disability payments may be provided. When the physician determines that no additional treatment is beneficial, the employee may be examined for any permanent impairment. The employee will be compensated for any permanent impairment according to a statutory schedule (see When an Injury Occurs).

Claims will be handled by the employer (if self-insured) or its worker's compensation insurance carrier. If disputes arise, both the employer and the employee have the right to a hearing before a worker's compensation hearing member.

OMBUDSMAN DIVISION

The Ombudsmen are the agency's "trouble-shooters". These services are available to injured worker's, insurance carriers, employers and attorneys. Their primary role is to facilitate resolutions to formal and informal disputes. The Ombudsmen are also available to mediate cases when appropriate to try to resolve issues in formal dispute. Attorneys for both parties are part of this mediation effort.

The Ombudsman do not have statutory authority to direct carriers or employers to take different actions on your behalf, however, they have been successful in resolving many types of disputes. If they advise you to seek legal counsel, typically, that is because your situation is outside their authority. The Ombudsmen are required to be impartial. But this should not discourage you from contacting them if you have any concerns about your claim.

Any question, problem or concern should be directed to the Ombudsman Division. They can be reached toll free, at 800/824-2667.

COVERAGE

+ I.C. 22-3-2-2

Indiana employers, must maintain worker's compensation insurance to pay compensation and medical expenses for injury or death occurring by accident arising out of and in the course of employment.

+ Contract of Employment –

I.C. 22-3-2-4

The provisions of the act apply to Indiana contracts of employment which contemplate at least partial performance in Indiana. An injury or death occurring within Indiana or in another state or a foreign country is covered if it arises out of an Indiana employment contract.

+ Exclusive Remedy –

I.C. 22-3-2-6

The rights and remedies granted by the act are exclusive. The employee cannot recover in civil court for occupational injuries and diseases within the jurisdiction of the Worker's Compensation Board regardless of the employer's negligence.

I.C. 22-3-4-12.1

The Worker's Compensation Board has the sole jurisdiction over claims that the employer/insurer acted with a lack of diligence, acted in bad faith, or committed an independent tort in adjusting or settling the claim. The Board can impose a maximum fine of \$20,000 and a minimum of \$500 for these acts. **Effective July 1, 2000: The maximum award for lack of diligence, bad faith, or an independent tort is \$20,000 for the duration of that claim regardless of the number times the employer/insurer commits these acts or the harm caused.**

+ Affirmative Defenses –

I.C. 22-3-2-8

Generally, an employer may deny an otherwise compensable claim only when the employer can prove that one of the following actions of the employee contributed to the cause of the injury:

- (1) knowingly self-inflicting the injury;
- (2) intoxication;
- (3) commission of an offense;
- (4) knowing failure to use a safety appliance;
- (5) knowing failure to obey a reasonable written rule posted in a conspicuous place;
- (6) knowing failure to perform a statutory duty.

You should contact an attorney if your claim is denied for these reasons.

+ **Excluded Employees –**

I.C. 22-3-2-9

The act does not apply to farm/agricultural employees, household employees, or casual employees unless a written notice of the employer's election to accept the act is given to the employee and filed with the Worker's Compensation Board prior to an injury occurring. Those employees not falling within the jurisdiction of the Worker's Compensation Board may have other remedies available to them.

+ **Contracting and Subcontracting –**

I.C. 22-3-2-14

Any contract for services amounting to more than \$1,000, falls within the jurisdiction of the Worker's Compensation Act. If the contractor is an independent contractor, liability may be avoided by obtaining an Affidavit of Exemption from the Worker's Compensation Board. There is no minimum contract amount for contractors making agreements with subcontractors.

+ **Assignments and Attachments –**

I.C. 22-3-2-17

Benefits paid under the act are not subject to assignment or claims of creditors, except that child support may be ordered withheld from benefits in an amount up to 50 percent of the benefit.

+ **Insurance –**

I.C. 22-3-2-5

All employers, except government and banking institutions, which are required to be self-insured, are obligated to insure their liability for benefits pursuant to the act.

+ **Taxability**

Worker's Compensation benefits are not subject to state or federal income taxes.

DEFINITIONS

+ **Employer –**

I.C. 22-3-6-1 (a)

An individual, firm, association, corporation, receiver, trustee, or legal representative of a deceased person, using the services of another for pay, is an employer. This includes the state, all of its political divisions and all municipal corporations. The term "employer" specifically includes the employer's insurance carrier where applicable. The owner of a sole proprietorship or a partner in a partnership may elect to be included as an employee for worker's compensation coverage if actually engaged in the proprietorship or partnership business. The Board and workers compensation insurance company must be notified in writing of such an election. ***Effective July 1, 2000: The parent company of an employer and its other subsidiaries are considered to be the employer for purposes of the exclusive remedy. Also, a lessor of employees, as opposed to the lessee, is the employer by definition.***

Example:

If a temp agency sends an employee to work at GM, and that temp is injured while working, the employee could collect worker's compensation from the temp agency and still sue GM in civil court where the temp may win a large jury verdict.

+ **Employee –**

I.C. 22-3-6-1 (b)

Every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, is an employee.

+ **Occupational Disease –**

I.C. 22-3-7-10

A disease arising out of and in the course of the employment is an occupational disease.

+ **Dependents - I.C. 22-3-3-18**

There are three classes of dependents. In order of exclusive preference, they are: presumptive dependents, total dependents in fact, and partial dependents in fact.

NOTICE PROVISIONS

+ **What Employer Must Do**

I.C. 22-3-4-13

The employer must prepare a report of injury or claimed injury or disability due to occupational disease when an employee loses more than one day of work as the result of the injury or disease. The report of injury must be provided to the employer's insurer within seven (7) days after knowledge of the occurrence of an injury or disease resulting in the requisite amount of disability. The insurer must file the report with the Worker's Compensation Board within seven (7) days. Self-insurers must file the report directly with the Worker's Compensation Board within seven (7) days. The failure to timely file the report of injury may result in a \$50 penalty.

The employer must notify the employee and the Worker's Compensation Board regarding the denial of a claim within 29 days after the employer has knowledge of the claim. The Board upon request may allow an additional 30 days. A delay of more than 30 days may be approved upon the filing of a specific petition with the Board, which petition explains, among other things, the extraordinary circumstances which have prevented the making of a decision within the first 59 days. A failure to timely notify the employee may result in a \$50 penalty being assessed following notice and an opportunity for hearing.

+ **What Employee Must Do**

I.C. 22-3-3-1

The employee, or his dependents, must report any injury or death by accident (or disability or death by occupational disease) to the employer or its authorized representative. The employee must use the physician provided by the employer.

MEDICAL PROVISIONS

+ **I.C. 22-3-3-4**

After an injury, the employer is required to provide and pay the cost for an attending physician and in addition, pay for such surgical, hospital and nursing services and supplies as the attending physician deems necessary.

Effective July 1, 2000: The employer is required to reimburse employees for lost wages due to work missed while attending doctor's appointments and travel to and from the doctor's office. This reimbursement should equal the employee's actual average daily wage.

If the employee is requested or required by the employer to submit to treatment outside the county of employment, the employer must pay, in advance, statutory mileage, food and lodging.

The act does not allow an injured employee to choose the treating physician except where there is an emergency, the employer has failed to provide a physician, or for other good cause.

The employer and employee may enter into an agreement concerning medical providers. Such agreement must be approved by the Worker's Compensation Board and the parties will thereafter be bound to both the medical care furnished by and the findings of the medical provider or providers so chosen.

If an employee refuses to accept medical services provided by or on behalf of the employer, the employee's right to receive compensation may be suspended during the period of such refusal. An employee must be notified, in writing, of the consequences of refusing the tendered treatment before the benefits may be suspended. The dependents of an employee whose compensable injury or disease results in death must be notified, in writing, of the consequences of refusing to permit an autopsy.

Where an accident results in the amputation of an arm, hand, leg, or foot, or the removal of an eye, or the loss of natural teeth, or prosthodontics, the employer must furnish an artificial member or prosthodontics. The replacement due to medical necessity or ordinary wear and tear, but not abuse, of a prosthetic device is the obligation of the Second Injury Fund.

Where a compensable accident damages an artificial member, eyeglasses, prosthodontics, implant, or other medically prescribed device, the employer must repair or replace the same.

MEDICAL EXAMINATIONS

+ I.C. 22-3-3-6

An employee, if requested by the employer, or if ordered by the Worker's Compensation Board, must submit to an examination by a physician paid for by the employer. The employee has the right to have present at such an examination any physician provided and paid for by him. If the employee has no physician present, the physician making the examination must prepare a report concerning the examination for delivery to the employee or his representative. The report must include all the facts that are reported by the physician to the employer.

The employer should pay the reasonable cost of travel for the examination. Also, if the employee misses any work to attend the required examination, the employer should reimburse the employee based on the employee's average daily wage.

TEMPORARY TOTAL DISABILITY (TTD)

+ I.C. 22-3-3-7

Temporary total disability is that disability which temporarily prevents an employee from performing his regular job.

The first day of disability is normally the day following the accident, whether Saturday, Sunday, holiday, or day off. Where an employee does not become disabled immediately after the accident, the first day of disability is the first day the employee is unable to work. Compensation begins as of the eighth day of disability. An employee is paid for the first seven (7) days of disability only if the period of disability lasts for longer than 21 days.

The first payment of temporary total disability benefits is due 14 days after the disability begins. Not more than 15 days after the first payment is due, the employee must be provided with a compensation agreement (Form 1043) and all compensation due to that point. Compensation may be paid semi-monthly or monthly instead of weekly when the parties agree and the Worker's Compensation Board approves such agreement.

If an employee has returned to work, but needs to be absent from work again, temporary total disability benefits should be reinstated during such period or periods of disability, subject to the appropriate statute of limitation.

Compensation for temporary total disability is payable at the rate of 66 2/3 percent of an employee's average weekly wage, subject to the statutorily imposed maximum weekly wage in effect on the date of the injury.

<u>Injury Date</u>	Max. Avg. Wage Per Week	Max. Benefit Per Week
July 1, 1979 - June 30, 1980	195	130
July 1, 1980 - June 30, 1983	210	140
July 1, 1983 - June 30, 1984	234	156
July 1, 1984 - June 30, 1985	249	166
July 1, 1985 - June 30, 1986	267	178
July 1, 1986 - June 30, 1988	285	190
July 1, 1988 - June 30, 1989	384	256
July 1, 1989 - June 30, 1990	411	274
July 1, 1990 - June 30, 1991	441	294
July 1, 1991 - June 30, 1992	492	328
July 1, 1992 - June 30, 1993	540	360
July 1, 1993 - June 30, 1994	591	394
July 1, 1994 - June 30, 1997	642	428
July 1, 1997 - June 30, 1998	672	448
July 1, 1998 - June 30, 1999	702	468
July 1, 1999 - June 30, 2000	732	488
July 1, 2000 - June 30, 2001	762	508
July 1, 2001 - June 30, 2002	822	548
On or After July 1, 2002	882	588

The statutory minimum average weekly wage is \$75, which results in a minimum compensation benefit of \$50 per week. The minimum compensation benefit is the actual average weekly wage if the actual average weekly wage is less than \$50.

+ Computation of Average Weekly Wage –

I.C. 99-3-6-1 (a)

In most cases, the average weekly wage may be determined by totaling the employee's earnings, including overtime, tips, or in-kind payments for the 52 weeks immediately preceding the date of injury, and dividing that total by 52. Wages from other similar employment should be included in the Computation. If the employee lost seven (7) or more days during these 52 weeks, the days lost are to be deducted from the divisor in order to obtain an average weekly wage for the weeks actually worked. Where the 52-week method does not result in a reasonable average weekly wage, consideration may be given to wages paid to comparable employees.

Maximum Payment –

I.C. 22-3-3-2

The maximum payment for all compensation (temporary total disability, temporary partial disability, permanent total disability, and permanent partial impairment), exclusive of medical and burial expenses, is:

<u>Injury Date</u>	Maximum for All Compensation
July 1, 1979 - June 30, 1980	\$65,000
July 1, 1980 - June 30, 1983	70,000

July 1, 1983 - June 30, 1984	78,000
July 1, 1984 - June 30, 1985	83,000
July 1, 1985 - June 30, 1986	89,000
July 1, 1986 - June 30, 1988	95,000
July 1, 1988 - June 30, 1989	128,000
July 1, 1989 - June 30, 1990	137,000
July 1, 1990 - June 30, 1991	147,000
July 1, 1991 - June 30, 1992	164,000
July 1, 1992 - June 30, 1993	180,000
July 1, 1993 - June 30, 1994	197,000
July 1, 1994 - June 30, 1997	214,000
July 1, 1997 - June 30, 1998	224,000
July 1, 1998 - June 30, 1999	234,000
July 1, 1999 - June 30, 2000	244,000
July 1, 2000 - June 30, 2001	254,000
July 1, 2001 – June 30, 2002	274,000
On or After July 1, 2002	294,000

+ Credit Against Permanent Partial Impairment Benefit

For injuries before July 1, 1988, temporary total disability benefits paid after 52 weeks constitute a dollar-for-dollar credit against any permanent partial impairment benefit which may be payable.

Between July 1, 1988, and June 30, 1991, the credit does not apply until after 78 weeks of temporary total disability benefits have been paid.

For injuries occurring on or after July 1, 1991, the credit begins after 125 weeks of temporary total disability benefits have been paid.

BENEFIT TERMINATION/INDEPENDENT MEDICAL EXAMINATION (IME)

+ I.C. 22-3-3-7(c)

Once temporary total disability benefits have begun, they may be terminated without notice only where:

- (1) the employee has returned to any employment.
- (2) the employee has died.
- (3) the employee (having received prior written notification regarding the employer's right to suspend benefits) has refused to undergo a medical examination or has refused suitable restricted-duty employment.
- (4) the employee has received 500 weeks of benefits or the maximum amount of compensation for the claim
- (5) the employee is unable or unavailable to work for reasons unrelated to the compensable injury.

In all other cases, temporary total disability benefits may not be terminated unless the following procedure has been followed:

- (1) The employer must notify the employee by way of Form 38911 of its intent to terminate benefits as of a certain date.

- (2) If the employee disagrees, the 38911 should be marked appropriately and returned to the employer and the Worker's Compensation Board within seven (7) days after receiving Form 38911. If the Board and employer do not receive the employee's notice of disagreement, benefits may be terminated.
- (3) Upon receipt of the employee's notice of disagreement, an Ombudsman will contact the parties and attempt to resolve the dispute. The employer is required to pay an additional two weeks of TTD benefits pending a further determination or agreement regarding the disability issue.
- (4) If unable to resolve the dispute, an independent medical examination will be arranged. The medical examiner may be agreed upon by the parties or appointed by the Board and will be at the employer's expense.
- (5) If the independent medical examiner determines that the employee is no longer temporarily totally disabled, or is temporarily partially disabled but able to return to restricted work which the employer has available, or if the employee fails to appear for the examination, benefits may be terminated. If it is determined that the employee remains unable to work, benefits must be reinstated.
- (6) If either party disagrees with the opinion of the independent medical examiner, an Application for Adjustment of Claim may be filed with the Worker's Compensation Board.
- (7) If an overpayment of temporary total disability benefits has occurred, the amount overpaid must be repaid by the employee or may be deducted from the permanent partial impairment benefit.

PERMANENT PARTIAL IMPAIRMENT (PPI)

+ I.C. 22-3-3-10

PPI benefits are intended to compensate an injured person for the permanent loss of a body part or function. On or after July 1, 1991, the benefit payable for a permanent partial impairment award will be equal to the employee's temporary total disability rate and should be paid on a weekly basis. The benefit is paid based on the number of degrees that the physician assigns for the employee's permanent partial impairment. Some injuries are assigned an impairment value by statute. In either case, the higher degrees of impairment have higher dollar values per degree. The underlying degrees of impairment maintain the stated dollar value per degree.

PPI VALUES BY DATE OF INJURY

<u>Injury Date</u>	<u>Value Per</u>	
	<u>Degrees</u>	<u>Degree</u>
July 1, 1991 - June 30, 1992	1-35	\$500
	36-50	900
	Over 50	1,400
July 1, 1992 - June 30, 1993	1-20	\$500
	21-35	800
	36-50	1,300
	Over 50	1,700
July 1, 1993 - June 30, 1997	1-10	\$500
	11-20	700
	21-35	1,000
	36-50	1,400
	Over 50	1,700
July 1, 1997 - June 30, 1998	1-10	\$750
	11-35	1,000
	36-50	1,400
	Over 50	1,700
July 1, 1998 - June 30, 1999	1-10	\$750
	11-35	1,000
	36-50	1,400
	Over 50	1,700
July 1, 1999 - June 30, 2000	1-10	\$900
	11-35	1,100
	36-50	1,600
	Over 50	2,000
July 1, 2000 – June 30, 2001	1-10	\$1,100
	11-35	1,300
	36-50	2,000
	Over 50	2,500
On or After 7/1/2001	1-10	\$1,300
	11-35	1,500
	36-50	2,400
	Over 50	3,000

+ Scheduled Impairment Benefits I.C. 22-3-3-10

Permanent partial impairment benefits are in addition to benefits paid for temporary total disability, provided that such temporary total disability does not exceed 52, 78 or 125 weeks (see "Credit Against Permanent Partial Impairment Benefit," p. 15), and provided further that the total for all benefits does not exceed the statutory maximum payment (see "Maximum Payment," p. 15).

<u>Specific Loss of Use</u>	<u>Weeks</u>	<u>Degrees</u>
Arm Above Elbow	250	50
Hand Below Elbow joint	200	40
Thumb (1st digit)	60	12
Index Finger (2nd digit)	40	8
Second Finger (3 rd digit)	35	7
Third or Ring Finger (4th digit)	30	6

Fourth or Little Finger (5th digit)	20	4
Great Toe	60	12
Second Toe	30	6
Third Toe	20	4
Fourth Toe	15	3
Fifth Toe	10	2
Foot Below Knee	175	35
Leg Above Knee	225	45
Loss of one (1) eye or its reduction in sight to one-tenth normal vision	175	35
Permanent and total loss of hearing	200	40
Hearing loss one ear	75	15
Loss one testicle	50	10
Loss both testicles	150	30
Both hands, both feet, sight of both eyes or any two such losses in same accident	500	100

Injuries that result in less than a total loss of use are paid based upon the percentage of the impairment multiplied by the appropriate value per degree.

For permanent partial impairment after July 1, 1991, the following procedure is followed:

- (1) For multiple injuries or for injuries to the whole body, the number of degrees of impairment for the whole body is determined. The maximum number of degrees of impairment for the whole body is 100
- (2) For injuries to a scheduled body part, the number of degrees for a total loss of use is statutorily assigned (see "Loss of Use" above). Less than a total loss of a scheduled body part is determined by multiplying the percentage of the loss by the maximum number of degrees for that body part. For example, 10 percent of the hand below the elbow would be 10 percent x 40 degrees = 4 degrees.
- (3) The number of degrees is multiplied by the dollar value per degree, which results in a total dollar value to be paid for the permanent partial impairment.
- (4) The permanent partial impairment is to be paid weekly at the same weekly rate as temporary total disability benefits. The number of weeks to be paid is determined by dividing the permanent partial impairment dollar value by the temporary total disability rate per week. The weeks of permanent partial impairment benefit which have accrued (beginning as of the accident date) are paid in a lump sum. The remaining permanent partial impairment benefit, if any, is paid weekly until the permanent partial impairment has been fully paid.

+ Amputation Benefits –

I.C. 22-3-3-1 0

After July 1, 1997, the amputation of a thumb, finger, hand, arm, toe, foot, leg, phalange or parts thereof, will have a value which is equal to two times the compensation payable for a 100-percent loss of use for that body part. After July 1, 1999, the loss by enucleation of an eye, and the loss by amputation of a testicle was included in this doubling provision.

+ Other Losses

- Loss of not more than one (1) phalange of a thumb or toe shall be considered loss of one-half (1/2) of the entire thumb or toe.

- Loss of more than one (1) phalange of a thumb or toe shall be considered loss of the entire thumb or toe.

- Loss of not more than one (1) phalange of the finger shall be considered one-third (1/3) of the finger.

- Loss of one (1) phalange of the finger but not more than two (2) phalanges shall be considered one-half (1/2) of the finger

- Loss of more than two (2) phalanges of a finger shall be considered the loss of the entire finger.

+ Permanent Disfigurement

Permanent disfigurement which impairs the future employment opportunities of the employee is compensable at the discretion of the Worker's Compensation Board up to a maximum of 200 weeks or 40 degrees as long as the injury is not otherwise compensable as a permanent partial impairment under this section.

+ For information on permanent partial impairment compensation for injuries occurring prior to July 1, 1991, please contact the Worker's Compensation Board of Indiana.

VOCATIONAL REHABILITATION

+ I.C. 22-3-3-1

The act provides injured workers vocational rehabilitation services through the state's Department of Human Services Office of Vocational Rehabilitation. The worker's compensation insurance carrier or the self-insured employer must send a copy of the First Report of Injury to the Department of Human Services Office of Vocational Rehabilitation, where the temporary total disability is longer than 21 days, or prior to the passage of 21 days when it appears that the compensable injury may be of such a nature as to permanently prevent the injured employee from returning to his previous employment.

Upon receipt, the state office notifies the local office closest to the employee's address. The local office then can contact the injured employee regarding the services available.

The vocational rehabilitation office determines eligibility for services and provide those services. Job placement services will be provided upon completion of the vocational rehabilitation.

An injured employee's receipt of vocational rehabilitation services does not affect the payment or termination of worker's compensation benefits.

DEATH BENEFITS

+ I.C. 22-3-3-17

If death results from an accident arising out of and in the course of the employment, the dependents of the deceased employee receive a weekly benefit in an amount equal to the deceased employee's temporary total disability benefit for a maximum of 500 weeks. If there is more than one dependent, then the weekly benefit is shared equally among the dependents.

+ Dependents –

I.C. 22-3-3-1 8

Presumptive dependents are entitled to compensation to the exclusion of all others. If no presumptive dependent exists, other dependents in fact may have a right to benefits. A dependent's right to compensation will terminate upon marriage and is not restored by divorce.

+ **Exception to Termination by Remarriage –**

I.C. 22-3-3-19

A surviving spouse who remarries and is the only surviving dependent is entitled to receive a lump sum settlement equal to the smaller of 104 weeks of compensation or the remainder of the 500-week compensation period.

+ **Burial Benefit –**

I.C. 22-3-3-21

Where a compensable death occurs, the employer is liable for burial expenses not exceeding \$6,000. The burial benefit was \$4,000 prior to July 1, 1991.

MINORS

+ **I.C. 22-3-6-1**

Minors are covered by the Worker's Compensation Act. Minors between the ages of 16 and 17 who are working in violation of the child labor laws of Indiana are entitled to recover double the amount of compensation otherwise payable. The employer, not its insurer, is liable for the excess compensation.

SECOND INJURY FUND

+ **I.C. 22-3-3-13**

The Second Injury Fund provides additional benefits when an employee had lost, or lost the use of, one hand, one arm, one foot, one leg or one eye, and in a subsequent compensable accident becomes permanently and totally disabled.

The Second Injury Fund also provides weekly benefits for permanently totally disabled employees who have been paid their maximum award of 500 weeks and remain permanently totally disabled. Such benefits are awarded in one hundred fifty (150) week increments for so long as the employee remains unable to engage in reasonable employment. Benefits under the Second Injury Fund are terminated upon death.

The Second Injury Fund is also responsible for providing the repair or replacement of prosthetic devices previously provided to the employee pursuant to an award of the Worker's Compensation Board.

SUBROGATION/LIEN/THIRD PARTY SUIT

+ **I.C. 22-3-2-13**

Generally, the rights and remedies granted to an employee covered by the act for injuries or death constitute the exclusive remedy as to his employer. But, if someone caused an employee's injury or death other than the employer or a fellow employee, the injured employee or the employer may maintain a civil action against such other party. If the employee makes a third-party recovery, the employer is entitled to receive reimbursement equal to the compensation benefits and medical expenses paid. Out of any such reimbursement, however, the employer must pay a pro-rata share of litigation expenses and must pay the employee's attorney. **Effective July 1, 2000: The pro-rata share of expenses is based on those amounts actually repaid to the employer/insurer.** An employer or compensation insurance carrier may waive the right to reimbursement and thereby avoid payment of expenses or fees.

AGENCY ADMINISTRATION

+ I.C. 22-3-1 -1

The Worker's Compensation Act is administered by the Worker's Compensation Board of Indiana. The Board is a bipartisan body, composed of seven members, one of whom is designated as chairperson by the Governor.

A member of the Board hears a disputed claim for compensation in the county where the injury occurred or in an adjacent county.

+ I.C. 22-3-2-15

The Worker's Compensation Board must approve all settlements. Where the parties agree to compensation, the terms of the agreement must be set forth on forms approved by the Board and signed by the parties. Medical reports must be attached to permanent partial impairment agreements. If the injured employee does not have a medical report from a physician of his own choice, a waiver of the right to obtain such a report must also accompany the permanent partial impairment agreement.

COMPROMISE/SETTLEMENT

+ I.C. 22-3-2-15

Voluntary compromise agreements as to disputed claims for compensation are valid when approved by a member of the Worker's Compensation Board. An approved compromise settlement made during an employee's lifetime may bar future claims for compensation for the employee's death if the settlement compromised a dispute on any question or issue other than the extent of disability or the rate of compensation.

A minor dependent, by his parent or legal guardian, may enter into a compromise settlement, which, when approved by a member of the Board, is as valid as if the minor had been an adult.

LIMITATIONS ON FILING CLAIMS

+ Original Claims

A Worker's Compensation claim must be filed within 2 years of the occurrence of the accident or risk being barred. Claims for death must be filed within two (2) years after such death.

An Occupational Disease claim must be filed within 2 years of the date of disability. Claims for exposure to radiation must be filed within two (2) years from the date on which the employee had knowledge of the injury. Claims for exposure to asbestos must result in disablement within various periods of time, depending on the date of last exposure, up to thirty-five (35) years from the date of last exposure. Filing your claim outside of these time periods may result in denial.

Please note that any questions regarding whether your claim is affected by the statute of limitations should be directed to an attorney familiar with worker's compensation. The agency is unable to advise claimants on this issue.

+ Modification of Award –

I.C. 22-3-3-27

The Board has continuing jurisdiction and it may revise prior awards due to a change in condition, subject to varying statutes of limitation. Generally, the original award may be modified within two (2) years of the last date for which compensation was paid pursuant to that award. Awards for permanent partial impairment may be increased within one (1) year of the last date for which compensation was paid. Additional medical expenses may

be ordered as long as the application for Adjustment of Claim was filed within two years of the last date for which compensation was paid

FORMAL HEARING PROCESS

Though the Ombudsman Division offers many informal means for resolving disputes, any party can request a hearing before a member of the Worker's Compensation Board. In many cases, the Ombudsman Division will refer a claim to this process. However, for advice on whether to file an application, the Board recommends you consult an attorney. For help contacting an attorney, phone the Lawyer Referral Service of the Indiana Bar Association at (317) 269-2222 or the Ombudsmen Division.

In order to request a hearing before a Hearing Member, an Application for Adjustment of Claim (SF29109) should be filed with the Board. This hearing is similar to a civil trial. The employer/insurance company are required to be represented by an attorney. Also, there are rules regarding how the claim must be brought forward and how evidence must be presented. Employees of the Board can not help you prepare or present your case. For these reasons, we recommend, again, that you seek legal counsel.

In some cases, a pre-trial conference may be scheduled prior to a hearing. This provides both sides the opportunity to focus on the issues and prepare for the hearing. At the hearing, both sides present their case before a Hearing Member. Once the Hearing Member renders a decision, either party has 30 days to appeal to the Full Board. The Full Board consists of all 6 Hearing Members and the Chairman. Usually, this is not a time for presenting new or additional evidence, but for arguing questions of law. Once the Full Board renders its decision, either party has 30 days to appeal all or part of that decision to the Indiana Court of Appeals. A party wishing to further appeal its case must petition the Indiana Supreme Court. The Supreme Court then decides whether it will hear the case. If a decision is not appealed, or if all of the levels of appeal have been exhausted, the order becomes final and no further appeals are available.

APPEAL PROCESS

Full Board Review

+ I.C. 22-3-2-15

After a decision has been rendered by a single hearing member, an application for review may be made to the Full Worker's Compensation Board, provided that it is filed within thirty (30) days from the date of the single hearing member's decision. If an application for review is not timely filed, the Full Board has no authority to review the case and the previous decision becomes final.

Judicial Review/Court of Appeals

+ I.C. 22-3-4-8

An award by the Full Board may be appealed to the Court of Appeals of Indiana within thirty (30) days from the date of the Full Board award. When an employer appeals a decision of the Full Board, and, the award is affirmed by the Court of Appeals, the award is increased by 5 percent and may be increased by 10 percent. Further appeal may be taken to the Supreme Court of Indiana.

WHEN AN INJURY OCCURS

Once a work related injury occurs, your employer should be notified as soon as possible. However, failure to immediately report the injury does not automatically prevent you from successfully bringing a claim forward. Until the employer/insurance company is notified, no progress can be made on your claim.

Medical treatment should be provided by the employer/insurer as needed. **Except in emergency situations, you must allow your employer to select or authorize your treating physician.** Once treatment is authorized, the

employer/insurer is generally obligated to pay these expenses. **In most situations, payment for unauthorized treatment will be the employee's responsibility.** However, the employer's failure to provide treatment as required by the Act might relieve the employee of this responsibility. Any questions regarding obtaining medical care can be directed to the Ombudsman Division or an attorney familiar with worker's compensation. The claim determination should follow shortly after notice of the injury is given. The carrier has 29 days to determine compensability. Usually, the more time that passes between the date of injury and the date you tell your employer means more time before a decision on your claim can be made. The claims determination process can take up to 60 days unless extraordinary circumstances prevent the employer/insurer from making its decision. **That decision must be delivered to you in writing from either the employer or insurance carrier.** Do not accept a denial communicated in any other way.

If your claim is compensable, and you miss more than 7 days of work:

Compensation for missed work is due 14 days after the the disability begins. Sometimes, this process takes longer. The amount of compensation is 66 2/3% of your Average Weekly Wage (AWW), which is based on an average of your wage earnings for the same or similar work over the last 52 weeks. Both a minimum and a maximum AWW are outlined in the Act (See Temporary Total Disability p. 12).

The company will then send you an agreement to compensation for your signature which identifies your compensation amount for your Temporary Total Disability (TTD). This agreement must be approved by the Worker's Compensation Board.

Everything in worker's compensation is medically driven. Therefore, once the treating physician determines that you have reached Maximum Medical Improvement (MMI), which is also called "quiescence", you will be released from care either with or without restrictions.

At that time, you should be evaluated for your Permanent Partial Impairment (PPI) rating. You are separately compensated for this permanent loss. Another agreement is sent to you for your signature regarding this compensation. The Board also approves these forms. The amount of PPI is determined by statute. Amputations result in a doubling of compensation for the amputated body part. If you disagree with the PPI rating you have been given, you may pay for your own examination; however, there is no requirement that another PPI rating be considered. **The Ombudsman Division cannot resolve disputes over PPI ratings.**

IME Process:

If you disagree with the proposed termination of benefits because you believe you have not reached MMI, you may request an Independent Medical Examination (IME) from the Board. The Ombudsman Division appoints these IMEs. This termination will be sent to you on a Form 38911.

The IME doctor is not permitted to address your PPI rating. The doctor will evaluate whether additional treatment would be beneficial. If additional treatment is suggested, the doctor may recommend a treatment plan. The insurance company is advised of the doctor's recommendations. Although not required to provide the suggested treatment, the insurance company will often comply with the IME's findings. Either party may dispute these findings through the formal hearing process (See Formal Hearing Process).

An IME may not be appointed if: you are still receiving benefits; are non-compliant with your treatment; or are currently working in any type of employment.

COMMON QUESTIONS

Can I see my own doctor or do I have to use the insurance company's doctor?

In Indiana, the employer/insurer has the right to direct all care. That means, if a doctor is provided to you, that is the doctor you must use if you want your employer/insurer to pay the bill. This also means that the employer has the obligation under the Act to provide you with medical care. If you are having trouble getting your employer to provide you with medical care once you clearly indicate that you feel you have been injured on the job, contact the Ombudsman Division for further assistance.

What if my employer tells me my claim is denied?

Indiana employers are bound by the Worker's Compensation Act which requires them to report all injuries to their carrier once employees report the injuries to them. An employer's denial, without report to the insurance company, does not necessarily constitute an official claims denial. Except in the case of self-insured employers, a denial notice should come in writing from your employer's insurance carrier.

How long do I have to report my injury to my employer?

This is a difficult question to answer. For initial reports of injury, an employee generally has up to two years to file a claim for an injury. In other cases, where some compensation has been paid, the answer depends on specific facts of the case. We suggest seeking legal counsel when the statute of limitations is in question, however, there is no penalty for filing an application for adjustment of claim, which ensures that a dispute will be on file with the Board as of the date it is received.

When do my benefits start and how much will I get paid? Do I pay taxes on them?

When an employee's claim is determined to be compensable, and more than seven days are missed, compensation in the amount of 66 2/3% of your average weekly wage is payable beginning that eighth day. However, the statute allows 14 days for the insurance company to send the check to an injured worker. If the employee remains off work for 21 days, the first seven days become payable. There is a minimum amount payable of \$50/week, and the maximum amount of compensation is capped by statute, by date of injury.

Should I get a lawyer? How long before I get a hearing?

We suggest legal counsel for representation in the formal hearing process. Employers and their carriers are required by statute to be represented by an attorney. The factors that are usually involved in determining the amount of time needed to prepare for a hearing differ widely from case to case. Some of these factors include awaiting medical evidence, your current condition, and whether or not the legal process of discovery has been completed. The number of continuances is not limited as long as both parties are in agreement. We advise injured employees to work very closely with their attorneys to resolve these issues.

How much does my attorney get paid?

Attorney fees are established by the Worker's Compensation Board. An attorney can collect a minimum of \$100. If your application is successful, the attorney collects a fee based on your recovery. Normally, the most the attorney can receive is 20% of the first \$10,000; 15% of the next \$10,000, and 10% of any amount over \$20,000. The attorney may also collect up to 10% of any medical expenses he or she has assisted in getting paid by the defendant. Attorney's fees are always subject to the discretion of the Board. These fees may not include expenses required to pursue your case.

What if I am returned for light duty work and my employer does not accommodate the restrictions?

The absence of light duty work does not relieve the employer of the obligation to care for an injured employee until they have reached maximum medical improvement. TTD benefits should be reinstated if light duty work is unavailable. This situation is different if an employee has reached a permanent condition, and light duty work is unavailable. However, other avenues may be available and employees should consult an attorney familiar with employment law and the Worker's Compensation Act for advice.

What if I don't like my PPI rating?

It is possible to obtain another PPI rating from a doctor of the employee's choice at the employee's expense. An employee can then request the insurance company to consider that rating if it differs from their own; however, there is nothing in the statute that requires the insurance company to do so.

Does my employer have to hold my job open for me? Can I be fired while out on work comp?

The Worker's Compensation Act does not address these issues. Your employer does not have to hold your job for you. Indiana is an "at-will" state so, receiving worker's compensation does not prevent you from being fired. If you believe you have been wrongfully discharged, there may be other remedies available to you. An attorney with experience in employment law may be able to help provide information.

If I had to miss work to go receive any type of treatment for my worker's compensation claim, will I be paid for the money I lost?

Beginning July 1, 2000, your employer is required to reimburse you for the lost time wages. This reimbursement should be based on your average daily wage. So, while you might not be reimbursed for the exact amount, you should still receive some type of reimbursement. Depending on your average daily wage you could be reimbursed less – or more, than your actual wage loss.

I work for a temp agency and was sent to work as a temporary employee. I injured my arm and shoulder, what can I do?

Beginning July 1, 2000, you can pursue Worker's Compensation from the temp agency. At the same time, you may be able to bring a successful lawsuit in civil court against the owner of the company or property where you were injured. If you win the civil suit, you may have to pay back the work comp you received.

FORMS AND PROCEDURES

Most Worker's Compensation Board forms are normally prepared and filed by the worker's compensation insurance carrier. The employer or its administrator must prepare and file the forms if the employer is self-insured.

Applications for hearing (SF 29109) and Requests for Assistance from the Ombudsmen are completed by claimants. All forms are available on our web site (www.state.in.us/wkcomp).

If a "filed" marked copy of any form is desired, an extra copy of the form and a self-addressed, stamped envelope must be submitted to the Board.

IMPORTANT PHONE NUMBERS

IN Department of Insurance
(317) 232-2385

IN Department of Labor
(317) 232-2655

IN Equal Employment Opportunities Commission
(800) 669-3362

IOSHA
(317) 232-2693

Lawyer Referral Service
(317) 269-2222

Vocational Rehabilitation
(317) 232-1409

Worker's Compensation Board
(317) 232-3808
<http://www.state.in.us/wkcomp>

WCB Ombudsmen Division
(800) 824-2667
(219) 881-6706 Gary, IN

Workforce Development
(317) 232-2670

Indiana State AFL-CIO
(317) 632-9147
<http://www.inaflcio.org>

