



Workers' Compensation – Employee Benefits

Workers' compensation is a system of no-fault insurance that provides medical care and monetary benefits to employees (or their survivors) for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Louisiana Workers' Compensation Law (WCL) establishes the benefits available to employees who sustain work-related injuries and illnesses in the state. The Louisiana Office of Workers' Compensation Administration ([OWCA](#)), part of the Louisiana Workforce Commission (Commission), administers the workers' compensation system and calculates the specific benefits payable under the WCL.

This Employment Law Summary provides a general overview of the various types of benefits the OWCA may order an employer to pay if an employee is injured in the course and scope of employment. Employers are free to voluntarily pay additional benefits over and above these requirements.

MEDICAL EXPENSES

Employers must cover the cost of all medical care, services and treatment necessary to address compensable work-related injuries and diseases. This includes all necessary:

- Drugs, supplies, hospital care and services;
- Medical and surgical treatment;
- Any nonmedical treatment that is recognized as legal under Louisiana law; and
- Costs of repairing or replacing any prosthetic devices, such as eyeglasses, artificial limbs or hearing aids that are damaged or destroyed as a result of a work-related accident.

Treatment Cost Limits

The WCL limits how much an employer can pay for medical expenses and requires treating health care providers to keep their charges within these limits. The maximum amounts a provider may bill an employer are listed in a [reimbursement schedule](#) published by the OWCA each year. These limits apply even if an employee receives treatment outside of Louisiana.

In addition, health care providers must obtain consent from both the injured employee and his or her employer before administering any nonemergency diagnostic testing or treatment that will cost more than \$750. Employers that unreasonably withhold their consent for these charges may be required to pay attorney fees and any additional expenses the injured employee may incur as a result of the unreasonable refusal.

Although an employer's prior consent is never required for emergency treatment expenses, medical providers have the burden of proving that any charge above \$750 for which they do not request prior consent is for treatment that was immediately necessary to address the effects of an employee's work-related injury.

Choice of Treating Physician

Injured employees have the right to select one treating physician, in any field or specialty, to provide medical care related to a work-related injury. An employee's medical provider for emergency care does not count as a treating physician selection.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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After making an initial treating physician choice, employees must obtain consent from the employer (or its workers' compensation insurance carrier) before changing to another treating physician within the same field or specialty.

Employees are not, however, required to obtain prior approval if they change to a treating physician in another field or specialty.

Travel Expenses

Employers must reimburse injured employees for all reasonable and necessary travel expenses they incur to receive medical treatment, services or supplies related to work-related injuries. If an employee uses his or her own vehicle, the reimbursement amount is the mileage rate in effect for state employees at the time the employee incurred the expense.

VOCATIONAL REHABILITATION

If a work-related injury results in an employee's inability to earn the same or higher wages as he or she earned prior to the injury, the employer may be required to provide rehabilitation services through a licensed professional vocational rehabilitation counselor who is approved by the OWCA.

The goal of vocational rehabilitation is to return a disabled employee to work, with a minimum of retraining, as soon as possible after an injury occurs. Employers (or their insurance carriers) are responsible for selecting a licensed counselor to evaluate and assist a disabled employee with job placement or vocational training. Employers must also help choose, and cover the expenses associated with achieving, the most appropriate vocational goal for a disabled employee. The goal options, in order of priority level under the WCL, are:

1. Return to the same position;
2. Return to a modified position;
3. Return to a related occupation suited to the claimant's education and marketable skills;
4. On-the-job training;
5. Short-term retraining program (up to 26 weeks);
6. Long-term retraining program (up to 52 weeks); and
7. Self-employment.

MONETARY COMPENSATION

When an employee is unable to work or sustains a permanent physical impairment as a result of a work-related injury, he or she may be entitled to receive monetary payments as compensation for his or her lost wages or physical abilities. An employee's surviving spouse and other dependents may also be entitled to compensation for the loss of support if a work-related injury results in the employee's death.

Although most monetary benefits are payable in weekly increments, the WCL includes specific requirements for each of the various types available, all of which are described later in this document. Regardless of the benefit type that may be payable, workers' compensation benefits are not considered income for tax purposes, and they are immune from wage assignments and creditor claims, except in certain cases involving child or spousal support.

Waiting Period

In general, employees may not receive monetary benefits for the **first week** after the date of injury. However, if an employee is unable to earn wages for **two weeks or longer** after the date of injury, benefits for the first week may be payable retroactively.

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Average Weekly Wage (AWW)

Monetary benefit rates are usually calculated as percentages of the average weekly wage (AWW) the employee earned as of the date of injury. If an employee has an occupational disease, the date of injury for this purpose is the later of either:

- The employee's last day of work for the employer; or
- The last day the employer was exposed to the hazards that caused the occupational disease.

The precise method for calculating an employee's AWW generally depends on the employment arrangement and how the employer regularly pays the employee's wages. The table below provides an overview of some of the common AWW calculation methods.

Employee Regular Pay	AWW Calculation	
An hourly wage for 40 or more hours per week	The hourly wage amount	x The greater of either: <ul style="list-style-type: none"> • 40 hours; or • The average actual hours the employee worked in the four full weeks before the date of injury.
An hourly wage for part-time employment	The hourly wage amount	x The average number of hours the employee worked during the four full weeks before the date of injury.
A monthly salary	$\frac{\text{The monthly salary amount} \times 12 \text{ months}}{52 \text{ weeks}}$	
An annual salary	$\frac{\text{The annual salary amount}}{52 \text{ weeks}}$	

The WCL also includes specific calculations for determining the AWW of an employee who is:

- Paid on an hourly basis and was offered employment for 40 or more hours per week but regularly, and at his or her own discretion, worked less than 40 hours per week;
- Employed on a seasonal basis (less than 44 weeks per year);
- Employed a unit, piecework, commission or other basis; or
- Employed on a part-time basis and has one or more additional jobs with other employers.

Benefit Rate Limits

Most types of monetary workers' compensation benefits are subject to rate limitations that depend on the employee's date of injury. The OWCA establishes these limits, which become effective on Sept. 1 each year. The following table lists the most recent applicable rate limits.

Date of Injury	Weekly Maximum	Weekly Minimum*
Sept. 1, 2016 – Aug. 31, 2017	\$876.00	\$175.00
Sept. 1, 2015 – Aug. 31, 2016	\$865.31	\$173.00
Sept. 1, 2014 – Aug. 31, 2015	\$839.76	\$168.00

*The minimum does not apply in cases where it is higher than the employee's AWW. Under those circumstances, the employee's benefit rate is the same as his or her actual AWW.

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TEMPORARY TOTAL DISABILITY (TTD) BENEFITS

Weekly TTD benefits are **66 and two-thirds percent** of the AWW, subject to the limits described above.

An employee is entitled to receive weekly TTD benefits while he or she is recovering from a work-related injury and is physically unable to perform any type of work as a result. The recovery period (and eligibility for TTD benefits) ends when a physician makes a reasonably reliable determination that the employee:

- Is permanently disabled, impaired or disfigured; or
- No longer requires continued, regular treatment.

Eligibility for TTD benefits may also end sooner if an employee becomes physically able to earn wages in any type of employment.

However, an employee who is no longer in the recovery period but participating in a vocational retraining program may also be entitled to TTD benefits, for up to 52 weeks. In addition, TTD benefits may be payable for any period of time during which an injured employee cannot work because he or she is being trained in the use of artificial members or appliances made necessary by a work-related injury.

PERMANENT PARTIAL DISABILITY (PPD) BENEFITS

Weekly PPD benefits are **66 and two-thirds percent** of the AWW, subject to the maximum (but not the minimum) rate limits described above.

An employee may be entitled to receive weekly PPD benefits if a work-related injury results in:

- Serious and permanent physical disfigurement;
- Permanent hearing loss solely due to a single traumatic accident;
- Serious, permanent impairment of the usefulness of the physical function of the respiratory system, the gastrointestinal system or the genitourinary system within the thoracic or abdominal cavities;
- Inguinal hernia (under limited circumstances); or
- Permanent loss or impairment of one or more of the body parts that are listed in the WCL's PPD Schedule.

Scheduled PPD

For permanent loss or impairment of a body part that is listed in the WCL's PPD Schedule, the number of weeks for which an employee may receive PPD benefits depends on the affected body part and the extent of the impairment or loss.

The longest period of time listed in the PPD Schedule is **200 weeks**, for the complete loss of an arm. If an employee has only a partial loss to a listed body part, the number of weeks depends on the percentage of impairment, as determined by a physician based on the "American Medical Association's Guides to the Evaluation of Permanent Impairment." For example, if a physician determines that an employee sustained 40 percent impairment to an arm, the employee would be entitled to PPD for 80 weeks (40 percent of 200 weeks).

Unscheduled PPD

For permanent disabilities or impairments to body parts that are *not* listed in the PPD schedule, an employee may receive PPD benefits for **up to 100 weeks**, depending the injury and extent of impairment.

SUPPLEMENTAL EARNINGS BENEFITS

Supplemental earnings benefits are payable if a work-related injury results in an employee's physical inability to earn **at least 90 percent** of the wages he or she earned at the time of the injury. Unlike most other monetary benefits available under the WCL, supplemental earnings benefits are payable on a

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monthly basis. The monthly amount is **66 and two-thirds percent of the difference** between the employee's average monthly wage at time of the injury and his or her average monthly wage after the injury. For purposes of determining this amount:

- The **average monthly wage at the time of the injury** is calculated by multiplying the AWW by 52 and dividing the result by 12; and
- The **post-injury average monthly wage** is either:
 - The monthly amount the employee actually earned from any employment; or
 - The monthly amount the employee would have earned from any employment that he or she was physically able to perform and that was either:
 - Offered to the employee; or
 - Available to the employee in the community or reasonable geographic region of either the employee's residence or the place of employment where he or she was injured.

The resulting benefit rate may not exceed **4.3 times** the applicable weekly maximum limit described above.

An employee may receive supplemental earnings benefits for a maximum of **520 weeks**, but eligibility will terminate sooner if:

- Two years have passed since the date the employee became ineligible for TTD benefits and, during those two years, there was no period of at least 13 consecutive weeks during which he or she was entitled to supplemental earnings benefits; or
- The employee has received supplemental earnings benefits for at least 104 weeks and is retired.

PERMANENT TOTAL DISABILITY (PTD) BENEFITS

Weekly PTD benefits are **66 and two-thirds percent** of the AWW, subject to the limits described above, and are available only if an employee's work-related injury results in his or her:

- Permanent physical inability to engage in any type of work;
- Loss of both hands or both arms;
- Loss of both feet or both legs;
- Loss of both eyes;
- Loss of one hand and one foot;
- Loss of any of the two body parts listed above; or
- Paraplegia or quadriplegia.

In addition, the employee must be completely unable to earn any wages whatsoever in order to receive PTD benefits. Before awarding PTD benefits, the OWCA must consider whether there is a reasonable probability that, with appropriate training or education, the employee may be rehabilitated to the extent that he or she can achieve suitable gainful employment and, if so, whether it would be in the employee's best interest to undertake vocational rehabilitation.

An employee will be disqualified from receiving PTD benefits if:

- He or she actually earns any wages; or
- The employer presents conclusive proof that he or she still has a substantial capacity to earn wages.

Under either of these circumstances, an employee may instead be eligible for supplemental earnings benefits.

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LUMP-SUM PAYMENT FOR CERTAIN LOSSES

In addition to any other benefits payable under the WCL, an employee may be entitled to a lump-sum payment of **\$50,000**, which must be paid within one year after the date of the injury, if his or her work-related injury results in:

- Paraplegia;
- Quadriplegia;
- Third-degree burns to 40 percent or more of the total body surface;
- Amputation of both hands, arms, feet, legs or eyes;
- Amputation of one hand and one foot; or
- Amputation of any two of the body parts listed above.

DEATH BENEFITS

In any case in which a work-related injury causes an employee's death, the employer must pay **between \$7,500 and \$8,500** to cover the expenses of burial. If the actual expenses of burial are less than \$7,500, the difference must be paid to the deceased employee's estate.

In addition, if a work-related injury causes an employee's death within **two years** after the employee last received medical treatment for the injury, the employee's surviving dependents may be entitled to weekly payments as compensation for the loss of support.

In general, a deceased employee's surviving spouse is entitled to weekly payments if he or she was living with and actually dependent upon the deceased employee at the time of both the accident and the death. A biological or adopted child of a deceased employee is entitled to weekly payments if he or she was living with and actually dependent upon (or was the beneficiary of a valid child support order against) the deceased parent at the time of the injury and, at the time of the employee's death, is either:

- Under the age of 18 years;
- A full-time student who is under the age of 23 years; or
- Physically or mentally incapacitated from earning wages.

Other dependent survivors may receive weekly payments only if no surviving spouse or child is entitled to benefits. Similarly, survivors who were only partially dependent on a deceased employee may receive weekly payments only if there are no wholly dependent survivors.

The table below provides a general overview of how weekly death benefits are payable for wholly dependent survivors.

Survivor	Weekly Rate (based on AWW)	Payment Details
A spouse (alone)	32.5 percent	<ul style="list-style-type: none"> • The full amount is usually payable directly to the spouse, but no more than 32.5 percent of the AWW may be used for the spouse's sole benefit. • Payments for a surviving spouse's benefit continue until death or remarriage, with a lump-sum payment equal to two years' worth of benefits payable at the time of remarriage.
A spouse and one child	46.25 percent	
A spouse and two or more children	65 percent	
One child (no spouse, no other children)	32.5 percent	N/A
Two children (no spouse)	46.25 percent	<ul style="list-style-type: none"> • When there is more than one surviving dependent child, the full benefit amount is divided equally among them.

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Survivor	Weekly Rate (based on AWW)	Payment Details
Three or more children (no spouse)	65 percent	<ul style="list-style-type: none"> Any portion for a child who is under age 18 may be payable to the child's guardian. A child may be entitled to weekly payments for as long as he or she is physically or mentally incapacitated from earning wages; otherwise, payments cease once a child reaches age 18 (or 23 for a full-time student).
Other dependent survivors (No spouse nor any children)	Up to 65 percent	<ul style="list-style-type: none"> The actual AWW percentage and the method for dividing the payments depend on the number of surviving parents, siblings or other family members who were wholly dependent on the deceased employee. Regardless of whether weekly benefits are payable to any of those individuals, surviving children who were over age 18 (or 23 for full-time students) at the time of the employee's death may be entitled to share a \$75,000 lump-sum payment.

MORE INFORMATION

Contact Touchstone Consulting Group or visit the OWCA [website](#) for more information on workers' compensation laws in Louisiana.