

THE WORKERS GUIDE TO WORKERS' COMPENSATION IN NEW JERSEY

The following summary of workers compensation benefits presents a general outline of the New Jersey Workers' Compensation system. For further details, the worker should consult a licensed attorney in the State of New Jersey with expertise in workers' compensation cases.

Whenever a worker is injured during the course of his or her employment in New Jersey, no matter how the injury occurs¹, he or she may be entitled to receive up to three different benefits: 1) payment of 100% of the medical expenses necessary to "cure and relieve" the worker of the effects of the injury 2) a weekly payment of 70 % of the worker's gross weekly wage for each week that he or she is temporarily totally disabled, and 3) payment of a monetary award for any permanent disability that results from the injury.

These benefits are discussed in detail below

1. Payment of Medical Expenses

Medical treatment necessary to "cure and relieve" the worker of the effects of the injury is paid at 100% by the employer or its workers' compensation insurer. There is no deductible or co-payment and the worker is not required to pay any portion of these medical treatment expenses. However, under New Jersey law, the employer or its workers' compensation insurer has the absolute right to designate a physician to treat the worker. If the worker sees a physician who has not been authorized, neither the employer nor its insurer is required to pay that bill nor are they required to abide by the recommendations of that unauthorized physician.

2. Payment of Temporary Total Disability

After a one week waiting period, the worker is entitled to receive 70% of his or her gross weekly wage (i.e. the wage before any deductions are made) for each week of temporary total disability. In order to receive this benefit, the authorized physician must provide a disability note. This benefit has a maximum which increases from year to year. In order to calculate the amount of this benefit for workers whose wages fluctuate, an average of the 26 weeks worth of wages immediately before the date of injury is taken. This results in an average weekly wage. The benefit is then paid at 70% of that average weekly wage. The maximum rate for 2010 is \$794.00 per week. Two examples will explain how the maximum rate applies.

Example 1: the worker earns \$1500.00 per week in gross wages. Seventy percent equals \$1,050.00. This exceeds the maximum rate. Thus the worker will receive \$794.00 per week for each week of temporary total disability.

Example 2: the worker earns \$600.00 per week in gross wages. Seventy percent equals \$420.00. The worker will receive \$420.00 per week (not \$794.00) for each week of authorized temporary total disability.

¹ With three exceptions: self inflicted injury, intoxication and horseplay

This benefit is payable for a maximum of 400 weeks. If the benefits are not paid promptly, the Workers' Compensation Judge may assess a penalty of 25% of the unpaid amount.

3. Payment of either Partial Total Disability or Total Permanent Disability

If the injury results in a partial total disability (i.e. produces a loss of function in the affected body part) but the worker is able to continue working, he or she may be entitled to a payment for the extent of that disability. The amount of the payment depends upon many factors including the nature and extent of the injury and treatment, as well as the wage earned by the worker. The amounts of the benefits are set by the New Jersey Legislature, increase from year to year, and vary depending upon the part of the body which is injured. Note that there is no payment through the workers compensation system for "pain and suffering". The worker is simply entitled to a payment for that degree of permanent functional loss suffered as a result of the work related injury. However, see note below regarding "third party" claims.

By way of example, the following awards are typical in workers' compensation cases.

Knee injury: tear of the lateral meniscus resulting in arthroscopic surgery - 17 ½% - 20% of the leg. For a 2010 injury, this equals \$11,626 (17 ½%) - \$13,350 (20%).

Shoulder Injury: torn rotator cuff resulting in arthroscopic surgery - 17 ½% -20% of partial total disability. For a 2010 injury, this amounts to \$23,442 (17 ½%) - \$27,288 (20%).

Back Injury: sprain and strain resulting in the need for physical therapy - 5% - 10% of partial total disability. For a 2010 injury this equals \$6,360 (5%)-\$12,720(10%)

Hand Injury: carpal tunnel syndrome (one hand) resulting in surgery - 12 ½ % - 17 ½% of the hand. For a 2010 injury, this equals \$6,492 (12 1/2%)-\$9,089 (17 ½%).

In the event that the worker is rendered totally and permanently disabled as a result of the injury (i.e. is permanently unable to work at any job), he or she may be entitled to a weekly payment for life. The maximum weekly payment for an injury occurring in 2010 is \$794.00 per week. This amount can be affected by several factors such as whether or not social security disability benefits are received and the weekly wage earned by the worker.

To determine the extent of payment of these benefits, examinations with one or more physicians will occur. The physician will estimate the extent of disability in a report. In the typical case, the examining physician retained by the attorney for the worker will provide a higher disability estimate than the physician who has been retained by the insurance company for the employer. If agreement cannot be made as to the extent of disability, a Trial may be necessary. If this occurs, the Judge of Compensation will decide if partial total disability or total permanent disability has been established and will make the appropriate award.

If a voluntary settlement of the claim is made, the worker typically retains the right to reopen

the case, for additional medical treatment or in the event of an increase in disability, for two years from the date of last payment of the settlement.

Additional benefits are paid for amputations.

The law provides that it is unlawful for an employer to take action against an employee because he has made a claim for workers' compensation benefits.

Third Party Claims

Occasionally, an employee's injury is caused by a Third Party (i.e. someone who is neither the employee's employer nor a co-worker). In such a case, an additional claim, typically called a third party claim, may be made against that third party. By way of example: A milkman driving his employer's truck on a delivery is struck by another car and is injured. The worker has two potential claims: a workers compensation claim for the benefits described in this article as well as a third party claim against the other driver. Compensation for "pain and suffering" and for other elements of damage may be recovered in a third party claim.

Once again, this article provides a general discussion of the principles of workers' compensation law. A licensed attorney should be consulted for further details.

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