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Workers' Compensation – Employee Benefits

Workers' compensation laws in California regulate the determination and payment of benefits for employees injured in the course of employment. An injury qualifies for workers' compensation coverage if the damage or harm an employee suffers is the direct result of an accident or exposure to a hazardous environment in the normal course of his or her employment.

Workers' compensation benefits in California include coverage for medical expenses, death benefits, burial costs, wage replacement and supplemental job displacement. The [Division of Workers' Compensation](#) (DWC) of the California Department of Industrial Relations investigates and handles workers' compensation claims.

MEDICAL BENEFITS

Under California law, an employer must cover all reasonable and necessary treatment expenses for any employee who is injured in the normal course of employment. Injured workers can receive medical treatment, marriage and family therapy and any other healing service so long as the provider holds a valid and current license to practice in the state. California law regulates the extent of coverage and expense limits for these services.

Though an employer is required to provide medical benefits to its injured employees, the employer may choose the health care provider (or network of providers) that employees must visit to receive treatment. Employees who choose to receive treatment from an unauthorized health care provider may have to assume the costs of their treatment.

However, if an employer fails to provide necessary initial medical treatment for emergency situations, an employee may receive treatment from any health care provider at the employer's expense.

California law also offers injured employees [reimbursements](#) for reasonable transportation expenses, including mileage, parking, and tolls, if they have to travel to receive medical treatment.

Effective Jan. 1, 2013, all disputes regarding medical treatment plans must be submitted for Independent Medical Review (IMR) for a final and binding decision, based on approved medical treatment standards.

Medical Coverage

Medical benefits are intended to cure or relieve the effects of work-related injuries. An employee's medical benefits cover medical, surgical and hospital treatment. Medical coverage includes several additional services, such as nursing, medicines, medical and surgical supplies, crutches, apparatus, physical therapy, chiropractic services and acupuncture.

In addition, injured employees are entitled to receive interpretive services during examination and review procedures, at their employer's expense.

Marriage and Family Therapy Treatment

Reasonable treatment also includes the marriage and family therapy necessary to cure and relieve the effects of an injury. These services are available if a licensed physician

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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recommends it, the employer approves it and the employee receives it from a licensed practitioner.

If the employer refuses to provide this type of treatment, an injured employee may receive it on his or her own and seek an authorization from the DWC Appeals Board. Approval from the Appeals Board overrides an employer's refusal to provide this benefit and makes an employer responsible for the costs.

Other Healing Services

Medical benefits may also cover other services and treatments the employer and the employee may agree upon. Any agreements made between an employer and employee after an individual begins employment must be approved by the Department of Industrial Relations. A valid agreement must:

- Include a description of the form of healing practice and the facilities qualified to administer it;
- Avoid leading the employee to waive any rights or forfeit any benefits to which he or she is entitled under the law; and
- Allow either party to terminate the agreement with a seven-day notice to the other party.

Mandatory Examination

Employees receiving medical benefits must submit to mandatory medical examinations at reasonable intervals. The costs of the examination and the choice of physician remain with the employer with a physician of the employer's choosing. However, at the employee's request and expense, the employee's physician may be present at any examination.

With the exception of emergency situations, a proposed course of treatment is valid if it complies with commonly accepted medical standards, practices, parameters and protocols. On or after Jan. 1, 2013, disputes regarding medical treatment plans must be submitted to Independent Medical Review for a final and binding decision.

Employees may request a change of physician during the course of treatment. This request may be granted one time during the course of treatment. Employers have **five days** after receiving a request to grant the change.

Independent Medical Review (IMR)

Effective Jan. 1, 2013, IMR is limited to an examination of whether the proposed medical treatment is a **medical necessity**. A medical necessity is a treatment that is "reasonably required to cure or relieve the injured employee of the effects of his or her injury." This process must be used even when considering a dispute regarding spinal surgery, a dispute process that follows an entirely different medical dispute resolution track under the current system.

IMR physicians must render their decisions in writing **within 30 days** and must use plain and simple language so that a layperson may understand, as much as possible, the reasoning used for the decision.

The review process can be expedited to three days if it can be proved that "an imminent and serious threat to the health of the employee...including, but not limited to, serious pain, the potential loss of life, limb, or major bodily function, or the immediate and serious deterioration of the health of the employee" exists.

If the decision is reviewed by a panel of physicians, the majority's decision prevails. California law prohibits the participation of a physician who may have a financial interest in a particular case from participating in the case review.

DEATH AND BURIAL BENEFITS

Under California law, employers must pay **up to \$5,000** for injuries before Jan. 1, 2013, and **up to \$10,000** for injuries on or after Jan. 1, 2013, to cover an employee's actual funeral expenses plus additional benefits to the employee's surviving dependents.

The employee's surviving dependents are also entitled to receive compensation amounting to **two-thirds** of the employee's average weekly wage (AWW). The maximum total compensation payable over time to

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an employee's surviving dependents is **\$320,000** for injuries occurring after Jan. 1, 2006. The actual amount that surviving dependents receive is based on the number of dependents, the date of the injury and whether the dependents are full or partial dependents.

The DWC will take into consideration an individual's age and physical or mental incapacity when determining whether the individual is a full or a partial dependent.

WAGE REPLACEMENT BENEFITS

If an employee cannot return to work, he or she is entitled to receive wage replacement benefits (also called indemnity benefits) while he or she recovers from the injury. Under California law, wage replacement benefits may be paid directly to the employee or deposited in the employee's bank account. Wage replacement benefits include temporary total disability, temporary partial disability and permanent disability. California law also prescribes the waiting period and the minimum and maximum benefit amounts.

Temporary Total Disability (TTD)

An employee qualifies for TTD benefits when the injury prevents him or her to return to work. Usually, TTD benefits are **two-thirds of the AWW**, subject to the minimum and maximum benefits described below.

TTD benefits are available for **up to 104 weeks** in a five-year period, or until the date of maximum medical improvement (MMI), whichever comes earlier. The MMI date is the date in which a qualified health care provider determines that an injured employee has reached the maximum recovery possible from a work-related injury. If an employee is not expected to make a full recovery after the 104-week period or the MMI date, the treating health care provider must conduct a permanent impairment assessment.

Temporary Partial Disability (TPD)

In some cases, employees are able to return to work under strict medical labor restrictions. When employer accommodations of medical restrictions lead injured employees to perform tasks other than what they were hired to do, employees may find themselves working less hours or receiving wages at a lower rate.

In these situations, California law enables employees to receive TPD benefits. TPD benefits cover **two-thirds of the difference** between an employee's AWW wages and the employee's post-injury wages. TPD benefits are reduced for individuals receiving unemployment compensation and extended duration benefits.

TPD benefits are also available to employees for **up to 104 weeks**. If, after this period, the employee has not made a full recovery, future benefits will depend on a permanent impairment assessment.

Permanent Disability (PD)

PD benefits are available to injured employees who retain some sort of incapacity after their MMI date. To receive PD benefits, an employee must first obtain an impairment rating from the physician who treated the injury. The amount of benefits available to these employees depends on the employee's impairment rating, the physician's determination of apportionment and the permanent disability benefit schedule.

Under California law, PD can be total if the impairment rating is 100 percent or partial if the impairment rating is less than 100 percent. Individuals who have sustained serious injuries are presumed to have a 100 percent impairment rating. Serious injuries include:

- Loss of both eyes or loss of sight in both eyes;
- Loss of both hands or loss of the use of both hands;
- Practically total paralysis; or
- Brain damage leading to incurable mental incapacity or insanity.

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To receive PD benefits, an injured employee must also obtain an apportionment determination from his or her treating physician. The apportionment determination is a percentage number used to indicate how much of the injury was caused in the course of employment and how much was caused by other factors (prior and subsequent to the injury).

Effective Jan. 1, 2013, an employer is not obligated to provide wage replacement benefits for a worker with a permanent disability if:

- An award for permanent disability has not yet been issued; and
- The employer has offered the employee a position that pays at least 85 percent of his pre-injury average wages or the employee already works in a position that pays at least 100 percent of his pre-injury wages.

However, once an award for permanent disability is authorized, an injured employee is entitled to receive these benefits retroactively, from the date when the last benefit for temporary disability was paid or the date when the employee's disability became permanent and stationary, whichever is earlier.

Waiting Period

Injured employees are not eligible to receive workers' compensation benefits for the **first three days** of their disability. However, if the injury results in **more than 14 days** of disability, or if the employee is hospitalized to treat the injury, benefits for the first three days must be paid retroactively.

Minimum and Maximum Benefit Amounts

An employee's minimum wage replacement benefit for temporary disability and permanent total disability must be at least **\$161.19 per week**. The maximum weekly benefit amount for 2014 is **\$1,074.64**. An employee's actual benefit amount depends on the date of injury and the state average weekly wage (SAWW).

For injuries occurring on or after Jan. 1, 2006, permanent partial disability wage replacement benefits must be **at least \$195, but no more than \$405, per week**, depending on the worker's disability rating. For injuries on or after Jan. 1, 2013, benefits must be **between \$160 and \$260 per week**.

Average Weekly Wage (AWW)

The AWW for an employee working at least 30 hours per week for five or more working days is his or her rate of pay at the time of the injury. If the employee is working for two or more employers at the time of the injury, his or her AWW will be calculated using the aggregate wages the employee receives from all employers. However, the wages for employment, other than the one that caused the injury, may not exceed the hourly rate the employee receives at the time of injury.

When an employee works less than 30 hours per week, his or her AWW will be calculated using all sources of income.

SUPPLEMENTAL JOB DISPLACEMENT BENEFITS (SJDB)

Employees injured on or after Jan. 1, 2004, are eligible for a SJDB voucher if they have a permanent partial disability and do not return to work **within 60 days** of the end of their temporary disability. SJDB vouchers are non-transferable and may be used for education-related retraining or skill enhancement (or both) at state-approved schools.

SJDB vouchers vary depending on the disability's impairment rating, and for injuries on or after Jan. 1, 2013, they can have an aggregate value of **up to \$6,000**. The vouchers can be used to cover tuition, fees, books and other expenses required by the school. **Up to 10 percent** of these vouchers may be used for vocational or return-to-work counseling.

ADJUSTING BENEFIT AMOUNTS

A variety of factors, such as a change of circumstances, may alter an employee's recovery and need for benefits. California law provides guidance on how to adjust workers' compensation benefits in situations

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where the injured employee suffers both temporary and permanent disability, is injured because of misconduct or is a minor at the time of injury.

Permanent and Temporary Disability

If an injury causes an employee to sustain permanent and temporary disability, the employee is entitled to receive compensation for both types of disability.

Misconduct

An employee's benefits may be **reduced by half** if the appeals board determines that he or she was injured because of willful misconduct. This reduction applies to most injuries but excludes injuries:

- Caused by the employer's failure to comply with any provision of the law or any safety order of the Division of Occupational Safety and Health;
- Resulting in a permanent disability of at least 70 percent;
- Resulting in death; or
- Sustained when the employee was younger than 16 years of age.

An employee's benefits may be **increased by half** when the employee is injured because of the willful misconduct of the employer or his managing representative. "Employer" in this context includes members of a partnership, managing representatives or officers, superintendents and corporate executives.

To prove that an injury is the result of willful misconduct, a party must show:

- The specific manner in which an order was violated;
- That the violation of the order was the immediate cause of the employee's injury; and either
 - That the violating party knew about the order; or
 - That the conditions leading to injury were obvious, created a probability of serious injury and that the failure to correct the condition constituted a reckless disregard for the probable consequences.

Benefits for Injured Minors

Employees under the age of 18 who sustain permanent injuries are entitled to receive benefits based on an AWW that represents their earning potential. If a future earning potential cannot be determined, these individuals are entitled to receive benefits at the maximum level.

Employers must pay minors under 16 years of age who are illegally employed at the time of injury **150 percent of the compensation** the employee is entitled to receive, unless the employer can prove that the minor provided a birth certificate, automobile driver's license or other reasonable evidence that he or she was over the age of 15. This exception applies even if the minor provided false documentation.

MORE INFORMATION

Please visit the Division of Workers' Compensation [website](#) or contact Heath Benefit Partners for more information on workers' compensation laws in California.