

WORKERS' COMPENSATION BENEFIT OVERVIEW

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Economic Affairs Interim Committee -
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Workers' Compensation Insurance is Mandatory Paid by Employers

GOALS:

Provide medical care &
income to injured
workers
Protect employers from
costly and
unpredictable law
suits from employees

ROLE:

With few exceptions,
workers'
compensation is the
only remedy available
to injured workers

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DECLARATION OF PUBLIC POLICY – INTENT – 39-71-105, MCA - OBJECTIVES

- Wage loss should bear reasonable relationship to actual wages lost
- Return worker to work as soon as possible
- Speedily obtain benefits
- Provide coverage at reasonably constant rates
- Minimize reliance upon lawyers and the Courts
- Act construed according to its terms and not liberally in favor of any party

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DECLARATION OF PUBLIC POLICY – INTENT – 39-71-105, MCA

- Stress claims are not covered – mental-mental or mental-physical
- Workers are not required to give employer 30 day notice for occupational disease claims
- Conclusive Presumption holder of independent contractor exemption certificate issued by department is an IC and holder waives rights and benefits under law

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DATE OF INJURY/OD CONTROLS COVERAGE AND BENEFITS

- Date determines whether there is coverage and the insurer at risk on the claim
- Date determines which law and benefits should be applied

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Burden to Prove Accident/Injury or Occupational Disease

- Claimant must establish it is more probable than not
 - Claimed injury occurred
 - Claimed injury aggravated a pre-existing condition
- Claimant must establish an OD
 - By objective medical findings
 - Work events are the major contributing cause in relation to other factors contributing to the OD

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COURSE & SCOPE OF EMPLOYMENT

Must arise out of employment

Occurs on the employer's premises and during working hours

For dates of injury/OD on or after 7-1-2011:

HB334 specifically excluded from course and scope:

- Injuries on a paid or unpaid break

 - Not on the employer's worksite

 - Not performing any specific tasks for the employer

Injuries during a social or recreational activity sponsored or paid by the employer, unless:

- Employee is paid while participating or

- Whose presence is required or requested by employer

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NOTICE, CLAIM FILING AND CLAIM REPORTING

Injured worker has 30 days to notify the employer of an injury

Employer has 6 days to report to insurer

Injured worker has 12 months to file a claim (First Report of Injury-FROI)

Insurer has 30 days to accept, deny or pay under reservation of rights – (without admitting liability)

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CHOICE OF TREATING PHYSICIAN

■ HB334:

- Allows injured worker to choose initial treating physician
- Allows insurer to approve choice or designate a different treating physician
- Details treating physician requirements
- Explains fee schedule reimbursement for medical treatment
 - Prior to designation by insurer = 100%
 - After designation by insurer = 110%
 - Referrals by designated = 90%

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MEDICAL CARE

- Provides payment of reasonable medical care related to the injury/OD
- HB334: Rebuttable presumption that adopted U & T Guidelines establish compensable medical treatment for an injured worker
- Medical treatments not recommended by the U & T Guidelines require prior authorization from the insurer
- Parties may request an Independent Medical Review by the Department Medical Director for treatments not recommended in the U & T Guidelines
- Insurer reimburses at amounts in Department fee schedules in effect on date of service - cost containment
- No co-payments except the injured worker pays \$25 co-payment for subsequent ER visits
- Travel Expenses – Insurer reimburses reasonable travel, lodging, meals, and misc. expenses
- Reimbursed at rates allowed for state employees

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Medical Care - Continued

HB334:

- Medical benefits (except PTD) terminate 60 months from the date of injury
- Medical benefits may be reopened within 5 years of termination
 - Request to Department Medical Provider/2 member panel
 - Medical condition direct result of injury/OD
 - Medical treatment needed to allow continuation of work or return to work
- If reopened:
 - Remain reopened 2 yrs. or reevaluated every 2 yrs. ¹¹

WAGE LOSS COMPENSATION Indemnity Benefits Cash Payments

- Waiting period - No wage loss paid for 1st 32 hours or 4 days
- Compensation begins on 5th day
- HB334:
 - Provides for retroactive payment of 4 day waiting period if disability goes beyond 21 days

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Temporary Total Disability Benefits (TTD)

- Temporarily unable to work any job
- Total loss of wages
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) FY14 = \$698 per week
- Paid until injured worker reaches maximum medical improvement (MMI) and is released to return to work or returns to work

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Examples of TTD Calculations Based on TOI Wage at 40 hrs per Week – 66 2/3%

- Minimum Wage/\$7.80 per hr = \$312
 - TTD rate = \$208 per week
- \$10 per hr = \$400
 - TTD rate = \$266.67 per week
- \$27 per hr = \$1,080
 - TTD rate = \$720 BUT capped at \$698 per week

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Temporary Partial Disability Benefits (TPD)

- Temporarily able to work with limitations or modifications
- Partial loss of wages
- Difference between TOI wages and actual wages paid during TPD – not to exceed TTD rate
- Paid until MMI

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Examples of TPD Calculations Based on TOI Wage at 20 hrs per Week

- Minimum Wage/\$7.80 per hr x 40 hrs = \$312
 - Part-time wages @ 20 hrs = \$156
 - TPD = \$156
- \$10 per hr x 40 hrs = \$400
 - Part-time wages @ 20 hrs = \$200
 - TPD = \$200
- \$27 per hr x 40 hrs = \$1080
 - Part-time wages @ 20 hrs = \$540
 - TPD = \$540 – NO CAP since < \$698

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Permanent Partial Disability Benefits (PPD)

- Reached maximum medical improvement (MMI)
- HB334:
- Has a whole person (WP) permanent impairment rating >0%, able to return to work in some capacity, and has an actual wage loss, or
 - Has a Class 2 or greater (WP) permanent impairment and no wage loss
 - Requires use of the 6th Edition of the AMA Guides to Evaluation of Permanent Impairment
 - Increases the number of weeks in the PPD calculation from 375 to 400 weeks

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PPD Benefits - Continued

- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Capped at ½ SAWW or \$349 per week – FY14
- Class 2 or greater Impairment rating and no actual wage loss
 - % is multiplied by 400 wks and paid at PPD rate
- Impairment rating >0% with actual wage loss
- Add percentages for following factors:
 - Impairment Rating
 - Age
 - Education
 - Restrictions
 - Wage Loss
- Multiply total % x 400 weeks for number of weeks at PPD rate

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Examples of PPD Calculations

- **5% Class 2 impairment rating – NO wage loss**
- 5% x 400 weeks = 20 wks x 66 2/3% TOI Wage or **CAPPED AT ½ SAWW OR \$349**
- TOI Minimum Wage or \$7.80 per hr
 - 20 wks x \$208 = \$4160
- TOI Wage \$10 per hr
 - 20 wks x \$266.67 = \$5333.40
- TOI wage = \$27 per hr
 - 20 wks x \$349 = \$6980

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Examples of PPD Calculations - Continued

- | | | |
|--------------------------|-----|------------------------------------|
| ■ Impairment Rating | 5% | ■ TOI wage = \$10 per hr |
| ■ 42 yrs old | 1% | □ \$266.67 X = 72 wks |
| ■ GED | 0% | □ <u>\$19,200.24</u> |
| ■ \$1 per hr wage loss | 10% | ■ TOI wage = \$27 per hr |
| ■ Restrictions med-light | 2% | □ \$349 PPD Rate-Max Rate |
| ■ TOTAL | 18% | □ \$349 x 72 wks = <u>\$25,128</u> |
| ■ 18% x 400 = 72 wks | | |
| □ at PPD Rate | | |

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Permanent Total Disability Benefits (PTD)

- Reached MMI
- No reasonable prospect of physically performing regular employment
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) FY14 = \$698 per week
- Cost of Living Increases every yr after 1st 104 weeks paid - % increase in SAWW
- Paid until reach retirement age

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Death Benefits

- Paid to Beneficiaries
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) – FY14 = \$698 per week
- Minimum is 50% of SAWW (\$349 – FY14) but may not exceed actual wage
- Burial Expense – Up to \$4,000

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Stay At Work/Return to Work Assistance Benefits

HB334: Effective July 1, 2012 - Makes assistance for SAW/RTW available by request unless :

- The worker has been determined to be a disabled worker
- The worker has refused a job that the worker is:
 - Physically capable of
 - Qualified to do, and
 - Wages are at least equal to time of injury job
- The worker has actually returned to work
- The worker's claim has been denied, closed or settled

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SAW/RTW assistance

Worker Contact

Determine commitment to return to work

Medical Status Form Review

Determine work abilities and restrictions

Employer Contact

Determine ability to provide transitional work

Facilitate Transitional Employment

Develop transitional job offer

Follow-up

Monitor for readiness to return to TOI job

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Vocational Rehabilitation Benefits

- Eligible for Rehab Benefits if:
 - Disabled Worker – Permanent impairment that precludes worker from TOI job AND has an actual wage loss; or
 - Has a 15% or greater impairment rating and no actual wage loss
- A vocational rehabilitation provider develops written plan for return to work or retraining
- Benefits paid for specified period in plan up to 104 weeks
- Paid at same rate as TTD benefits – 66 2/3% of TOI wage – capped at SAWW

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Compromise Settlements & Lump Sum Payments

Biweekly payments are the rule

Lump sum payments are the exception

Certain settlements and lump sum payments are allowed

All settlements must be approved by the Department or the Workers' Comp Court

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Department May Approve

- All benefits if insurer disputes initial compensability of a claim
- PPD benefits
- PTD benefits only if worker demonstrates financial need
- Future medical benefits if an insurer disputes continued liability for medical benefits and there is a reasonable dispute over the medical treatment or compensability

HB334:

- Allows settlement of future medical benefits on accepted claims if mutual agreement
- Requires rationale for settlement
- Statement of best interest of parties
- Signed acknowledgment of worker
- All settlements must be converted to present value

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Dispute Resolution Mediation

- Purpose – Resolve disputes at lowest level possible
- Any and all benefit disputes – including medical disputes over authorization or payments of medical bills
- Mandatory
- Informal
- Non-Binding
- Confidential
- 80% resolution rate

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Workers' Compensation Court

- Effective July 1, 1975 – Legislature established the Workers' Compensation Court
- Eliminated conflict of interest in Division of Workers' Compensation
- Appeals go directly to the Montana Supreme Court
- Eliminated expense and delay of District Courts

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THE END
QUESTIONS?

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