

Questions and Answers
on
IOWA
WORKERS' COMPENSATION
LAW

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"Working Together For All Iowans"

In Conjunction with
Smith & McElwain
Attorneys at Law
Sioux City and Des Moines, Iowa

CAUTION: This booklet is intended as a brief summary of some of the more significant features of the Iowa Workers' Compensation Law. This booklet is not intended as legal advice. As most of you know, in March 2017, the Iowa Legislature made several changes to our workers' compensation law. Most of these changes apply to injuries occurring on or after July 1, 2017. It is simply too soon to know the purpose or explain the impact of these legislative changes. For more information on how the law may apply to a specific case, please consult your union representative or knowledgeable legal counsel.

Why Do We Have Workers' Compensation?

The Iowa Workers' Compensation law, first enacted in 1913, was the result of political compromise, then known as the "grand bargain," reached by various groups representing labor and industry. The fundamental purpose underlying our workers' compensation law was to provide basic and certain benefits for workers injured on the job, so that the loss caused by work injuries was borne by the industry itself and not suffered alone by the injured worker. In exchange for guaranteed certain and basic benefits, workers gave up their right to sue their employers under common law in state court. Thus, the Iowa Workers' Compensation Act has provided injured workers their exclusive remedy against their employers for the loss caused by workplace injuries.

The Iowa Workers' Compensation law over time proved it could be an effective and fair system for providing basic benefits and compensation for workers injured on the job. Fair and effective for both workers and employers alike. For over a century since its enactment, legislative amendments and court interpretations brought incremental change; but like the original grand bargain itself most of these were the result of political compromise or thoughtful consideration. This Iowa tradition of political compromise and incremental change was challenged by the Republican Legislature and Republican Governor in the 2017 legislative session. On a strict party-line vote, on March 30, 2017, House File 518 became law.

Almost all of the provisions of this new law apply only to injuries that occur on or after July 1, 2017. Because of this, our summary of Iowa Workers' Compensation law must be "bifocal." The following outline sets out basic benefits available to injured workers for injuries that occurred prior to July 1, 2017. We also attempt to explain some of the changes in the law that apply to injuries that occur after July 1, 2017. (These changes will be noted in this summary as "New Section.")

We cannot overemphasize the fact that the 2017 legislative amendments were drafted hastily; and their meaning, purpose and effect will only be revealed over time. Their ultimate impact will largely depend on the efforts of workers, their representatives, and organized labor in fighting for the basic benefits that were the promise underlying the "grand bargain" struck over 100 years ago. With this caveat, prompted by both caution and hope, we offer the following summary of Iowa Workers' Compensation Law.

What Injuries Are Covered?

The Iowa Workers' Compensation Act covers all injuries arising out of and in the course of a worker's employment. The Iowa Supreme Court has defined "injury" very broadly, including both physical and mental injuries. Injuries covered by the Act include not just specific or traumatic events, but also cumulative trauma caused by repetitive work activities. The presence of a pre-existing condition at the time of injury is not a bar to recovery. Injuries or work activities that aggravate or accelerate a prior condition are covered under the Act.

The Act also covers Occupational Disease and Hearing Loss, each of which are set out in separate statutory provisions, with separate rules and procedures. This booklet deals primarily with the laws covering bodily injuries. If you are experiencing an illness or hearing loss which you believe is related to your work, you should contact your union representatives about what you must do to pursue a claim for benefits under these special laws.

What is My First Step If I am Injured?

If you sustain a work-related injury or if you believe a physical condition you have is caused by your work, **you must report the injury** to your employer. Under the law, you **must** report the injury **no later than 90 days** after it occurs. You **should** report the injury **as soon as you are aware of it**.

As a general rule, it is best to make sure you comply with the employer's rules and procedures for reporting work injuries. However, an employer **cannot** refuse to accept an injury report, even if you do not report it within the time or in the manner required by the employer's policies.

If you do not provide notice of the injury within the 90-day period under the law, the employer can claim that it is not obligated to provide Workers' Compensation benefits for the injury. In turn, it is best if you obtain a copy of the injury report or have a witness to the report in case a dispute about whether or when you gave notice arises later.

What Happens After I Report the Injury?

After you report an injury, the employer must decide whether it will "accept" the injury as work related and thus "compensable." If the employer accepts the injury as a "compensable injury," it is then obligated to commence providing benefits as required by the law.

If the injury claim is not immediately accepted as compensable, the employer is obligated to undertake a prompt and reasonable investigation to determine whether the claim is compensable. If the employer denies, delays or terminates benefits without having a reasonable excuse, it may be subject to penalty benefits in an amount of "up to fifty percent" of the benefits that were wrongly denied or delayed. A denial, delay, or termination of benefits must be communicated by the employer to the injured worker immediately.

If the employer denies the injury claim, you must enforce your rights to benefits. This is accomplished by filing a "petition" with the Iowa Workers' Compensation Commissioner.

What Benefits Are Available for Medical Care?

The rules concerning medical care for a work-related injury differ depending on whether or not the employer accepts the injury as compensable.

Accepted Claims

The employer is required to provide the injured worker with prompt and reasonable medical care suitable for treating the employee's injury at its expense. If weekly money benefits are paid, the employer's obligation to furnish the medical care for the injury continues for the lifetime of the employee.

In addition, the employer must pay for the employee's transportation expenses associated with the medical treatment. Transportation expenses include mileage at the Internal Revenue Service standard business mileage rate as of July 1 of the current year. As of July 1, 2017, the rate is 53.5 cents per mile.

Once the employer has accepted the claim as compensable under the Workers' Compensation law, it has the **right to choose** the physician who will furnish the injured worker's medical care. The employer, however, is not allowed to "micromanage" the medical care it provides or to interfere with the medical judgments or recommendations of the physician it has chosen to treat the worker. The worker is obligated to cooperate with the medical providers in regard to recommended treatment.

If the employee has reasonable grounds for being dissatisfied with the medical care being offered by the employer-chosen medical provider, the employee can make a written request to the employer or the employer's Workers' Compensation insurer to provide alternative care. Reasons which justify alternate care can include the distance between the employee's residence and the site of the treatment, the failure of the medical treatment to improve the employee's condition, or the provider's lack of expertise in regard to treating the employee's injuries.

If the employer refuses to grant the request for different medical care, the employee should file an application for alternative medical care with the Iowa Workers' Compensation Commissioner's office. By law, the Commissioner's office is required to decide within 10 to 14 days whether the employer must provide the alternative medical care.

Further, if the injury has caused incapacity to work for more than three days, or results in permanent partial disability, and if the employee thereafter is required to miss work for one full day or less for medical care, the employer must pay the employee regular wages for the time lost from work.

Denied Claims

If the employer decides to deny that the injury is work-related or is otherwise not compensable under the law, the employee may seek medical care from providers of the employee's own choice. The employee may also submit the medical expenses to his own health insurance plan, which usually is the employer's group medical insurance plan. In applying for the group benefits, the employee should state that the bills are for a work-related injury, but that the employer has denied the Workers' Compensation claim. Under the law, where the employer denies the claim, the group insurer **cannot** refuse to pay benefits under its plan on the grounds the medical expenses are for a work-related injury.

No Collections

If any dispute exists concerning who should pay for medical expenses or the amount of payable expenses resulting from treatment for a work-related injury, it is illegal for the medical providers to take collection actions of any kind against the injured worker while a claim for Workers' Compensation benefits is pending. The medical provider, however, can send a current statement to the worker periodically.

What Money Benefits Are Available When I Am Recovering From My Injury?

Basically, there are two types of benefits due to an injured worker who is off work during the period of recovery. Which type you receive depends on whether the injury results in any permanent disability. If the injury does not cause any permanent disability or impairment, then you are entitled to *temporary total disability* payments. If the injury does cause permanent disability or impairment, then you are entitled to *healing period payments*.

Generally, both payments are aimed at providing you with 80% of your average after-tax regular weekly earnings during the 13 weeks preceding the date of the injury for which payments are due. Some special rules exist regarding how your weekly earnings are computed if you are not paid on a weekly basis. Likewise, special rules exist about how weekly earnings are computed during weeks in which you are not working or not being paid for some days of the week.

For hourly-paid employees, overtime hours and shift pay are included in computing the injured worker's regular weekly earnings. But the overtime hours are computed at straight time pay rates, not premium or overtime pay rates. You are entitled to a copy of your employer's records of your wages for the one year period prior to your injury. You should obtain a copy of the record to use in verifying the benefit rate to which you are entitled.

There are both a minimum weekly rate and a maximum weekly rate, which are determined annually by the Workers' Compensation Commissioner under a statutory formula. The rates, as well as simple instructions for determining the appropriate rate, can be found at the Workers' Compensation Commissioner's website: <http://www.iowaworkforce.org/wc>.

Temporary Total Disability Payments

Temporary Total Disability (TTD) payments begin on the fourth day after the date the worker is injured. If the injured worker remains off work due to the injury more than fourteen days after the date of the injury, the worker receives payment for the first three days, which were not paid. TTD payments end when the employee has returned to work or is able to return to work which is substantially similar to the work the employee was engaged in at the time of the injury.

Healing Period Payments

Healing period payments begin on the first day of disability after the injury. Healing period payments end whenever the first of one of the following occurs: (1) the employee returns to the employee's regular job; (2) the employee is able to return to work which is substantially similar to the work the employee was engaged in at the time of the injury; or (3) the medical providers have concluded that significant improvement from the injury is not anticipated.

Prior to terminating healing period payments to an employee who has not returned to work, the employer must provide the injured employee a notice stating that it will be ending payments thirty days from the date of the notice and setting out the reason for the termination of the payments. This is known as an "Auxier Notice."

Can I Be Required to Perform Light or Restricted Duty?

Unless your contract has a provision which prohibits the employer from requiring an employee with a work-related injury to perform "light or restricted duty," the answer is yes. If your employer offers you a job within your medical restrictions, you cannot refuse to try to perform the job. If you refuse to attempt to perform the job, the employer may cut off TTD or healing period payments for the entire period you refuse the job.

New Section: For injuries occurring on or after July 1, 2017, the new law imposes additional obligations on both employers and employees. The employer offering temporary work will be required to communicate the offer in writing to the employee. The employer's written communication must also inform the employee:

- That if the employee intends to refuse the offer of work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing;
- That during the period the employee refuses suitable work, the employee will not be paid temporary partial, temporary total, or healing period benefits.

Then, where an employee refuses the offer of temporary work on the grounds that it's not suitable work, the employee shall communicate the refusal, and the reason for the refusal, in writing to the employer.

Simply put, the party who fails to comply with these new obligations to communicate these matters in writing bears the risk of loss (for the employer, who may have to pay additional weekly benefits, including penalty benefits; and for the employee, who may forfeit the right to weekly benefits during the period of the employee's refusal of suitable work). And, the employee not protected by a labor contract bears the ultimate risk of loss, that is, the loss of employment itself.

Finally, when the employee returns to light duty work at less pay or reduced hours, the employer is obliged to make *temporary partial disability* (TPD) payments. TPD payments are equal to two-thirds of the difference between the injured worker's weekly earnings before the date of the injury and the weekly earnings from the light or restricted-duty job.

What Am I Entitled To If My Injuries Cause Permanent Disability?

When an injury results in permanent functional loss of any part of an employee's body, the employee is entitled to permanent partial or permanent total disability benefits. These benefits are in addition to the medical benefits and temporary disability benefits discussed above. The amount of benefits due depends on: 1) the body part affected; 2) the extent of impairment or disability; and 3) the weekly benefit rate.

For all injuries occurring before July 1, 2017, compensation for permanent partial disability is due beginning at the termination of the healing period. That is, from the earliest of three events: 1) return to regular work; 2) maximum medical improvement as determined by a medical provider; or 3) employee is able to return to work substantially similar to the work performed at the time of injury.

New Section: For injuries occurring on or after July 1, 2017, compensation for permanent partial disability is now due only when it is medically indicated the employee is at maximum medical improvement and that the extent of impairment can be determined by the AMA Guides to Permanent Impairment. The obvious intent of the new law is to push back the date when benefits begin, and to leave it up to medical providers to determine when this occurs.

Commencement date for payment of permanent total disability was not changed by the new law. Benefits are due from the date the employee becomes totally disabled.

How is my Permanent Disability Determined?

In order for an employee to receive permanent partial disability benefits, it is usually necessary that a medical provider establish the extent of permanent impairment and/or the appropriate work restrictions. Usually, the treating physician has determined that the work-related injury has caused some permanent physical or functional impairment or condition affecting a specific member or area of the worker's body or affecting the worker's "body as a whole." The rating is normally expressed as a numerical percentage impairment to a part or area of the body (e.g. 10% impairment to the arm; 20% impairment of the spine; 35% impairment to the whole body or whole person.)

Disputes in claims accepted by the employer often arise over the physicians' ratings. Usually, the medical provider chosen by the employer will issue a rating at the time the injured worker returns to work or is released from medical care. Some employers forget or fail to obtain a rating from the physicians. Accordingly, if you are not informed about a rating within two or three weeks after you return to work or after you are released from care, you should contact your employer about obtaining a rating from the doctor.

If the employee disagrees with the rating, the employee is entitled to have an **independent examination**, which is paid for by the employer, by a physician of the employee's choice. The examination is only for the purpose of obtaining another rating. If the employer balks at paying for a requested examination, the employee may file an application with the Iowa Workers' Compensation Commissioner's office to require the employer to provide the examination.

If the employer has denied that the injury is compensable, the injured worker's physician will often provide the initial rating. In turn, the employer has a similar right to obtain an examination and a rating by a doctor of its choice.

The impairment ratings determined by the various medical providers are important because they are used in determining the extent of the permanent disability caused by a worker's injury. In turn, the extent of the permanent disability is the basis for establishing the amount of benefits available to the injured worker.

Permanent Partial Disability Payments

There are two different methods for determining the amount of permanent partial disability payments owing to an injured worker. The difference is based on what part of the body is injured. One method of calculating payments exists for what are referred to as "scheduled member" injuries. The other method is used for what are referred to as injuries to the "body as a whole."

Scheduled Member Injuries

The Iowa Workers' Compensation statutes establish a schedule which states the maximum number of weeks of weekly payments which must be paid for a total or 100% loss or loss of use (impairment) of specific body parts. The schedule for injuries occurring prior to July 1, 2017, include the following:

<u>MEMBER BENEFITS</u>	<u>MAXIMUM NUMBER OF WEEKS</u>
Thumb	60
First Finger	35
Second Finger	30
Third Finger	25
Fourth Finger	20
Great Toe	40
Other Toes	15
Hand	190

Arm	250
Foot	150
Leg	220
One Eye	140
Second Eye	200
Disfigurement	Up to 150

Thus, if the injured employee’s right arm was completely severed in a work-related accident, the employee would be entitled to receive a total of 250 weekly payments. The weekly payments would be paid at the same weekly rate as healing period payments.

If the injured employee’s right arm was broken and physicians determined that as a result of the fracture the employee had sustained a 10% impairment to the arm, the employee would be entitled to receive only 10% of 250 weeks, or 25 weekly payments. (Special rules apply for injuries to two scheduled members incurred at the same time.)

The impairment ratings provided by the medical providers constitute the primary basis for determining the number of weeks of benefits available to the injured worker. Though, for injuries occurring prior to July 1, 2017, lay (non-expert) testimony may be considered in determining impairment. The calculation does not take into account the effects of the physical impairment to the injured body part on the employee’s ability to work.

New Section: For injuries occurring on or after July 1, 2017, the new law provides two changes. First, the Iowa Legislature has attempted to add shoulder injuries to the section of the statute that sets out scheduled members.

Sec. 7. Section 85.34, subsection 2, Code 2017, is amended by adding the following new paragraph:
NEW PARAGRAPH. *On.* For the loss of a shoulder, weekly compensation during four hundred weeks.

Second, the new law attempts to limit the determination of impairment of scheduled members “solely by utilizing” the AMA Guides to the Evaluation of Permanent Impairment. The purpose and effect of these two changes are at this time open questions.

There are differences in medical terminology used among medical providers. One doctor may rate a hand injury as an injury to a finger or fingers. Similarly, there are legal definitions of where arms and legs become part of the body for purposes of Workers’ Compensation laws. Accordingly, it is important to make sure medical providers are rating the correct body part under the Workers’ Compensation laws.

Injuries to the Body as a Whole

An injury to any part of the body not expressly listed in the statutory schedule is known as an injury to the “body as a whole.” In determining the extent of the disability resulting from an injury to the body as a whole, the effects of a physical or functional impairment to a part of the body on the employee’s employability and ability to work **are taken into account**. The effects of a physical or functional impairment are referred to as the “industrial disability” caused by the work-related injury.

Traditionally, factors in determining the extent of an employee’s industrial disability in addition to physical or functional impairment of the body included such things as the worker’s age, education, work history, loss of earning capacity due to the injury and ability to retrain for other work. Because the determination of an employee’s industrial disability involves consideration of many factors and judgment calls, disputes often arise regarding the issue.

An injured worker should **never agree** to accept as full payment of a claim for an injury to the body as a whole an amount based on a functional impairment rating alone **without consulting** a union representative or legal counsel who is knowledgeable about Workers' Compensation matters.

The calculation of the benefits is based on a maximum of 500 weeks of weekly payments. The amount of industrial disability is expressed in a percent. Again, the weekly payments are at the same rate as those for healing period payments.

Thus, an employee with a 50% industrial disability is entitled to 250 weeks of weekly payments (50% of 500 weeks). An employee with a 10% industrial disability is entitled to 50 weeks of weekly payments (10% of 500 weeks).

New Section: For injuries occurring on or after July 1, 2017, new rules apply in determining industrial disability. First, the determination "shall take into account...the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury."

Second, if an injured worker with a permanent body-as-a-whole injury either 1) returns to work, or 2) is offered work, which pays the same or more than what the employee was earning at the time of injury, the employee's entitlement to permanent partial disability benefits shall be limited to the employee's functional impairment. However, if the employee who has returned to work with the same employer is later terminated, the employee can then petition to have his disability determined using the traditional factors in assessing disability. This should result in an award of permanent partial or permanent total disability above and beyond the functional impairment previously paid.

(Note: There are some situations where an injured worker may receive industrial disability payments for injuries to a scheduled member of the body. They include the following:

1. Where the employee who has a permanent loss to one scheduled member body part and later sustains a work-related injury to another scheduled member body part, the employee may be entitled to payment of industrial disability benefits from the Second Injury Fund. It is necessary to file a formal claim under the Workers' Compensation Commissioner's procedures in order to pursue a claim for these benefits.
2. If the injury to the scheduled member is found to extend into the body as a whole, the employee may be entitled to industrial disability benefits.
3. Where an injury to a scheduled member results in mental or emotional injury, industrial disability benefits may be available.)

Permanent Total Disability Payments

If an employee suffers an injury to the body as a whole, which results in the worker's permanent and total inability to work in any recognized job market, the employer is obligated to pay weekly payments at the healing period payment rate for the life of the injured worker or until the medical condition causing the disability ends.

Are There Any Benefits To Help Me Retrain For Other Work

An injured worker, who has a permanent disability and cannot return to gainful employment due to a work-related injury, may be entitled to \$100 per week for a maximum of 26 weeks if the worker is participating in a vocational rehabilitation program approved by the state of Iowa. The benefits are in addition to any other benefits owed.

New Section: For injuries occurring on or after July 1, 2017, an employee who sustains an injury to the shoulder resulting in permanent partial disability that prevents the employee from returning to gainful employment shall be evaluated by the Department of Workforce Development to determine whether the employee would benefit from vocational training at an area community college. If the employee is approved for such vocational retraining, and if the employee enrolls at the specified community college within six months, the employer shall pay directly to the community college a sum not to exceed \$15,000.00 for the costs of such vocational retraining.

What If I Die As a Result of a Work-Related Accident or Injury?

The injured worker is entitled to payment of medical expenses for care incurred between the time of the injury and death. Also, the employer is obligated to pay TTD weekly payments during the same period.

Upon the death of the injured worker, the employer is obligated to pay weekly payments to the worker's spouse and dependents, if any. Payments to the spouse continue for life or until remarriage. Payments to dependents continue until age 18, or age 25 if a minor is actually dependent after age 18. Enrollment in an accredited educational institution normally makes an individual a dependent. Payments to dependents who are disabled continue during the period of the disability.

Finally, there is a burial expense benefit equal to the reasonable cost of burial not to exceed twelve times the average state weekly wage as determined annually by the Iowa Department of Workforce Development.

What If My Employer Doesn't Pay My Benefits on Time?

The law requires an employer to pay weekly benefits each week they are due—no sooner and no later. Benefits are due beginning on the eleventh day after the date of the injury and each following week until the benefits have been paid in full. If the employer does not pay benefits when they are due, for injuries occurring before July 1, 2017, you are entitled to interest on the unpaid benefits at the rate of 10% per annum. As a general rule, employers do not voluntarily pay interest. You should insist on timely payment of weekly benefits or payment of interest on late payments.

New Section: For injuries occurring on or after July 1, 2017, interest on unpaid benefits will accrue at a much lower rate (based on the one-year treasury constant maturity rate plus 2%). This may encourage many employers to delay payment of benefits with protracted appeals, inflicting financial pain on the injured worker and adding “insult to injury.”

What Can I Do If My Employer Refuses to Pay Workers' Compensation Benefits ?

In such a situation, you have a “contested” or “disputed” claim. The office of the Iowa Workers' Compensation Commissioner is the governmental agency with the authority to resolve the dispute. The Commissioner's office has established procedures, similar to court proceedings, for deciding the dispute. And, the Commissioner's office has rules governing how to process a claim under the procedures.

If you have a contested or disputed claim, you **need help**. You should contact your union representatives, who can assist you in filing and processing a formal claim for benefits through the Commissioner's office or help you obtain legal representation to pursue a claim.

When Must I File a Formal Claim for Benefits in a Contested or Disputed Case?

If the employer refuses to “accept” your claim that you have sustained a work-related injury and has not paid any weekly payments for it, you **must file** a formal claim for benefits with the Commissioner's office **within two years from the date of the injury**. If you fail to make the claim within two years, you lose the right to make a claim.

If the employer has “accepted” your claim and paid you some weekly payments for it, you **must file** a claim with the Commissioner's office **within three years from the date of the last payment of weekly benefits**. Again, if you fail to make the claim within the three-year period, you lose the right to make a claim.

If the employer has “accepted” your claim, but has provided you only medical care benefits, you must file your formal petition with the Commissioner within two years from the date of the injury.

Summary

As noted in the Introduction, Workers' Compensation benefits, in most cases, are the **only remedy** you have against your employer for a work-related injury. Generally, they are also the only remedy you have against a co-worker, whose actions may have contributed to you sustaining an injury.

Under some limited circumstances, you may have a right to pursue legal action for damages against someone other than your employer or a co-worker who caused your work-related injury. If you believe you have such a claim, you need to discuss it with competent legal counsel.

Finally, your collective bargaining agreement may contain benefits, which are available in addition to the benefits provided for under the Workers' Compensation statutes. You should always check with your union representatives to determine whether there are additional contract benefits to which you are entitled as a result of a workplace injury.

If you have additional questions contact:

Iowa Federation of Labor, AFL-CIO
2000 Walker Street
Suite A
Des Moines, IA 50317
515-262-9571
800-372-4817 www.iowaaficio.org

or

Iowa Workers' Compensation Commissioner
1000 East Grand Avenue
Des Moines, Iowa 50319
515-281-5387
800-562-4692
www.iowaworkforce.org/wc/