Wage replacement: Are my workers' compensation benefits forever?

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Fortunately, most workplace injuries are minor and do not result in serious injury or lasting disability. When a worker is seriously injured at work, they're unable to work in some capacity for a certain period of time, indefinitely, or even permanently. This entitles that worker to wage replacement or "indemnity" benefits. Indemnity benefits are not always infinite. The type of injury, status of medical treatment, and jurisdiction determine how long an injured worker will receive indemnity benefits.

Understanding the types of indemnity benefits

Indemnity benefits are classified as either temporary or permanent and either total or partial, and in most jurisdictions, provide the injured worker with a percentage of their average weekly wage. Temporary benefits are awarded when an injured worker is temporarily unable to work, and permanent indemnity benefits are awarded when the injured worker has reached maximum medical improvement and is able to return to work or suitable alternative employment has been identified.

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Whether indemnity benefits are total or partial in nature depends on whether the injured worker is totally or partially disabled, i.e., whether the injured worker has lost some or all use of a body part (amputation of an arm or leg, loss of eyesight, loss of hearing, etc.), or whether the injured worker can work in some capacity.

Capping injured workers' indemnity benefits at the state level

Each state has placed limitations on how long an injured worker can receive indemnity benefits, whether temporary or permanent. Some states have also created limitations for "scheduled injuries," which are usually injuries involving the loss of a limb, eye (vision), digits, or ear (hearing).

For example, Ohio's workers' compensation law provides that an injured worker will receive two-thirds of their average weekly wage so long as a temporary disability is total. However, for the first 12 weeks of total disability, the employee receives 72% of their weekly wage. After 200 weeks of temporary total disability benefits, an injured worker is evaluated to determine whether the temporary disability has become permanent.

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If an injured worker suffers from a permanent impairment, a hearing office will determine the percentage of the injured worker's permanent disability. The injured worker will then receive two-thirds of their average weekly wage per week for the number of weeks that equals the percentage of 200 weeks that is proportionate to the percentage of their disability.

However, Ohio has also placed limitations on scheduled injuries, such as the loss of an arm, which is capped at 225 weeks. Therefore, if an injured worker has lost 40% use of their arm, they are only entitled to 90 weeks of benefits. If the injury is not considered a scheduled injury, and it is permanent and total, the injured worker will continue to receive two-thirds of their average weekly wage until their death.

In Tennessee, temporary total disability benefits are provided until an injured worker reaches maximum medical improvement or can return to work but capped at 450 weeks. Permanent total disability benefits are due if the injured worker is unable to return to any job in the open market because their work-related injury caused permanent disability. This benefit continues until the injured worker becomes eligible for old-age retirement under the federal Social Security law.

Capping injured workers' indemnity benefits at the federal level

Federal workers' compensation laws have also adopted limitations on how long an injured worker can receive indemnity benefits. Under the Longshore and Harbor Workers' Compensation Act

("LHWCA"), compensation is generally payable for as long as the disability continues.

The two exceptions are temporary partial disability benefits, which cannot exceed five years, and "scheduled" permanent partial disability benefits, which are limited to a statutorily defined number of weeks. Permanent total disability benefits are paid as long as the disability continues, subject to cost of living adjustment ("COLA") increases.

"Scheduled" injuries under the LHWCA are permanent impairment or loss of use of the arm, hand, fingers, leg, foot, toes, ears (hearing), or eyes (vision). Benefits for scheduled injuries are paid for a specified number of weeks, outlined in Section 8(c) of the LHWCA.

The maximum recovery for a scheduled injury under Section 8(c) of the LHWCA is for loss of an arm, valued at up to 312 weeks of compensation. However, an amputated arm does not automatically guarantee 312 weeks of compensation. Under Section 8(c)(15), if an arm is amputated at or above the elbow, compensation shall be paid the same as for the loss of the arm; however, if the arm is amputated between the elbow and the wrist, compensation shall be paid the same as for the loss of a hand, which is valued at up to 240 weeks of compensation.

While all states have workers' compensation laws, not all are the same. Not all states provide injured workers with indemnity benefits for the duration of their disability, which is often for life. To determine how long they may receive indemnity benefits, an injured worker should refer to their state's laws or consult with an attorney.

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