A GUIDE TO

INDIANA WORKER'S COMPENSATION

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I. INTRODUCTION

Worker's compensation is an insurance system that provides benefits to employees when they suffer work-related injuries and illnesses. The theory behind worker's compensation is that it should work like a no fault insurance system paid for by the employer. Generally speaking, if an employee suffers a work related injury or illness, the employee is entitled to worker's compensation benefits. This rule is subject to one major exception in Indiana. The employee loses eligibility if the injury was caused because the employee was intoxicated, involved in horseplay, failed to follow the safety rules of the employer or failed to use a safety device.

The worker's compensation system provides the only benefits that an employee can claim from the employer because of a work-related injury. If an employee is injured at work, the only claim that the employee has against his or her employer is for worker's compensation. In other words, the employee cannot sue the employer in a regular lawsuit, even if the injury was caused by the employer's negligence, recklessness or violation of a safety regulation. All that the employee can claim from the employer are worker's compensation benefits.

> Example: A foreman takes a safety guard off a machine in order to speed up production. As a result, a machine operator is injured by the unguarded machine. Can the employee recover money from the company in a regular lawsuit for negligence? NO. The employee's only claim against the employer is for worker's compensation.

II. WHAT BENEFITS DOES WORKER'S COMPENSATION PROVIDE?

A. Medical Benefits

Worker's compensation provides benefits for all of an injured employee's reasonable and necessary medical care. This includes payment of doctors' bills, hospital bills, prescription drug expenses, and mileage for trips to medical providers located outside the county of employment. However, it is imperative to note that under Indiana law the employer has the right to select the doctor and/or health care providers which will provide the treatment. To be eligible for medical benefits, as well as the other types of worker's compensation benefits, an injured employee must go to the doctor selected by the company and accept the treatment provided by that doctor unless the treatment is unreasonable. If an employee, without the employer's permission, goes to his or her own doctor for treatment, worker's compensation will not pay for the treatment, and other benefits available under worker's compensation may be denied as well.

There are limited exceptions to this general rule. For example, if an employee needs emergency treatment in the middle of the night and is rushed to the local emergency room the worker's compensation carrier must pay for the treatment even though the employer did not send the employee to the emergency room or provide advance permission for the visit. Generally speaking, an employee must accept the treatment provided by the doctor selected by the employer. The fact that the employee does not like the doctor or has more confidence in his or her own doctor is not a sufficient reason for refusing employer-provided medical care.

The employee is not personally liable to pay for medical treatment ordered by his employer. All such claims by a health care provider can be made only against the employer or its worker's compensation carrier.

If an employee is required to miss work to obtain medical treatment directed by her employer, the employer is required to reimburse the employee for loss of wages on the basis of the employee's average daily wage.

B. Temporary Total Disability Benefits

1. When are these Benefits Paid?

Frequently referred to as TTD benefits or just TTD, these are weekly benefits paid to an employee when the employee is (1) totally disabled from working, and (2) when that total disability is temporary in nature. The first weekly installment of TTD benefits is due fourteen (14) days after disability begins.

> Example: An employee slips in some spilled oil, falls and breaks her wrist. With her broken wrist, the employee cannot perform her regular job or any other job that her employer has available. Accordingly, she is totally disabled. In addition, although her disability is total, it is temporary in nature because her wrist will heal. For the time that the employee cannot work because her broken wrist is healing, she is entitled to TTD benefits during this period because she is (1) totally disabled, and (2) her condition is temporary in nature.

The medical condition caused by an injury or illness must be both totally disabling and temporary in nature in order for an employee to qualify for TTD benefits. If the employer says that it has a job she can do with one hand, her entitlement to TTD benefits ceases because the availability of that job she is no longer totally disabled even though her wrist has not healed.

Similarly, when the doctor says that her wrist is healed as much as it is going to heal, her entitlement to TTD benefits also ceases because at that point her condition is no longer temporary in nature. When the healing process is over, her condition becomes permanent. The medical term for when a medical condition ceases to be temporary and becomes permanent is "quiescent". Once an injured employee's medical condition becomes quiescent, the employee is no longer entitled to TTD benefits, no matter how severe the employee's permanent condition may be. Assume that the employee who slipped in the oil shattered her wrist so severely that even after her condition becomes quiescent she has little use of her hand. With this limited use of her hand she is unable to do any of the jobs that the employer has available. In other words, because of the seriousness of her permanent injury she is unable to return to work and, instead, loses her job. Because her condition prevents her from doing her job or any other job her employer has available, does she remain eligible for TTD benefits? The answer is no. Even though she cannot return to work she loses her eligibility for TTD benefit once her physical condition becomes quiescent.

Once begun, TTD benefits can be terminated only if the employee has returned to any employment, the employee has died, the employee has refused to undergo a medical examination scheduled by the employer, the employee has already received 500 weeks of TTD, or the employee becomes unable or unavailable to work for reasons unrelated to the compensable injury. If TTD benefits are otherwise terminated the employer must notify the employee in writing of the intent to terminate TTD. If the employee disagrees with the proposed termination, she must give written notice of the disagreement to the employer and the Worker's Compensation Board within seven days of receipt of the notice of termination of benefits to avoid termination of benefits. Then, weekly benefits must be continued for fourteen (14) days after the proposed termination date. If the employee disagrees in writing, the Worker's Compensation Board will contact the employer and employee and attempt to resolve the dispute. If the Board cannot resolve the dispute within ten (10) days after receipt of notice of disagreement, it will arrange for an immediate evaluation by an independent medical examiner, who will determine whether or not the employee is temporarily totally disabled. If the independent medical examiner determines that the employee is temporarily totally disabled, weekly benefits will continue. If the independent medical examiner agrees with the employer, weekly benefits will cease and the employee must file a claim for benefits with the Worker's Compensation Board requesting a hearing.

2. How Much are TTD Benefits?

The amount of TTD benefits payable are determined by the employee's average weekly wage and the date of her injury. TTD is two-thirds (2/3) of the employee's average weekly wage as of the date of the injury, with a set maximum benefit. Employees draw the weekly TTD benefits amount that was in effect at the time of their injury no matter how long their disability might last. Even if a new benefit level goes into effect while an employee is drawing benefits, the employee's benefits will remain at the old level. The new benefit level applies only to employees who suffer injuries after the increase goes into effect.

CHART A- TEMPORARY TOTAL DISABILITY RATES

DATE OF INJURY	MAXIMUM AWW WEEKLY WAGE	MAXIMUM TTD BENEFIT
7/1/00 to 6/30/01	**762.00**	**508.00**
7/1/01 to 6/30/02	**822.00**	**548.00**
7/1/02 to 6/30/06	**882.00**	**588.00**
7/1/06 to 6/30/07	**900.00**	**600.00**
7/1/07 to 6/30/08	**930.00**	**620.00**
7/1/08 to 6/30/09	**954.00**	**636.00**
7/1/09 and after	**975.00**	**650.00**

C. Permanent Partial Impairment Benefits

1. What Are These Benefits For?

PPI benefits are intended to compensate the injured employees for any permanent loss that they sustain in the use of their body or their body parts as a result of a workplace injury.

> Example: An employee ruptures a disc while lifting at work. When the employee recovers as much as he is going to after surgery, the doctor says that he has a 15% impairment of the person as a whole. This impairment rating expresses the doctor's medical judgement concerning the employees loss of use or function of his body as a whole because of the injury. Permanent partial impairment benefits are supposed to compensate the employee for this loss.

It is important to note that PPI benefits have nothing to do with an employee's ability to do his or her job. The impairment rating expresses solely the doctor's judgment concerning the employee's loss of bodily use or function. As an example, let's take an employee whose job involves repetitive heavy lifting of 75 pounds or more. If this employee injures his back so that he suffers a 15% impairment of the person as a whole, he probably will never be able to return to his pre-injury job because he will not be able to perform the heavy lifting that he did before the injury. Another employee whose job does not require heavy lifting, who suffers the same type of back injury and receives the same impairment rating, may very well be able to return to his job even though he has a 15% impairment rating because of the nature of his work. Both employees have the same impairment because they have the same degree of loss of use or function. Even thought the first employee may lose his job because of the injury, he will get the same amount of PPI benefits as the second employee because their impairment ratings are the same.

2. How Much Are PPI Benefits And How Are They Figured?

The worker's compensation law establishes that losses of the body as a whole or of individual body parts are worth a specified number of weeks of PPI benefits. The law also establishes what the PPI weekly benefit is. Note that the PPI weekly benefit is not necessarily the same as the TTD weekly benefit. Also note that TTD benefits paid in excess of 125 weeks is offset against any PPI award.

The percentage of impairment as assessed by the physician is translated into degrees as listed in Chart B:

CHART B- DEGREES (˚) OF PERMANENT IMPAIRMENT * double if amputated*

TYPE OF LOSS	DEGREES
Hand below the elbow	40˚
Arm above the elbow	50˚
Foot below the knee	35˚
Leg above the knee	45˚
Loss of one eye	35˚
Loss of hearing (one ear)	15˚
Loss of hearing (both ears)	40˚
Body or person as a whole	100˚
Thumb	12˚
Index (first) finger	8˚
Middle (second) finger	7˚
Ring (third) finger	6˚
Little finger	4˚
Big toe	12˚
Second toe	6˚
Third toe	4˚
Fourth toe	3˚
Little toe	2˚
Loss of one testicle	10˚
Loss of both testicles	30˚

The value of each degree is shown on Charts C, D, E, F, G and H.

CHART C
7/1/00 to 6/30/01

Degrees	Per Degree
1 to 10	$1,100.00
11 to 35	$1,300.00
36 to 50	$2,000.00
51 to 100	$2,500.00

CHART D
7/1/01 to 6/30/07

Degrees	Per Degree
1 to 10	$1,300.00
11 to 35	$1,500.00
36 to 50	$2,400.00
51 to 100	$3,000.00

CHART E
7/1/07 to 6/30/08

Degrees	Per Degree
1 to 10	$1,340.00
11 to 35	$1,545.00
36 to 50	$2,475.00
51 to 100	$3,150.00

CHART F
7/1/08 to 6/30/09

Degrees	Per Degree
1 to 10	$1,365.00
11 to 35	$1,570.00
36 to 50	$2,525.00
51 to 100	$3,200.00

CHART G
7/1/09 to 6/30/10

Degrees	Per Degree
1 to 10	$1,380.00
11 to 35	$1,585.00
36 to 50	$2,600.00
51 to 100	$3,300.00

CHART H
7/1/10 and after

Degrees	Per Degree
1 to 10	$1,400.00
11 to 35	$1,600.00
36 to 50	$2,700.00
51 to 100	$3,500.00

Example: On July 5, 2007, an employee suffers a back injury which results in a twenty-five percent (25%) impairment to the person as a whole. Twenty-Five percent (25%) of one hundred (100) degrees is twenty-five (25˚) degrees. This employee is entitled to the following PPI benefits:

10˚ x $1,340 = $13,400.00
15˚ x $1,545 = $23,175.00
TOTAL BENEFIT = $36,575.00

If the employee's average weekly wage was greater than $930.00 per week, his weekly benefit rate is $620.00 per week. The PPI benefits would be paid over a period of sixty (60) weeks. $36,575 ÷ $620.00 = 58.99 weeks.

The permanent impairment values are doubled if the injury included the amputation of a body part.

D. Total Disability and Death Benefits

In cases of total and permanent disability, worker's compensation provides 500 weeks of benefits at the TTD level. Total and permanent disability does not mean that an employee simply cannot return to his or her pre-injury job. To qualify for total and permanent disability, the employee must be unable to perform any gainful employment.

In the case of a work-related death, dependent survivors are entitled to 500 weeks of worker's compensation benefits at the TTD level. Example: If a husband is killed on the job, his wife is entitled to receive the death benefits because she is considered a dependent survivor by the law. However, in the event she remarries before the 500 weeks of benefits have been paid, her benefits will be terminated.

III. WHAT STEPS ARE NECESSARY TO OBTAIN WORKER'S COMPENSATION ?

A. Notice to the Employer

If you are hurt at work, to avoid problems in obtaining worker's compensation, you should report the accident immediately to your foreman, the plant medical department or first aid station or some other representative of management.

Unless the employer has actual knowledge at the time of an accident resulting in injury or death, written notice shall be given within thirty (30) days. An employer has actual knowledge of an accident if a supervisor witnesses it or if, as a result of the accident, an employee needs immediate medical attention and goes to the plant medical department or is taken to a hospital. But even if the employer does not have actual knowledge of the accident, an employee loses no benefits as long as written notice of the accident is provided within thirty (30) days. In addition, the law further provides that the lack of notice does not excuse the employer from paying benefits unless the employer can show that it was actually injured or prejudiced by the failure to receive notice. Finally, even if the employer can show that it was prejudiced by the failure to give notice, the employer is excused from providing benefits only for the time no notice is received. After notice is served, even after thirty (30) days, the worker's compensation law takes effect again.

Problems may arise if an employee is hurt at work but does not realize the severity of the injury at the time it occurs or where the injury develops over time. In these cases, the employee may not report the injury immediately because he or she believes it is just a muscle strain or cramp that will go away. A back injury is a perfect example of this problem. An employee feels a strain in his back as he lifts something on Friday, but he does not report it because it does not seem serious at the time. By Sunday morning, the employee can barely get out of bed, and the pain is so severe that he goes to the emergency room. The doctor finds a ruptured disc. The employer, however, denies worker's compensation because the injury was not reported on Friday.

The employer's unwillingness to pay worker's compensation is unreasonable because under the law, the employee has thirty (30) days to provide written notice of the injury without risking the loss of any benefits. In this situation, all that the employee has to do is provide written notice within thirty days of the day he felt the twinge, and the employer will have no argument concerning notice. But remember, even if written notice is never provided, the employer is justified in denying compensation only if it can show that it was prejudiced by the lack of notice. If oral notice was given, and proof of that oral notice can be demonstrated, it will be difficult for the employer to show prejudice.

Notice to the employer is all that is required by the law. However, as a practical matter it may help an employee win a disputed claim if he or she also does the following: (1) reports the accident and injury to the union committeeman or health and safety representative; and (2) gets the names and address and phone numbers of all witnesses to the accident and, if possible, a statement from each of them describing what happened. If the employee is unable to do this, he should ask his union representative to do it for him.

B. Agreement to Pay Compensation

Notice of the denial of a claim by an employer must be made in writing and mailed to the injured employee no later than thirty (30) days after the employer has knowledge of the injury. If a determination of liability cannot be made within thirty (30) days, the employer must submit a written request for an extension of time to the Worker's Compensation Board. An employer who fails to comply with the requirement is subject to a civil penalty of fifty dollars ($50.00).

If an employee's claim is undisputed, the employer will begin benefits voluntarily under an agreement to pay compensation. The Worker's Compensation Board provides forms on which this agreement is written. The form, when completed, will contain the employee's name, the employer's name, the date of the accident, a brief description of the accident, the employee's average weekly wage and the amount of the weekly benefits to be paid. The employer will fill out the agreement and bring it to the employee for signature. If you are injured at work and presented with such an agreement, you should make sure that all the blanks in the form are filled out. Never sign a blank form. In addition, make sure that the description of the accident and your injuries is accurate. An inaccurate description of the accident may cause you trouble later if you decide to bring a third party claim (see below). A partial description of your injuries may create difficulties with either your worker's compensation claim or a third party claim. Also, make sure your average weekly wage is correctly stated.

C. Demand for Compensation

After you have provided notice of an accident and your injury, you should also make a demand for worker's compensation. In most cases, worker's compensation is paid without the necessity of the employee demanding it. However, the law provides for a demand which is different from notice of the injury. Accordingly, if your employer does not pay compensation after it receives notice, you should make a demand. The demand does not have to be in writing, but if you make an oral demand, make sure that you can prove that the demand was made.

D. Filing a Claim with the Worker's Compensation Board

If, after you have provided notice and made a demand for compensation, your employer still refuses to provide worker's compensation benefits, your recourse is to file a claim for benefits with the Worker's Compensation Board. While you may file a claim and represent yourself, you may find it helpful to retain an attorney since your employer will be represented by an attorney. Union representatives are not permitted to represent employees in worker's compensation proceedings.

E. Is There a Time limit for Filing a Claim?

Yes. The statute of limitation for filing a claim with the Worker's Compensation Board is two years (2) from the date of the accident or from the last date for which TTD benefits were paid. Two years from the date of the accident is easy to compute. If an employee is injured on January 15, 2006, two years from the date of the accident is January 15, 2008, and the employee has at least until that date to file a claim with the Worker's Compensation Board.

If the employer recognized the injury as being compensable and paid TTD benefits, the employee will have longer than two years from the date of the accident to file a claim. If TTD benefits were paid, the employee will have two years from the last date for which compensation was paid to file the claim.

Example: the employee was injured on January 15, 2006 and drew TTD benefits until July 1, 2006. In this case the employee will have until July 1, 2008 to file a claim with the Worker's Compensation Board.

When figuring two years from the last date for which compensation was paid BE CAREFUL. First, the date for which compensation was paid and the date that compensation is received by the employee are two different things. The last week for which compensation was paid may have ended on July 1, 2006, but the employee may not have received the check until July 15, 2006, or even later. The two year time limit is measured from the date for which compensation was paid, not from the date on which the compensation was mailed or received by the employee.

If, after settling a claim for permanent partial impairment benefits, your condition becomes worse, and it is not because of another injury, you can file a claim to reopen within one (1) year from the last date for which benefits were paid. The procedure for filing is the same as for filing if you are denied benefits. Most awards and settlements provide that PPI benefits will start from the date of the injury. You should be aware that as a result, the one (1) year to re-open a claim may be very short or may have already run when a lump sum PPI amount is made. The period of time to re-open a claim increased to two (2) years for injuries occurring after July 1, 2006.

IV. THIRD PARTY CLAIMS

A. What is a Third Party Claim?

Worker's compensation is the exclusive remedy that injured employees have against their employers. However, if an employee is injured at work because of something that is done by a third party, that is, someone other than the employer, the employee may be able to sue the third party in a regular lawsuit. Because Indiana worker's compensation benefits are so low, it is worth investigating the possibility of a third party claim particularly in cases where the injuries are severe. Third party claims can be filed in a regular court and tried before a judge or jury. Indiana worker's compensation benefits do not fairly or adequately compensate the injured employees, and the only chance for reasonable compensation may be a third party claim. The amount of money an injured employee may recover in a third party claim may be substantially greater than the amount provided by worker's compensation.

Supervisors and fellow employees are not third parties who can be sued if they cause an injury if they were acting within the scope of their employment. In other words, a supervisor cannot be sued as a third party if he or she makes a mistake that causes an injury to an employee. Supervisors and fellow employees can be sued, however, if they intentionally cause injury to an employee.

Most third party actions are brought against manufacturers of machines, machine parts or other equipment on the theory that the product that these manufacturers produced and sold was defective and the defect caused the injury.

Example: A manufacturer produces a machine that is subject to short circuits in the control panel. It sells that machine to your employer. While you are working on the machine, it begins to cycle when you have not pushed the cycle control button, and your hand is caught in the machine. As the machine was defective, and the defect caused your injury, you would have a legitimate claim against the manufacturer of the machine.

B. Are There Time Limits for Bringing a Third Party Claim?

Yes. Any third party claim must be brought within two (2) years of the date of the accident that gives rise to the claim.

In addition to the two year limitations period, there is another time limit under Indiana law that affects third party claims. In Indiana, you cannot sue the manufacturer if the product that injures you was manufactured more than ten (10) years before the date of the accident.

> Example: The machine that developed a short-circuit in the control panel because of the way it was designed was manufactured in 1995. You were injured by the machine in 2006. You cannot recover any damages against the manufacturer because more than ten (10) years have passed between the time the machine was manufactured and the time you were injured.

If you are injured within the ten year period, you still have a full two years to file your claim in court, even if the ten years runs out between the time you are injured and the time you file your lawsuit.

> Example: The machine is produced in 1996. You are hurt in 2005. You still have two years from the date of your injury to file a suit even though when you file your lawsuit in 2007 more than ten (10) years will have passed from the time the machine was manufactured.

Be aware that even though a machine that causes an injury may be more than ten (10) years old, parts in that machine may have been installed less than ten (10) years before the accident. If so, and it is a defect in one of these parts that causes an injury, a lawsuit can be brought against the manufacturer of the part even though the manufacturer of the machine cannot be sued.

C. Do Employees who Recover Damages in Third Party Suits have to pay back the Worker's Compensation the Received?

Yes. There is a provision in the worker's compensation law that permits employers and their insurance companies to recover the money they provided in worker's compensation benefits if the injured employee recovers damages from a third party. An employer can claim a lien on any recovery that an employee makes against a third party. The lien covers money provided for all benefits: medical benefits, TTD benefits, PPI benefits, etc. The only obligation that the employer has in these circumstances is to pay a portion of the court costs in the third party suit. The law, however, does not require the employer or its insurance company to pay its share of the court costs in advance.