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# Louisiana Workers Compensation

## Chapter 9

### *DISABILITY BENEFITS*

Regarding disability from a job injury, workers' compensation is a wage replacement system. It is designed to compensate an injured worker for wage loss during the period of disability. There is no provision for the award of estimated future wage loss<sup>1</sup>. Wage replacement through workers compensation benefits is paid on a weekly or monthly basis as the wage loss is sustained.

There are four classifications of disability benefits under the workers compensation Act:

Temporary Total Disability Benefits – TTD;

Permanent Total Disability Benefits – PTD;

Supplemental Earnings Benefits – SEB; and

Permanent Partial Disability Benefits – PPD;

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<sup>1</sup> §1222. Probable duration of disability not basis for award

Supplemental earnings benefits shall not be awarded or payable for probable duration of loss of wages. However, this Section does not prohibit the parties from entering into a compromise or lump sum settlement, in accordance with the Workers' Compensation Law.

### ***Temporary Total Disability<sup>2</sup>***

Generally, an injured worker initially will be entitled to TTD following the accident, during the period of healing. The name of the benefits explains its purpose, temporary (during recovery) total disability (unable to work in any capacity). The injured worker is given medical care and, during this healing process, receives TTD benefits. The right to TTD ceases when the employee's condition resolves to such an extent that (1) a reasonably reliable determination of the employee's disability may be made; and (2) continued, regular treatment by a physician is not required.<sup>3</sup> The amount of weekly benefits is two-thirds<sup>4</sup> of the injured worker's average weekly wage (AWW). TTD benefits are subject to the maximum and minimum compensation rate.<sup>5</sup>

### ***Permanent and total disability<sup>6</sup>***

In the case of very serious or catastrophic injury, the employee may not ever be able to return to work in any capacity. In such a case, the employee would be entitled to permanent total disability benefits. These benefits are paid for the life of the injured worker. Like TTD, with PTD the amount of weekly benefits is two-thirds the amount of the injured workers average weekly wage AWW, subject to the maximum and minimum compensation rate.

### ***Supplemental Earnings Benefits<sup>7</sup>***

The typical injured worker at some point recovers from a job injury and reaches a point of maximum medical improvement. At this point, the worker usually is released to return to employment with or without restrictions. If the injured worker is released to return to work without physical restrictions, weekly disability benefits typically end. If the injured worker has physical restrictions, and can prove a wage loss because of those restrictions, however, the worker is entitled to supplemental earnings benefits (SEB).

Again, the name of the benefit explains its purpose, to supplement an injured employee's income. SEB continues until the wage loss ends or after 520 weeks,<sup>8</sup> whichever comes first.

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<sup>2</sup> La. R.S. 23:1221(1)

<sup>3</sup> La. R.S. 23:1221(1)(d)

<sup>4</sup> Sixty-Six and two-thirds percent. La. R.S. 23:1221(1)(a)

<sup>5</sup> Under La. R.S. 23:1202, the OWC publishes annual maximum and minimum compensation rates based on the average weekly wage of all Louisiana employees, as determined by the administrator of the Louisiana Employment Security Law. The maximum compensation rate in any given year is 75% of the average weekly wage of all Louisiana employees for that year. The minimum compensation rate is 20% of the average weekly wage of all Louisiana employees for that year.

<sup>6</sup> La. R.S. 23:1221(2)

<sup>7</sup> La. R.S. 23:1221(3)

<sup>8</sup> La. R.S. 23:1221(3)(d)(ii)

The total obligation to pay 520 weeks of SEB is subject to a credit for the number of weeks of TTD or other benefits paid.<sup>9</sup>

The injured worker has the burden of proving a wage loss to be entitled to supplemental earning benefits. The injured worker must prove that, as result of a job injury, he is unable to earn 90% of pre-accident wage. Once the worker proves a wage loss, however, the employer has the burden of proving the worker's post-accident wage earning capacity.

SEB is calculated on a monthly basis the following formula:

(Average Monthly Wage – post-accident wage earning capacity) x 2/3 = monthly SEB

Average Monthly Wage is (Average Weekly Wage x 52) divided by 12.<sup>10</sup>

SEB is subject to the maximum compensation rate, but not the minimum compensation rate. The SEB rate is not increased if it reduces compensation below the minimum compensation rate.

### ***Permanent Partial Disability***<sup>11</sup>

Unlike other disability benefits, which compensate an employee for wage loss, Permanent Partial Disability benefits compensate an injured employee for loss of use of a body part or for disfigurement. La. R.S. 23:1221(4) contains a schedule of benefits that are due for total loss of specific body parts. If the employee does not have a total loss of use of the body part, the employee is entitled to compensation based on the percentage of impairment to the body part.<sup>12</sup> For example, an employee with total loss of use of the hand is entitled to 150 weeks of compensation.<sup>13</sup> If the employee has only a 50% impairment rating to the hand, the employee would be entitled to 75 weeks of benefits (50% x 150 weeks). The impairment rating is assigned by the treating physician based on the criteria set forth in the American Medical Association's "Guides to the Evaluation Permanent Partial Disability."<sup>14</sup>

Because PPD is based on impairment or disfigurement, rather than wage loss, PPD is paid even if the employee is capable of returning to work or, in fact, has returned to work. The payment is due once the employer has notice of an anatomic loss. The employer is entitled to a credit for TTD or SEB paid against any amount of PPD that may be due.<sup>15</sup> Using the example above, if the employee is entitled to 75 weeks of benefits for a 50% impairment to the hand, but the employer has already paid 50 weeks of TTD, the employee only receives 25 weeks of PPD.

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<sup>9</sup> La. R.S. 23:1223(B)

<sup>10</sup> La. R.S. 23:1221(3)(a)

<sup>11</sup> La. R.S. 23:1221(4)

<sup>12</sup> La. R.S. 23:1221(4)(o)

<sup>13</sup> La. R.S. 23:1221(4)(e)

<sup>14</sup> La. R.S. 23:1221(4)(q).

<sup>15</sup> La. R.S. 23:1223(A)

### ***Catastrophic Injury – One Time Lump Sum Payment<sup>16</sup>***

For certain catastrophic injuries, the injured worker is entitled to a lump sum payment of \$50,000.00.<sup>17</sup> The following injuries qualify for the payment:

- (1) Paraplegia or quadriplegia or the total anatomical loss of both hands, or both arms, or both feet, or both legs, or both eyes, or one hand and one foot, or any two thereof;<sup>18</sup> and
- (2) Third degree burns of forty percent or more of the total body surface.<sup>19</sup>

This payment is not subject to any credit or reduction due to other workers compensation benefits paid to the injured worker. This payment is due within one year of the accident.

### ***Death Benefits<sup>20</sup>***

If a job accident results in a worker's death, persons actually dependent on the deceased worker at the time of the accident and death are entitled to worker's compensation death benefits. The deceased worker's spouse living with the worker at the time of the accident and death is conclusively presumed to be wholly and actually dependent on the deceased employee.<sup>21</sup> The deceased workers' children are conclusively presumed to be wholly and actually dependent on the deceased employee if they are:

- (1) under age 18, a full-time student under age 24, or physically or mentally incapacitated from earning; and
- (2) either living with the deceased employee or the beneficiary of a valid child support order against the deceased worker, regardless of whether child support was actually being paid.<sup>22</sup>

All other dependents must prove actual dependency and the extent of dependency to recover death benefits.

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<sup>16</sup> La. R.S. 23:1221(4)(s)

<sup>17</sup> La. R.S. 23:1221(4)(s)(i).

<sup>18</sup> La. R.S. 23:1221(4)(s)(iii)(aa). For the purpose of this payment, functional loss or loss of use shall not constitute anatomical loss.

<sup>19</sup> La. R.S. 23:1221(4)(s)(iii)(bb)

<sup>20</sup> La. R.S. 23:1231 *et seq.*

<sup>21</sup> La. R.S. 1251(1).

<sup>22</sup> La. R.S. 1251(2) and (3).

The total amount of death benefits to be paid varies depending on the number of the dependents and extent of each dependent's dependency.<sup>23</sup> The total payment to all dependents may not exceed 65% of average weekly wage or the maximum compensation rate, whichever is lower. Wholly dependent persons are paid in preference to partially dependent persons.<sup>24</sup> Competing dependents are paid in the following priority: (1) spouse and dependent children, (2) parents; (3) siblings; and (4) other dependents.<sup>25</sup>

A dependent must be member of the deceased's family,<sup>26</sup> but Louisiana courts interpret "family member" to include non-relatives that resided with the deceased employee.<sup>27</sup> Effective August 1, 2012, however, neither a "concubine" nor the children of a "concubine" are entitled to death benefits, even if they resided with and were dependent on the deceased worker.<sup>28</sup> The legislation that prohibits payments to concubines did not alter any other language in the statute. Consequently, a person not related to the deceased, but who lived with and was dependent on the deceased at the time of death, still may recover benefits as an "other dependent," as long as that person is not the deceased's concubine or the child of the deceased's concubine. The legislation also did not define "concubine," and that omission makes the scope of the prohibition unclear.<sup>29</sup>

If the deceased worker had no dependents, but is survived by biological or adopted children, the children are entitled to a single payment of \$75,000.00. The \$75,000.00 payment is to be divided between the children equally.<sup>30</sup> If the deceased worker had no dependents and no biological or adopted children, each surviving parent is entitled to a payment of \$75,000.00.<sup>31</sup>

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<sup>23</sup> The percentage of average weekly to be paid in death benefits under different circumstances is listed in La. R.S. 23:1232. If a dependent was only partially dependent on the deceased employee, weekly compensation is paid in proportion to the dependency. La. R.S. 1231(B)(1). For example, if the weekly death benefit for someone wholly dependent on the deceased employee is \$200.00, a person 50% dependent on the deceased employee would receive a weekly benefit of \$100.00.

<sup>24</sup> La. R.S. 23:1252.

<sup>25</sup> La. R.S. 23:1232.

<sup>26</sup> La. R.S. 1253

<sup>27</sup> Archibald v. Employers' Liability Assur. Corp., 202 La. 89, 11 So.2d 492 (1942).

<sup>28</sup> La. R.S. 23:1253

<sup>29</sup> At least one workers' compensation judge has held that the provision excluding concubines and their children from workers' compensation benefits is unconstitutional. See, fn. 2, in Heathcote v. D&D Drilling & Exploration, Inc., 16-167 (La. App. 3d Cir. 9/28/16), 200 So.3d 371, 372. To date, no Louisiana appellate court has ruled on the issue.

<sup>30</sup> La. R.S. 23:1231(B)(2)

<sup>31</sup> Id.