



Guide for Injured Workers

This is a guide to Oklahoma workers' compensation law and rules. It is based on laws and rules in effect in 2019. Laws and rules can change by acts of the Legislature, rulemaking by the Oklahoma Workers' Compensation Commission, or by decisions of the higher courts of Oklahoma. This guide provides basic information, but please keep in mind that every situation is different; the Commission cannot provide legal advice by applying the law to a particular set of facts. This guide is supplemented in places with frequently asked questions pertaining to the subject area addressed.

Please note: the laws and procedures summarized herein apply only to injuries occurring on or after February 1, 2014. The Workers' Compensation Commission assumed jurisdiction over work-related injuries, illnesses, and deaths occurring or arising on or after that date.

I. Introduction: What is Workers' Compensation?

Workers' compensation is a system of insurance that provides medical and indemnity benefits for workers' with job-related injuries or illnesses. Workers' compensation is a "no fault" system, meaning fault for the accident is not relevant to eligibility for benefits. Workers' compensation provides for:

- Medical care for work-related injuries or illnesses;
- Payments for wages lost as a result of work-related injuries or illnesses;
- Replacement for lost wages; this is temporary total disability (TTD);
- Compensation for permanent disabilities, within limitations set by law;
- Death benefits for the families of workers' who died due to a work-related injury;

- Vocational retraining and/or job placement for workers' who are unable to return to their prior occupation;

Question: Who is covered by the Administrative Workers' Compensation Act?

Answer: Generally, every employee who is injured on the job in a work-related injury is covered by the Administrative Workers' Compensation Act, but only if the injury occurred on or after February 1, 2014.

Some exceptions do apply. For example, agricultural or horticultural workers employed by an employer with less than \$100,000 in payroll for agricultural or horticultural workers in the preceding calendar year are not "employees" under the act, and not covered. Other exceptions include:

- *In general, employees of the Federal government, or employees who are covered for injuries, disease, or death arising out of and in the course of employment under any Act of Congress (federal law);*
- *Any person who is a licensed real estate sales associate or broker, paid on a commission basis;*
- *Any person who is providing services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person. This exception does not apply to nursing homes;*
- *Any person employed by an employer with five or fewer total employees, all of whom are related within the second degree by blood or marriage to the employer, all of whom are dependents living in the household of the employer, or all of whom are a combination of such relatives and dependents. If the employer is not a natural person such relative shall be related within the second degree by blood or marriage to a person who owns fifty percent (50%) or more of the employer, or such dependent shall be in the household of a person who owns fifty percent (50%) or more of the employer.*
- Independent contractors do not fall under the definition of "employee" under the AWCA.

Question: What does the term "compensable" mean?

Answer: A "compensable" injury or illness generally means an injury or illness for which benefits are due under the Administrative Workers' Compensation Act. An injury or illness that is not compensable would not be covered under the act.

II. Is your injury covered?

Not all injuries that occur on the job are covered by workers' compensation. Injuries that do not occur as a result of employment activities are typically not covered. For example:

- Injuries occurring while the employee is in a parking lot or other area *adjacent to* the employer's place of business, while reporting for a shift or leaving at the end of a shift, are typically not covered Note: this exclusion will not apply if the employer owns or maintains exclusive control over the area.
- Injuries caused by the use of drugs or alcohol are not covered; a positive drug test or refusal to undergo drug and alcohol testing creates a rebuttable presumption that intoxication was the cause of an accident. To rebut the presumption, the injured worker must prove by clear and convincing evidence that his or her state of intoxication had no causal relationship to the injury (in other words, that the intoxication did not cause the injury).
- Injuries incurred while engaging in recreational or social activities for the employee's personal pleasure are not covered;
- Injuries caused by pre-existing conditions are not covered when there has been no significant and identifiable aggravation in the course and scope of employment;
- Injury is not covered if it occurred while the employee is on a work break, unless the break is authorized by the employee's supervisor and the injury occurs inside the employer's facility;
- Mental injuries are only compensable if caused by a physical injury to the employee; this limitation does not apply to the victim of a crime of violence.

Question: Are volunteers of any type covered?

Answer: Yes. Any member of the Oklahoma National Guard performing duties in response to state orders and any authorized voluntary or uncompensated firefighter, peace officer or emergency management worker may be covered. Benefits for volunteer workers who are covered are calculated by using wages earned in the individual's regular occupation.

III. What are your rights and responsibilities as an injured worker?

- You have the right to receive assistance from the Workers' Compensation Commission's Counselor program, if you are not represented by an attorney.

The Counselors are available to assist if you have questions about the workers' compensation process, laws, or rules. The Counselors have demonstrated knowledge of the Oklahoma workers' compensation process, laws, and rules. This service is available to anyone, and is free, but any person who has hired an attorney to handle a workers' compensation claim should contact his/her attorney. It is important to note that the Counselors can give information about the law and process, but they cannot give legal advice by telling you how the law applies to your circumstances.

- You may have the right to receive any medical treatment that is reasonable and necessary for a compensable injury or illness.

By law, the employer must provide reasonable and necessary treatment within five (5) days of receiving knowledge or notice that a work-related injury has occurred. If the employer fails to do so, the employee may have the right to select his or her own treating physician at the employer's expense.

- You have the responsibility to give your employer prompt notice that the injury has occurred. Failing to provide notice within thirty (30) days an injury occurs, or within thirty (30) days after separation from employment for a cumulative trauma injury could jeopardize your right to compensation. Notice of an injury should always be given as soon as possible to avoid delays for investigation.
- You have the responsibility to follow the restrictions and treatment plan given to you by your treating physician. Missed medical appointments can result in denial of benefits.

IV. **Benefits**

Medical Treatment

For a work-related injury that is compensable under Oklahoma law, an employer should provide reasonable and necessary medical treatment within five (5) days of notice or knowledge that an injury to an employee has occurred. The employer has the right to choose the treating physician. If the employer fails to provide reasonable and necessary treatment within five (5) days of notice or knowledge, the employee may choose his or her treating physician.

Question: Can I change doctors? Answer: Yes, but the procedure for changing a treating physician may differ depending upon whether the employer has contracted with a certified workplace medical plan (CWMP).¹

If the employer has not contracted with a CWMP, the employer shall select the treating physician. If the employee wishes to seek a change of physician, he or she may apply with the Commission for a one-time change. The employer, at that point, presents a list of three (3) physicians for the employee to choose from. The physicians must be qualified to treat the affected body part or condition for which a change of physician is sought.

If the employer has contracted with a CWMP, then the employer chooses the treating physician from the physicians listed within the network of the CWMP. The process for change is to apply through the dispute resolution process set out in the CWMP.

Question: Can I get a second opinion?

Answer: The employer or its insurance carrier has the initial authority to determine whether a second opinion is needed. In some situations, the insurance carrier will authorize another physician besides the treating physician to make an evaluation. This evaluation could be done for the purposes of determining the nature and extent of the injury, or whether there is or could be any link, in medical terms, between the injury and the event that is claimed to be the cause of the injury. Once a claim for compensation has been filed with the Commission, an Administrative Law Judge may order an independent medical examiner to address any number of medical issues, such as the nature and extent of the needed medical treatment, if any.

Temporary Disability

Temporary disability comes in 2 forms, temporary total disability (TTD) and temporary partial disability (TPD). Benefits are paid for both types of disability, and these benefits are meant to replace wages lost as a result of a disability brought on by a work-related injury.

Temporary Total Disability (TTD)

TTD occurs when a work-related injury prevents a person from performing his/her job duties. Whether a person is TTD is typically determined by the treating physician.

Compensation for TTD is 70% of the injured worker's average weekly wage, but this amount is capped at 70% of the state's average weekly wage for injuries occurring between February 1, 2014 and May 27, 2019. For injuries occurring from May 28, 2019 on, TTD is 70% of the injured worker's average weekly wage, capped at 100% of the State's Average Weekly Wage. This amount is subject to change, and the amount may differ based on your date of injury. TTD benefits are not paid for the first three (3) days of the initial period of temporary total disability. Please see the Commission's "Maximum Weekly Compensation Rates" chart, available at www.wcc.ok.gov, under "Legal", then "Benefit Charts." This document is also available upon request.

Question: How long am I entitled to TTD benefits?

Answer: You may receive TTD benefits for as long as you are able to work, subject to certain limitations. For injuries occurring on or after May 28, 2019, the maximum amount of TTD benefits is 156 weeks. Payment may continue for an additional 52 weeks for a total weekly limitation of 208 weeks if there is a finding of consequential injury, and additional time is needed to reach maximum medical improvement. For injuries occurring between February 1, 2014 and May 27, 2019, these limits are 104 weeks, and 156 weeks, respectively.

For soft tissue injuries, TTD is limited to 8 weeks. If an individual is recommended for surgery, an additional 16 weeks may be paid. An additional 8 weeks may also be paid if the injured worker is treated with an injection or injections.

For hernias, TTD is limited to 6 weeks.

For mental injury or illness, disability benefits in general are limited to twenty-six (26) weeks, unless it is shown by clear and convincing evidence that benefits should continue for a set period of time, not to exceed a total of fifty-two (52) weeks

Question: If I work a second job, are my wages for both jobs taken into account when calculating the TTD rate?

Answer: The average weekly wage is computed by dividing the employee's gross earnings by the number of full weeks of employment with the employer, up to a maximum of fifty-two (52) weeks. While there is some ambiguity in this section of the law, it is also provided that "if, because of exceptional circumstances, the average weekly wage cannot be fairly and justly determined by [the formulas provided in statute], the Commission may determine the average weekly wage by a method that is just and fair to all parties concerned."

Temporary Partial Disability (TPD)

Temporary partial disability (TPD) may be payable when an injured worker can perform alternative work, but cannot make as much as he or she made before the injury.

Permanent Disability

A person who has sustained a compensable injury under Oklahoma workers' compensation law may be entitled to receive an award for permanent disability of one type or another. There are two (2) kinds of permanent disability under Oklahoma law; permanent partial disability and permanent total disability.

Permanent Partial Disability (PPD)

A person is permanently partially disabled when he/she is unable to perform the same job duties as he or she could perform before the injury, but is still capable of working in some capacity. PPD typically is paid in a weekly amount, currently set at 70% of the injured worker's average weekly wage, but capped at \$350 per week for injuries occurring on or after May 28, 2019. Different rates apply for different dates of injury, so it may be useful to consult the Commission's benefit charts to determine the exact rate applying to the relevant date of injury.

Sometimes the PPD amount is commuted to a lump sum, meaning part or all of the benefit is paid in one payment, rather than weekly amounts.

Question: When and how is it determined whether an injured worker is permanently partially disabled?

Answer: This is partially a medical question and partially a legal question. When an injured worker reaches maximum medical improvement, as determined by the treating physician, he or she is typically rated for impairment.

Question: I lost part of a finger, but have returned to my pre-injury job. Should I receive any compensation for my lost finger?

Answer: When a body part such as a finger is amputated as the result of a compensable work-related injury, the injured worker should receive an amount set in law for permanent partial disability.

Permanent Total Disability (PTD)

Permanent total disability is payable if an injured worker is incapable of returning to any form of gainful employment based upon his or her education or experience. PTD is typically paid in a weekly amount, currently set at 70% of the injured worker's average weekly wage, but capped at 100% of the state's average weekly wage. A claimant may receive permanent total disability benefits for a period of fifteen (15) years, or until such time as the employee reaches the age of maximum Social Security retirement benefits, whichever period is longer.

Anyone who has received permanent total disability for an injury occurring on or after February 1, 2014 must annually submit an affidavit to the Commission, stating under penalty of perjury that he or she is not and has not been gainfully employed and is not capable of gainful employment. Failure to do so could result in a suspension of benefits.

Vocational Rehabilitation

An injured worker who is unable to return to his or her pre-injury or equivalent job due to permanent restrictions determined by the treating physician may be eligible for vocational rehabilitation and possibly job placement. A vocational rehabilitation program provides training for the injured worker to work in a different field of employment. Injured workers who are eligible for permanent partial disability are eligible for vocational rehabilitation.

Continuing Medical Maintenance

If it is recommended by the treating physician or an independent medical examiner, the injured worker may receive continuing medical maintenance after finishing treatment. A worker who is permanently disabled may receive medical services which constitute day-to-day maintenance of the worker's current condition.

Death Benefits

A surviving spouse and dependent child or children of a worker whose death results from a compensable injury are entitled workers' compensation benefits.

Surviving Spouse: If there is a surviving spouse only, he or she is entitled to a lump-sum payment of one hundred thousand dollars (\$100,000.00) and seventy percent (70%) of the lesser of (1) the deceased employee's average weekly wage and (2) the state's average weekly wage. In addition to other benefits paid or due, two (2) years' indemnity benefit is due in one lump sum to the surviving spouse upon remarriage.

Surviving Spouse and a child or children: where there is a surviving spouse and one or more children, a lump sum payment of twenty-five thousand dollars (\$25,000.00) and fifteen percent (15% of the lesser of the deceased employee's average weekly wage and the state average weekly wage *to each child.*) If there are more than two children, each child receives

a proportional share of fifty thousand dollars (\$50,000.00) and thirty percent (30%) of the deceased employee's average weekly wage.

V. **The Claim Process**

Initiating a Claim

Typically, employers and/or insurance carriers will ensure that injured workers receive the proper medical treatment and any benefits payable under the law. However, occasionally a dispute will arise and it may be necessary for the injured worker to file a claim with the Workers' Compensation Commission to preserve his or her rights.

A claim with the Commission is initiated by filing a CC-Form 3, CC-Form 3A, CC-Form 3B, or CC-Form 3C. All of the Commission's forms are available on the Commission's website:

www.ok.gov/wcc

Requesting a Hearing or Prehearing Conference

Filing a CC-Form 3, or appropriate version thereof, is just the first step. In order to have a hearing or prehearing conference before an administrative law judge, a CC-Form 9 Request for Hearing or CC-Form 13 Request for Prehearing Conference must be filed. A hearing is a formal process by which the parties present evidence, question witnesses, and present a case before an administrative law judge. A prehearing conference is used to address issues preliminary to a formal hearing, such as discovery, evidentiary issues, etc. According to Commission rule "[t]he purpose of the prehearing conference is to permit an informal hearing between the parties and the Administrative Law Judge in an effort to resolve the case or issues in the case before an administrative hearing, and to discuss the facts, identify the legal issues, present discovery requests, make all appropriate stipulations, and discuss such other matters as may facilitate consideration of the case." Commission Rule 810:10-5-30(b).

Requesting a Change of Physician

Under Oklahoma law, an injured worker may request a one-time change of treating physician when the employer is not a CWMP or qualified employer. This may be done by filing a CC-Form A with the Commission, after a CC-Form 3 has been filed. At this point, the matter may be set for hearing on the issue of change of physician. The employer or carrier provides a list of three (3) physicians from which the injured worker may choose.

Discovery and Exchange of Evidence

When a hearing is requested, the parties have until twenty (20) days before the hearing date to exchange all documentary evidence, exhibits, and a complete list of witnesses with all opposing parties. Discovery is the process by which the parties gather evidence. Parties may also conduct depositions, which involve the gathering of testimony outside a formal hearing, the transcript of which may later be used in a hearing.

Evidence and Burden of Proof

The injured worker must prove by a preponderance of the evidence that he or she has a valid (compensable) claim under workers' compensation law. In other words, the injured worker must prove that it is more likely than not that he or she sustained an injury that occurred in the course of employment and arose out of the employment, and that the claim is otherwise compensable under Oklahoma law.

Appealing the Decision of an Administrative Law Judge or Commission

An order of an administrative law judge may be appealed by filing a Request for Review (original and two (2) copies) with the Commission within ten (10) days of the file-stamped date of the order being appealed. Parties may not appeal an ALJ order directly to the Supreme Court. Once the Commission makes a decision on appeal, a party may appeal that order to the Supreme Court within twenty (20) days of the file-stamped date of the Commission order being appealed.

Settlement

The parties may choose to settle a claim through the use of a joint petition. This can be a full and final settlement that will decide the rights of the parties. A settlement can either be made on all issues or on some issues. Settlements are made to compensate the injured worker for a variety of purposes, including permanent disability, temporary disability, future medical treatment, continuing medical maintenance, and vocational rehabilitation.

Mediation

Mediation is an informal process by which the parties may attempt to agree to terms of a settlement. Mediation is a voluntary process, and the parties may request that the Administrative Law Judge make a referral order for mediation. Mediation proceedings are not recorded or transcribed in any way, and are completely confidential.

Multiple Injury Trust Fund

An injured worker who suffers increased disability as a result of the combination of disabilities that result in permanent total disability may be eligible to receive benefits from the Multiple Injury Trust Fund (MITF).

In order for the Commission to award benefits from the Multiple Injury Trust Fund, several conditions must be present:

(1) The injured worker must be a "physically impaired person" by the definition given under the AWCA;

(2) The injured worker must have sustained a subsequent compensable injury and received an adjudication through the Workers' Compensation Commission or Workers' Compensation Court for the most recent injury.

(3) The combination of the prior disability and subsequent, work-related disability must have resulted in permanent total disability as defined by law.

Any adjudication of preexisting disability to a part of the body is not combinable for purposes of the MITF unless that body part was deemed to have been injured in the (present) claim being adjudicated.

The compensation rate for permanent total disability awards from the MITF is the compensation rate for permanent partial disability paid by the employer in the last combinable compensable injury.