



SUMMARY OF CALIFORNIA WORKERS' COMP BENEFITS

MAIN OFFICE

2401 E. El Segundo Blvd., Suite 100
El Segundo, CA 90245
Tel: 310.337.4480 | Fax: 844.910.1850

ALL OFFICES

El Segundo, Fresno, Oakland, Ontario, Orange, Redding,
Sacramento, San Diego, San Jose, and Westlake Village



MICHAEL SULLIVAN & ASSOCIATES LLP

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Introduction

Workers' compensation essentially is a "bargain" between the employer and employee. The injured worker receives limited benefits regardless of fault, and the employer is shielded from civil liability and its potentially serious damages. California workers' compensation law outlines precisely what benefits injured workers and their dependents receive.

The complexity of this body of law can be daunting, especially when first encountered, so the authors of "Sullivan on Comp" wrote this overview for people new to the system.

For greater detail on any of these topics, consult "Sullivan on Comp" at <https://www.sullivanoncomp.com/> for purchase options or to request a free trial.

Summary of Workers' Compensation Benefits

An injured worker (IW) is entitled to receive benefits as compensation for the injury. Benefits in the workers' compensation system generally are limited to:

- medical care;
- temporary disability;
- permanent disability;
- the supplemental job displacement benefit; and
- death benefits (when applicable).

Those benefits are explained below.

Medical Care

Medical treatment must be provided to a worker if it is reasonably necessary to cure or relieve him or her from the effects of the industrial injury. The medical treatment utilization schedule (MTUS) is applied to determine if treatment is reasonably necessary, and the MTUS is presumptively correct about the extent and scope of medical treatment. The presumption may be rebutted only by other scientific medical evidence establishing that varying from the guidelines is reasonably required.

Utilization Review

The MTUS is applied through the utilization review (UR) process, in which a defendant engages a licensed physician to review the treatment recommendations of a treating physician. The reviewer decides whether to approve, modify or deny authorization.

Time Limits for Utilization Review

Prospective UR regarding requests for treatment covered by the drug formulary must be made no more than five business days from the date of receipt of the request for authorization (RFA) for medical treatment. Generally, prospective UR for other treatments also must be made within five business days from the date of receipt of a completed RFA form. But within that period, the reviewer may request additional appropriate information, and make a decision within 14 calendar days from when the request was received, or deny the request if the additional information is not received.

A prospective UR determination is timely when three time limits are met:

- The UR determination must be made no later than five working days from receipt of an RFA form, but UR may request additional appropriate information within that period and make a decision within 14 calendar days.
- The decision must be communicated to the requesting physician by telephone, fax or email within 24 hours of being made.
- The initial communication must be followed by written communication within two business days.

A decision to approve, modify or deny prospective or concurrent requests must be done on an expedited basis when:

- The employee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb or other major bodily function. Or
- The normal time limit for the decision-making process would be detrimental to the employee's life or health, or could jeopardize the employee's ability to regain maximum function.

In cases of expedited review, the UR decision must be made in a timely fashion appropriate to the nature of the employee's condition, but no more than 72 hours after receipt of the information reasonably necessary to make the determination.

For cases in which the medical services have been provided, a retroactive UR may be performed. A retroactive UR determination must be made within 30 days of receipt of the medical information that is reasonably necessary to make a determination.

If a UR decision is not timely, the WCAB retains jurisdiction to decide the treatment dispute.

Independent Medical Review

If a UR decision is timely, an injured worker may challenge a decision denying or modifying a request for treatment only by requesting an independent medical review (IMR), an administrative function for which the administrative director contracts with an outside organization of physicians to review UR decisions.

A worker must submit the request for IMR no later than:

- 10 days after service of the UR decision for formulary disputes; or
- 30 days after service of the UR decision for all other medical treatment disputes.

If IMR determines that the medical service is medically necessary, the employer must implement the decision promptly unless an appeal is filed. In the case of services not yet rendered, the employer must authorize them within five working days of receipt of the written IMR determination, or sooner if appropriate for the nature of the employee's medical condition. In the case of reimbursement for services already rendered, the employer must reimburse the provider or employee, whichever applies, within 20 days after the receipt of the final determination.

An IMR determination may be appealed to the WCAB within 30 days of the date it is mailed. The IMR decision is presumed to be correct and may be set aside only on limited grounds. If the IMR determination is reversed by the WCAB, another IMR must be performed by a different reviewer.

Medical Provider Network

Employers provide medical treatment to injured employees through a medical provider network (MPN). The MPN system empowers employers with medical control over an employee's injuries through a network of physicians and medical groups. Employers or insurers have the exclusive right to determine the members of the network. An MPN must be approved by the administrative director, and such approval constitutes a conclusive presumption that the MPN was validly formed.

If an MPN is established, the employer may maintain medical control over treatment for an employee's injury through the life of the claim. Without an MPN, an employer generally has the right to control medical treatment for 30 days from the date of injury. After that period, an employee may be treated by a physician or facility of his or her choice within a reasonable geographic area.

Predesignation of Treating Physician

An employer that has an MPN must give its employees notice of the predesignation requirements and an optional form for predesignating a personal physician. If an employee predesignates a treating physician for industrial injuries, he or she is not required to treat within the MPN.

To be a predesignated physician, the personal physician, whether a person or a group, must:

- be the applicant's regular "physician and surgeon," and must be licensed pursuant to BPC 2000 et seq;
- be the applicant's primary care physician;
- have previously directed the medical treatment of the applicant;
- retain the applicant's medical records, including his or her medical history; and
- agree to be predesignated.

Before an industrial injury occurs, the personal physician must have agreed to be predesignated, and that agreement must be in writing and must be provided to the employer.

Temporary Disability Benefits

Temporary disability is often called TD. It serves to replace an injured worker's wages during the healing period for an industrial injury.

- **Temporary total disability (TTD)** — replaces wages while the IW is off work. Pays out 2/3 of the average weekly earnings (AWE) subject to statutory minimums and maximums that differ by year.
- **Temporary partial disability (TPD)** — benefit paid when the IW suffers wage loss due to injury but is still working, probably in a modified capacity, and earning some money. TPD is two-thirds of the "weekly loss in wages."

When TTD payments are made two years or more from the date of the injury, the rate in effect at the time of payment applies. This means that two years after the date of injury, workers receiving the TTD benefit for the statutory maximum or minimum must have their benefits adjusted to the new statutory limits.

TD Payments

The first payment of TD must be made no later than 14 days after knowledge of the injury and disability. The first payment must include all indemnity due to that point, unless liability for the injury is earlier denied. Subsequent TD payments must be made every two weeks on the day designated with the first payment.

Generally, no TD is recoverable for the first three days after the employee leaves work as a result of the injury. But if TD continues for more than 14 days or the employee is hospitalized as an inpatient for treatment required by the injury, the TD is payable from the date of disability.

TD Limits

TD benefits are paid out until the injured worker returns to work, is deemed able to return to work or achieves permanent and stationary status (P&S), which means his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment. But the period of TD also is subject to statutory limits of two or five years, depending on the date of injury (DOI):

- **DOI 4/19/04 to 12/31/07** — paid up to 104 weeks in a period of two years once payments start.
- **DOI on/after 1/1/08** — paid up to 104 weeks in a period of five years from DOI.

The 104-week limit for TD benefits has specified exceptions. If a worker has one of these conditions, he or she is entitled to 240 weeks in a period of five years from the DOI:

- acute and chronic hepatitis B;
- acute and chronic hepatitis C;
- amputations;
- severe burns;
- human immunodeficiency virus (HIV);
- high-velocity eye injuries;
- chemical burns to the eyes;
- pulmonary fibrosis;
- chronic lung disease.

Permanent Disability Benefits

Permanent disability, often called PD, is not wage replacement. It is paid as compensation for the irreversible residual of the injury itself and in recognition of the fact that the IW's future earnings capacity is diminished.

PD Payments

No PD is paid while the applicant is receiving TD. PD benefits commence within 14 days after the last payment of TD, regardless of whether the extent of PD can be determined, unless the employer makes an offer of work or the worker is employed in a position that pays at least 100 percent of the wages and compensation paid to him or her at the time of injury. In that situation, following an award of benefits, the employer must pay PD retroactively to the applicant's last payment of temporary disability or permanent and stationary date, whichever is earlier.

PD is paid for a specific number of weeks depending on the employee's PD level. As the percentage of disability increases, the number of weeks payable at the employee's compensation rate also increases. There are tables outlining the PD payable for the different disability levels.

PD Rating

The percent of PD arising from an industrial injury is determined by a schedule adopted by the administrative director. A rating considers these factors:

- date of injury;
- age;
- occupation;
- impairment(s);
- apportionment (vs. other injuries/causes).

The rating is a whole percentage value between 1-100 percent that indicates the degree of permanent disability suffered by the IW.

Limitation of Add-On Impairments

Workers injured on or after Jan. 1, 2013 generally are no longer allowed to add PD for sleep dysfunction, sexual dysfunction and/or a psychiatric disorder that flows from a physical injury. That limitation does not affect the employee's entitlement to other benefits. There are two exceptions to the rule:

- The worker is a victim of a violent act or was directly exposed to a significant violent act.
- The worker suffered a catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn or severe head injury.

The evaluation of a violent act focuses on the mechanism of the injury rather than the injury itself. A violent act is characterized by strong physical force, extreme or intense force, or is an act that is vehemently or passionately threatening. Whether an injury is catastrophic depends on the nature of the injury rather than

the mechanism of the injury. Determining whether an injury is catastrophic is a fact-driven inquiry that considers relevant factors including, but not limited to:

1. the intensity and seriousness of treatment received by the employee that was reasonably required to cure or relieve from the effects of the injury;
2. the outcome when the employee's physical injury is permanent and stationary;
3. the severity of the physical injury and its impact on the employee's ability to perform activities of daily living (ADLs);
4. whether the physical injury is closely analogous to one of the injuries specified in the statute — loss of a limb, paralysis, severe burn or severe head injury; and
5. if the physical injury is an incurable and progressive disease.

If those exceptions are met, a compensable psychiatric disorder may increase the impairment rating.

Categories of PD Benefits

There are three categories of PD benefits:

- **Permanent partial disability (PPD)** — PPD awarded from 1-99 percent. The percentage determines the number of weeks the PPD benefit is to be paid. The amount of the weekly payout is calculated using the PD percentage, the workers' average weekly earnings and is subject to statutory limits based on the date of injury. For injuries on or after Jan. 1, 2014, the minimum PPD rate is \$160 and the maximum PPD rate is \$290.
- **Life pension** — an additional benefit awarded beyond PPD for injuries rated from 70-99 percent. Life pension payments begin once PPD payments end and continue for the remainder of the IW's life. They are calculated as a weekly rate based on a reduction of the PD rate, and subject to statutory limits based on the DOI.
- **Permanent total disability (PTD) aka total permanent disability (TPD)** — weekly payments made for life to injured workers who are 100 percent disabled. Calculated as 2/3 the average weekly earnings, subject to statutory minimums and maximums. PTD benefits are paid at the TD rate, which is significantly higher than the PPD rate. (If an IW receives PTD, there are no PD or life pension payments; he or she receives PTD instead.)

Increases Due to Cost of Living Adjustment

Cost of Living Adjustment (COLA) — For injuries occurring on or after Jan. 1, 2003, the weekly rate of the specified benefits increases annually. COLA applies directly to calculated payments for:

- life pension;
- PTD payments.

How COLA is calculated:

- Each January, the weekly benefit owed increases by the same percentage as the **state average weekly wage (SAWW)** increases per the previous year.

In *Baker v. WCAB* (2011) 76 CCC 701, the Supreme Court held:

- COLAs are to be calculated and applied on January 1 following the date the injured worker becomes entitled to and actually begins receiving PTD or life pension benefits; that is, for PTD benefits, the P&S date, and for life pension payments, the date on which PPD benefits become exhausted.
 - **"So, we calculate the benefit in the year in which they are due, and begin applying the COLA increases the following January 1 and every January thereafter.**

Supplemental Job Displacement Benefit

The supplemental job displacement benefit — commonly called the “voucher” — is given to an injured worker for vocational retraining after an injury.

Eligibility for the Voucher

For injuries on or after Jan. 1, 2004, but before Jan. 1, 2013, an employee may receive a voucher if:

- The injury causes permanent partial disability. And
- The employer does not offer regular, modified or alternative work within 30 days of the termination of temporary disability indemnity payments.

For injuries on or after Jan. 1, 2013, an employee may receive a voucher if:

- The injury causes permanent partial disability. And
- The employer fails to make an offer of work within 60 days after receipt of the physician's return-to-work and voucher report.

The offer of work must meet these requirements:

- The employee has the ability to perform the essential functions of the job provided.
- The job provided must last at least 12 months.
- If modified or alternative work is offered, the position must pay wages and compensation that are within 15 percent of those paid to the employee at the time of injury.
- The job is located within reasonable commuting distance of the employee's residence at the time of injury.

Amount of the Voucher

For injuries on or after Jan. 1, 2004, but before Jan. 1, 2013, the amount of the voucher depends on the level of disability. It can be worth as much as:

- \$4,000 for permanent partial disability awards of less than 15 percent;
- \$6,000 for permanent partial disability awards from 15-25 percent;
- \$8,000 for permanent partial disability awards from 26-49 percent; and
- \$10,000 for permanent partial disability awards from 50-99 percent.

For injuries on or after Jan. 1, 2013, all permanently partially disabled workers who are not timely returned to work are entitled to the same \$6,000 for the voucher.

Payment and Settlement of the Voucher

The defendant must issue payments to the employee or direct payments to the training providers within 45 calendar days from receipt of the completed voucher, receipts and documentation.

The voucher may be settled as part of a compromise and release (C&R) for injuries prior to Jan. 1, 2013, but may not be settled for injuries on or after that date. But there's a limited exception allowing settlement for injuries on or after Jan. 1, 2013 if the parties establish that there's a good-faith dispute that, if resolved against the applicant, would defeat his or her entitlement to all workers' compensation benefits.

Death Benefits

The death of an injured employee terminates a defendant's liability for TD and PD benefits. Any accrued and unpaid TTD and/or PD goes to the dependents, heirs or estate. When an IW dies due to a work-related accident, death benefits are paid to the dependents, or the state if there are no dependents.

Amount of Death Benefit

Except as otherwise noted, the following amounts apply for injuries on or after Jan. 1, 2006:

- one total dependent and no partial dependents — \$250,000;
- two total dependents — \$290,000;
- three or more total dependents — \$320,000;
- one total plus one or more partial dependents:
 - \$250,000 plus 4x the annual amount spent to support any partial dependents, not to exceed \$290,000.
- one or more partial dependents:
 - 8x the annual amount spent to support the partial dependents not to exceed \$250,000.

The employer also is liable for reasonable burial expenses. The limits are:

- DOI: **Jan. 1, 1991 - Dec. 31, 2012** — \$5,000; or
- DOI: **Jan. 1, 2013** — \$10,000.

If an employee dies without leaving any person entitled to a dependency death benefit, the employer is required to pay death benefits to the state. The amount to be paid is equal to the total dependency death benefit that would be payable to a surviving spouse with no dependent minor children (\$250,000).

Death Benefit Payments to Totally Dependent Children

For one or more totally dependent minor children, death benefit payments continue in the same manner

and amount as temporary total disability indemnity would have been paid to the employee until:

- the youngest child turns 18; or
- the death of a child physically or mentally incapacitated from earning.

For children of specified public servants — to age 19 if the child is still in high school.

Death Benefit Payment Schedules

If there are several dependents, the total death benefit must be divided. It is divided equally among total dependents, and favors them over partial dependents.

How death benefits are paid:

- Beginning on date of death, it's the TTD rate, based on AWE at the time of injury that causes death, although not less than \$224/week.
- But the WCAB may order otherwise (for example, a higher weekly rate).
- The sum is paid every two weeks.
- It's payable until the benefit is paid in its entirety, or the dependent minor benefit is paid, whichever is greater.

Two years after the date of injury, the benefit rate is subject to current AWE/TTD maximums and minimums, although not less than \$224/week. Here's how that works:

- *For maximum wage earners:*
 - The original $AWE \times 2/3$ = rate of payment.
 - That figure is subject to the current maximum/minimum in place for DOI. Once determined, it is paid for two years.
 - After the two-year period, review the current maximum rate. If $AWE \times 2/3$ is greater, increase the payment to the new maximum rate.
 - The rate is assessed again in this way on January 1 of each year.
 - The rate of payment will increase annually with the maximum, up to the point at which it reaches the actual value of $AWE \times 2/3$. From that point on, the rate remains fixed.
- *For minimum wage earners:*
 - Death benefit payments to a dependent may increase when COLA increases result in minimum earnings above \$336 per week ($\times 2/3 = \224 per week benefit payment).

Commutation

Generally, workers' compensation benefits are calculated weekly and paid every two weeks. Through a process called **commutation**, however, injured workers may chose to receive a lump sum payment by reducing some portion of that future cash flow.

Commutation is permissible when it is "for the best interest of the applicant."

These benefits types are eligible:

- temporary disability;
- permanent disability;
- life pension payments;
- death benefits.

When benefits are commuted, the lump sum is reduced by a certain percentage. Per LC 5101(b), the employer's credit is set by law at 3 percent per annum.

Types of Commutations

- **Commutation off the far end of the award** — payments are converted into a lump sum paid now based on the schedule for the final stages of an award.
- **Commutation off the side of the award** — employee receives the same number of weekly payments, but at a lesser rate in order to support the lump sum payment. (Typically, these are ordered by the court in order to pay the IW's attorneys' fees.)
 - **Over entire award** — all payments are affected equally.
 - **Over portion of award** — the reduction is limited to a specified duration, after which the weekly payment reverts to the original amount.
- **Commutation off near end of award** — benefits immediately forthcoming cease until the value of commuted sums and interest savings have accrued fully, then payments resume. This method is seldom used but is possible.



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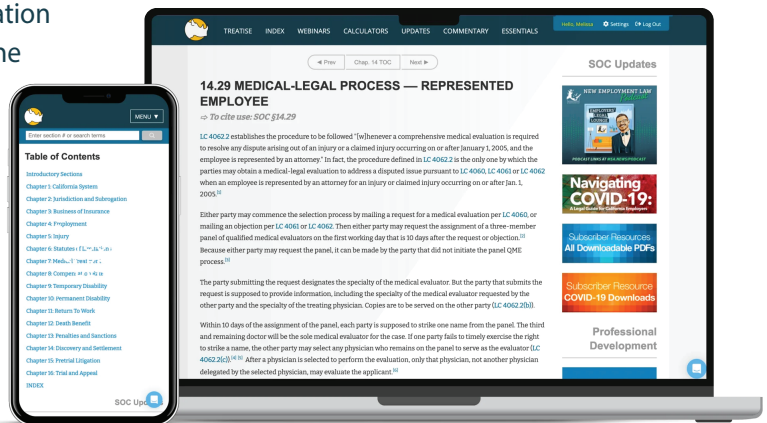
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