



# Workers Compensation Claim State Environmental Guide – West Virginia

WEST VIRGINIA – <http://www.wvinsurance.gov/WorkersCompensation.aspx>

## Indemnity issues

|                            |   |
|----------------------------|---|
| Temporary Total Benefits   | <p>\$193.33 Min., \$957.40 Max (weekly compensation rate) for current fiscal year running 7/1/22 through 6/30/23)No benefits for first 3 days unless “unable to work as a result of compensable injury for more than 3 consecutive calendar days following date of injury,” if unable to work more than 7 consecutive calendar days then can be paid from first day off work, maximum of 104 weeks. Compensation Rate is 66 2/3% of claimant’s AWW, wherever earned. AWW is based on a daily rate of pay at time of injury or weekly average derived from best quarter of wages out of preceding four quarters. Compensation rate is not to exceed 100% of the state AWW</p> <p>Payment for TTD must commence w/in 15 days of receipt of employee’s or employer’s report of injury, whichever is sooner, and also upon receipt of either a proper physicians report or any other information necessary for a determination.</p> <p>May immediately enter order granting TTD in your discretion after receipt of proper medical evidence of disability and after compensability ruling is entered. If injured worker is retired he/she is disqualified from receiving TTD unless application filed before retirement or if compensable injury/disease causes the retirement.</p> <p>No TTD for “reasonably ascertainable period of time during which the injured worker would not have been performing work for any employer.”</p> |
| Vocational TTD Benefits    | <p>Paid at same rate as TTD benefits.</p> <p>Maximum of 52 weeks; can request extension for additional 52 weeks – not to exceed 104 weeks.</p>  |
| Permanent Partial Benefits | <p>66 2/3% of claimant’s AWW not to exceed 70% of state AWW. \$193.33 min., \$670.18 max. (weekly) – current fiscal year running 7/1/22 through 6/30/23)1% of PPD equals 4 weeks of PPD.</p> <p>If on TTD more than 120 days and the EE isn’t sent out for an IME, then PPD closure would not be in effect. Statutory awards in W. Va. Code § 23-4-6 85 C.S.R. § 20 -OP, HL, CTS, and spinal injuries</p> <p>AMA Guides 4<sup>th</sup> edition except for rating impairment for OP, HL, or psychiatric conditions.</p> <p>Statute of Limitation – 5 years from date claim closed if no award or 5 years from date of initial PPD award; only 2 reopening within 5 years</p>   |



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|-----------------------------|--|
| Permanent Total Benefits    | <p>66 2/3% of claimant's AWW not to exceed 100% of state AWW. Max rate: \$957.40/week- for current fiscal year running 7/1/22 through 6/30/23) Minimum: 193.33/week, \$4160.13 maximum (monthly).</p> <p>Must have 50% in prior PPD awards to apply.</p> <p>Must be found to have 50% in WMI by reviewing body or 35% statutory.</p> <p>Must be found unable to engage in employment within 75 mile radius.</p> <p>Benefits terminate at age 70.</p> <p>If IW dies while receiving PTD dependents receive 104 weeks of benefits.</p> |
| Fatality Benefits           | <p>Maximum burial expense fixed by OIC - \$10,000.00</p> <p>Dependent Widow/Widower – until death or remarriage (death due to compensable injury § 23-4-10(b)(1) and (d)).</p> <p>Dependent – until 18 or 25 of full time student; if invalid child as long as child remains invalid (§ 23-4-10(b)(1) and (d)).</p> <p>Dependents entitled jointly to benefits.</p> <p>Amount the same as PTD.</p> <p>Widows – 104 weeks of benefits (claimant receiving PTD, dies from cause other than compensable condition § 23-4-10(e)).</p>    |
| Vocational Rehabilitation   | <p>Yes, if injured worker is unable to return to pre-injury employment or has permanent restrictions.</p> <p>7 Step hierarchy.</p> <p>Vocation TTD – 52 weeks with possible extension of 52 weeks – paid at TTD rate.</p> <p>Temporary partial rehabilitation benefits – 70% of difference between AWW at time of injury and AWW at new employment.</p> <p>TPR – not subject to minimum amount; cannot exceed TTD benefit amount; must be reviewed every 90 days; not paid for differences of 5% or less; no more than 52 weeks.</p> |
| Settlement Allowed          | <p>Yes, you can Full and Final a claim to include medical.</p> <p>For non-orthopedic occupational disease claims (OP), the claimant must be represented to settle medical benefits</p> <p>Statute revision in 2020 does not require the claimant to be represented if settling a claim for occupational hearing loss</p>   |
| Cap on benefits, exceptions | See above.   |

### Medical issues

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| Initial Choice of Provider             | Employee choice (within MCO, if applicable)                                  |
| Change of Provider                     | Employee choice (within MCO, if applicable)                                  |
| Medical Fee Schedule                   | Yes  |
| Managed Care                           | Yes – if approved <u>See</u> 85 C.S.R. § 21                                  |
| Utilization Review                     | <u>See</u> 85 C.S.R. § 21  |
| Treatment Guidelines                   | 85 C.S.R. § 20 “Rule 20”   |
| Generic Drug Substitution              | The state mandates generic substitution.                                     |
| Medical Mileage Reimbursement Rate     | \$0.65/mile for treatment and IME  |
| Network Information                    | <u>See</u> 85 C.S.R. § 21  |
| Ability to Terminate Medical Treatment | Use IME to manage treatment. Yes, you are able to terminate medical benefits |

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**Medical issues**

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|                             | due to supporting information. IME now called CPE Claimant Physical Exam |
| Settlement Allowed          | Yes  |
| Cap on benefits, exceptions | Yes  |

**Other Issues**

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|--|--|
| WC Hearing Docket Speed                                  | Depends on issue<br>Expedited hearing process available for claimant to opt-in for 1) rejection of claim, 2) denial of initial TTD benefits and 3) denial of medical treatment issues. |
| Staff Counsel  | Yes, William J. Ferren & Associates Staff counsel contact in WV is Jeffrey Carder  |
| Hearings require attorney or claim handler participation | Attorney required for employer at all levels.  |
| Occupational Diseases                                    | Yes, 6 factor causal connection test.<br>Statutory requirements.   |
| Second Injury Fund availability                          | No   |
| Other Offset Opportunities                               | Apportionment for prior or subsequent conditions/injuries.   |
| EDI  | Claims EDI Release 3: FROI & SROI (7/1/2008)   |
| In-State Adjusting Required                              | No   |
| License or Certification Required                        | No, unless adjusting in state.   |