

# Workers Compensation Claim State Environmental Guide - Montana

MONTANA – <http://erd.dli.mt.gov/employers>

## Indemnity issues

Temporary Total Benefits	The minimum is 66 2/3% of employee's average weekly wage. The maximum is established annually by the state each July 1st. 7/1/2022-6/30/2023 rate is \$974.00. The waiting period is 32 hours or 4 scheduled work shifts. For claims after 07/01/11 waiting period is retro-active after 21 days of disability. Can be waived if paid sick leave. The benefit period is not limited. Section 39-71-701 MCA. There is an offset for ½ of any SSDI benefits paid on account of the injury.
Temporary Partial Benefits	There is no minimum and the maximum is the TTD rate. There is no waiting period. The average weekly wage for TPD purposes is capped at 40 hours per week. Section 39-71-712 MCA There is no limit on the number of weeks.
Permanent Partial Benefits	2022-2023 rate is \$487.00..PPD based on 400 weeks. See Section 39-71-703 MCA. a. Injured workers with a Class 1 (mild) impairment without an actual wage loss are not entitled to receive payment for the impairment rating; a Class 2 or greater impairment is payable regardless of wage loss..b. Injured workers with a Class 1 or greater impairment rating and an actual wage loss are eligible to receive permanent partial disability (PPD) benefits. c. Designates use of the 6th Edition of Guide to Impairments retroactively to 01/01/08. d. The number of weeks used to calculate the PPD benefits is 400.
Permanent Total Benefits	PTD benefits paid until retirement age (SSA retirement age) is reached. There is an annual cost of living adjustment after 104 weeks of PTD is paid. Section 39-71-702 MCA. There is an offset for ½ of any SSDI benefits paid on account of the injury.
Fatality Benefits	Beneficiary receives 500 weeks of benefits Minimum rate \$487.00. Maximum is the TTD rate. Minimum is 50% of the state's AWW but in no event can it exceed decedent's actual wages at time of death. If spouse remarries then benefits to the spouse end. If no spouse or other beneficiary, surviving parents receive \$3,000.00. Section 39-71-721 MCA. There are provisions for benefits for children up to age 22 enrolled in an accredited school.
Vocational Rehabilitation	If impairment is 15% or greater, the injured worker is entitled to formal retraining regardless of a wage loss, if the retraining will result in an increase over the time of injury wage. If impairment is less than 15% then wage loss must be established to make worker eligible for voc rehab. A certified rehabilitation counselor must certify a formal rehabilitation plan. Benefits could include job placement assistance or formal retraining for up to 104 weeks including bi-weekly TTD, tuition, fees and books, and auxiliary benefits Section 39-71-1006. Plan must be started within 78 weeks of MMI.

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Settlement Allowed	A Petition for Settlement can be negotiated to resolve existing/future indemnity and medical benefits.
Cap on benefits, exceptions	None beyond what is listed in above.
Payment of benefits under a reservation of rights	Section 39-71-608 allows an insurer to make indemnity and medical payments without acceptance of liability. The insurer must seek an extension from the department to extend the period beyond 90 days. Medical only claims can be paid under a reservation of rights pursuant to Section 39-71-615.

**Medical issues**

Initial Choice of Provider	Injured worker. Section 39-71-1101 MCA. Choice of physician. (Applies to injuries and ODs occurring on or after 7/1/11). a. The injured worker can choose the initial health care provider prior to an insurer's acceptance of the claim. b. Upon acceptance of the claim, the insurer can either approve the individual chosen by the injured worker or designate a "treating physician." The insurer can designate a treating physician at any time after acceptance of the claim.
Change of Provider	The injured worker must have the insurer's permission to change treating physician.
Medical Fee Schedule	Medical fee schedules. Payment for medical services is based on the fee schedule in effect when the service was provided.  Reimbursement varies based on status: If a treating physician is designated pay is 110% of fee schedule; health care providers referred to by designated treating physician – 90% of fee schedule; initial/emergency health care providers, prior to designation of the treating physician- 100% of fee schedule.
Managed Care	No..
Utilization Review	See Treatment Guidelines
Treatment Guidelines	Utilization and Treatment (U & T) Guidelines for certain conditions. a. Guidelines are available at <a href="http://MTguidelines.com">MTguidelines.com</a> .
Generic Drug Substitution	The state mandates generic substitution.
Medical Mileage Reimbursement Rate	1/1/2023- \$0.655/mile (changes annually every 1 <sup>st</sup> of January)
Network Information	First Health is primary and Corvel is secondary.
Ability to Terminate Medical Treatment	Yes for non-compliance. Section 39-71-1106 MCA Closure of medical benefits 60 months from the date of injury or date of diagnosis of occupational disease (OD). (Applies to injuries and ODs occurring on or after 7/1/11). Section 39-71-704(1)(f) MCA a. Limited exceptions for prosthetic devices and permanently totally disabled individuals. b. Allows medical benefits to be reopened by a medical panel if treatment is necessary to allow a person to continue to work or return to work. Section 39-71-717 MCA
Settlement Allowed	Effective 04/12/11 for all claims regardless of date of injury can settle medical benefits.
Cap on benefits, exceptions	Medical benefits terminate 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of terminated medical benefits within 5 years of the termination. A request must be filed with the

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	department and a medical director or medical panel will review the request and make a recommendation whether or not medical care should be reopened.
Payment of medical benefits under a reservation of rights	Pursuant to Section 39-71-615, an insurer can make payments on medical-only claims without acceptance of liability upon notice to the worker. There is no requirement to obtain an extension from the department to pay medical-only benefits beyond 90 days. For other claims involving indemnity and medical benefits Section 39-71-608 allows for payment of medical under a reservation of rights with a renewal every 90 days.

**Other Issues**

WC Hearing Docket Speed	Estimate 6 months to hearing after filing petition; up to 1 year after the hearing to a decision
Staff Counsel	Staff counsel is not present in Montana.
Hearings require attorney or claim handler participation	Hearings before Work Comp Court require attorney representation. Mediations (non-binding) held with Department of Labor do not require attorney representation.
Occupational Diseases	There is no apportionment among carriers who contribute to an occupational disease. The employer at the time of the last injurious exposure is liable for the occupational disease. Intervening exposures with subsequent employers may shift liability.
Second Injury Fund availability	Yes, it is called Subsequent Injury Fund
Other Offset Opportunities	Social Security Disability
EDI	Claims EDI Release 1: FROI & SROI (7/1/2000)
In-State Adjusting Required	Yes. Section 39-71-107 MCA
License or Certification Required	Yes, 7/1/19 Claims Examiner Certification required.