



# Workers Compensation Claim State Environmental Guide – South Dakota

SOUTH DAKOTA – <http://dlr.sd.gov/workerscomp/>

## Indemnity issues

Temporary Total Benefits	<p>Max \$ 975 from 7-1-22 to 6-30-23 Min \$488 from 7-1-22 to 6-30-23 Max/Min changes occur annually on July 1 If low wage earner and NET AWW is below min TTD rate, comp rate is NET AWW. 7 day waiting period (must be consecutive days), retroactive if the waiting period is met. AWW based on 52 week period preceding injury (gross wages), overtime included at straight time rate. TTD rate = 0.6667 of AWW. Five day work week. Insurer has 20 days from receipt of injury report to complete investigation and if necessary can request up to an additional 30 days to investigate (Form 106), payment or denial then due. Form 106 must be submitted via SD DLR web application. It must be accepted before the 20<sup>th</sup> day. TTD payable until RTW, attains a complete recovery or impairment rating is assigned, whichever occurs first.</p>
Temporary Partial Benefits	<p>The claimant must meet the 7 day waiting period just like with TTD. Seven consecutive days working half days would qualify for TPD. Calculation: one-half the difference between AWW at time of injury and what employee is earning or able to earn “in some suitable employment or business” after the injury. These benefits can exceed the TTD rate under SDCL 62-4-5 (example: AWW of \$600 and a comp rate of \$400. Released to work, but has not received an impairment rating, and is making \$400 a week. The employee would be entitled to \$100 in comp benefits for a weekly total of \$500.) Total amount of wages and TPD cannot be less than TTD benefits (with a few exceptions). If released to RTW and no “bona fide job” that employee can perform, TPD rate is the TTD rate Payable until attains AWW, released to work with no restrictions or impairment rating is assigned.</p>



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**Indemnity issues**

Permanent Partial Benefits	<p>PPD rate is same at TTD rate</p> <p>PPD benefits are based solely on the rating assigned by a physician using the AMA Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> Edition for all injuries before July 1, 2013. For all injuries <u>on or after</u> July 1, 2013, you must use the AMA Guides, 6<sup>th</sup> Edition, July 2009 reprint.</p> <p>Rating is to be assigned to the most specific body part affected.</p> <p>Percentage rating is applied to the number of weeks assigned the specific body part in the schedule of injuries to calculate the PPD benefits (SDCL 62-4-6)</p> <p>PPD paid weekly unless a lump sum is approved by the Department or the benefits have accrued since the date of the rating. Benefits accrued can be paid in a lump sum up to date of payment and any remainder owed must be paid weekly unless a lump sum for the balance is approved by the Dept.</p> <p>Lump sum payments of PPD must equal the sum of the probable future payments capitalized at their present value on the basis of interest calculated at the rate of ten-year treasury notes on the date of injury as determined by the records of the Federal Reserve Library rounded to the nearest one-fourth of 1 percent.</p>
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Permanent Total Benefits	<p>Max \$975 from 7-1-22 to 6-30-23                      Min \$488 from 7-1-22 to 6-30-23                      Max/Min changes occur annually on July 1</p> <p>Payable for life (you can revisit PTD every 5 years under SDCL 62-7-33)                      Annual cost of living increase applies (determined annually on the first July 1 that is at least 12 months from the acceptance or determination of PTD. For example, if PTD is accepted on July 2, 2014, the COLA does not commence until July 1, 2016.) after receipt of 12 months of benefits                      3.0% COLA increase for 7-1-22 to 6-30-23</p> <p>For injuries on or after 7-1-93, if an employee receiving PTD subsequently received Social Security retirement benefits, the work comp benefits are equal to 150% of the TTD rate less the retirement benefits. This does not apply to employees entitled to Social Security retirement benefits at the time of the injury.</p>
Fatality Benefits	<p>Max \$975 from 7-1-22 to 6-30-23                      Min \$488 from 7-1-22 to 6-30-23                      Max/Min changes occur annually on July 1</p> <p>An additional \$50 per month is payable, in addition to the PTD rate, for each child under the age of 18  <b>A deceased employee's dependents are also entitled to \$2,000 a year for up to five years if they are enrolled in an accredited post-secondary educational institution in South Dakota.</b>                      Dependents receive benefits for life with certain limitations</p> <ol style="list-style-type: none"> <li>1. Spouse receives benefits for life or until remarriage. If spouse remarries 2 years of benefits are paid to the spouse in a lump sum</li> <li>2. If there are eligible surviving children of the employee, the compensation becomes payable to them two years after the date of remarriage.</li> <li>3. A child under age 18 receives benefits if there is no spouse until age 18 or 22 if the child is enrolled as a full time student in any accredited educational institution. If a child is physically or mentally incapable of supporting his/herself, the benefits are paid for the life of the child.</li> <li>4. Workers compensation also provides up to \$10,000 in burial expenses, plus the cost of transporting the body if death occurs outside the community where the employee is to be buried</li> </ol>

Indemnity issues

<p>Vocational Rehabilitation</p>	<p>Claims for retraining or rehabilitation are governed by SDCL 62-4-5.1. This statute provides:</p> <p>“Compensation during period of rehabilitation—Procedure. If an employee suffers disablement as defined by subdivision 62-8-1(3) or an injury and is unable to return to the employee’s usual and customary line of employment, the employee shall receive compensation at the rate provided by § 62-4-3 up to sixty days from the finding of an ascertainable loss if the employee is actively preparing to engage in a program of rehabilitation as shown by a certificate of enrollment. Moreover, once such employee is engaged in a program of rehabilitation which is reasonably necessary to restore the employee to suitable, substantial, and gainful employment, the employee shall receive compensation at the rate provided by § 62-4-3 during the entire period that the employee is engaged in such program. Evidence of suitable, substantial, and gainful employment, as defined by § 62-4-55, shall only be considered to determine the necessity for a claimant to engage in a program of rehabilitation.</p> <p>The employee shall file a claim with the employee’s employer requesting such compensation and the employer shall follow the procedure specified in chapter 62-6 for the reporting of injuries when handling such claim. If the claim is denied, the employee may petition for a hearing before the department.”</p> <p>Judicially, it has been determined that a claimant must meet five requirements before receiving rehabilitation benefits:</p> <ol style="list-style-type: none"> <li>(1) The claimant must be unable to return to his usual and customary line of employment;</li> <li>(2) Rehabilitation must be necessary to restore the claimant to suitable, substantial and gainful employment;</li> <li>(3) The program of rehabilitation must be a reasonable means of restoring the claimant to employment;</li> <li>(4) The claimant must file a claim with the employer requesting these benefits; and</li> <li>(5) The claimant must actually pursue a reasonable program of rehabilitation.</li> </ol> <p><i>Kurtenbach v. Frito-Lay</i>, 563 NW2d 869 (SD 1997).</p> <p>The obligation of the insurer is only to pay the weekly benefit rate during the entire time that the employee is engaged in a program of retraining or rehabilitation. The cost of schooling, tuition, fees, books, etc. are <u>not</u> the obligation of the insurer/self-insurer.</p>
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Settlement Allowed	Settlement allowed if any dispute exists, no matter how slight. An Insurer or employee who desires to have any unpaid compensation paid in a lump sum may petition the Department of Labor for a lump sum payment. Dept. may order commutation of the compensation to an equivalent lump sum amount. The amount has to equal the total sum of the probable future payments at their present value on basis of interest calculated at a rate per year set by the Dept.
Cap on benefits, exceptions	No

**Medical issues**

Initial Choice of Provider	Employee has right to make initial selection
Change of Provider	Must receive written approval from employer/insurer to change choice of physician; if no written approval, can deny medical care for unauthorized change in physician Employee may seek a second opinion without the employer/insurer/s approval at the employee's expense
Medical Fee Schedule	Per Relative Value Fee Schedule Services for which there is no price listed in schedule, or which are not identified, are paid at 80% of the charge billed by the provider
Managed Care	Work Comp insurers are required, by law, to contract with one or more case management plans. Every injury has to be reported to the case management plan, however insurer may consider some claims to be minor and not have them managed.
Utilization Review	UR is not required. If UR is done for an insurer, and a final decision is made on behalf of the insurer about treatment, it must be done by a certified managed care plan
Treatment Guidelines	No
Generic Drug Substitution	The state allows generic substitution; however, it is not mandatory.
Medical Mileage Reimbursement Rate	Rate \$.42 as of 7/1/2022 Medical mileage is not owed unless it is necessary that the employee treat with a physician located outside of the community where they live or work. If an employee selects a health care provider located outside of the community where they live or work and a health care provider is available in the local community or in a closer community, no travel expense is to be paid. Medical mileage is owed for in-town travel if the employee is on TTD benefits. If the employee is on TPD benefits, mileage is not owed. Mileage is not reimbursed for picking up prescriptions Mileage is owed for in town medical appointments if the Claimant is ordered totally off of work
Network Information	CorVel network is used.
Ability to Terminate Medical Treatment	SDCL 62-7-35.1 states a compensable claim is barred after three years from the last payment of benefits unless the claimant experiences a change in condition. It is the claimant's burden to present medical evidence that he or she has sustained a change in condition. Once a change in condition is proven, the claim is reopened and it is no longer barred by the three year statute of limitation. This section operates as a bar to all benefits. But, in order to deny medical treatment, there must be an opinion that either the treatment is not related to the work injury or that the treatment is not reasonable.

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	When terminating benefits for a change in condition following an admitted or judicially accepted condition, a declaratory action to have the Department make a determination that there has been a change in condition sufficient to warrant a termination of benefits may be filed. Terminated benefits without a Department determination is subject to reopening.
Settlement Allowed	Only allowed if compensability of claim is disputed, and subject to addressing Medicare issues
Cap on benefits, exceptions	No

**Other Issues**

WC Hearing Docket Speed	No control – A hearing will not be scheduled until the parties have informed the Department of Labor that they are ready to proceed and the Judge assigned to the case is comfortable that the case is ready to be heard. Most cases require a period of discovery and pre-hearing procedures before the case is ready for hearing. As of April 2022, the Department is moving more quickly through workers' compensation claims than they have in the past.
Staff Counsel	Staff Counsel is not available in South Dakota.
Hearings require attorney or claim handler participation	Attorney
Occupational Diseases	Governed by SDCL 62-8 Defined as disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment and includes any disease due or attributable to exposure to or contact with any radioactive material by an employee in the course of employment.
Second Injury Fund availability	The Subsequent Injury Fund was reinstated 7-1-01 for all injuries occurring prior to 7-1-01. The Subsequent Injury Fund remains abolished for any injury occurring on or after 7-1-01.
Other Offset Opportunities	South Dakota follows the last injurious exposure rule for both successive employers and successive insurers of the same employer. Under the last injurious exposure rule, full liability rests on the employer/insurer covering the risk at the time of the most recent injury that bears a causal relation to the disability If the second episode of symptoms is a mere recurrence of the first, the original employer/insurer remains liable If there is an aggravation or a new injury that contributes independently to the final disability, liability shifts to the employer/insurer on the risk at the time Effective 7-1-94, where multiple employers or insurers are involved and the employee claims an aggravation of a preexisting injury or if an injury is from cumulative trauma making the exact date of injury undeterminable, the insurer on the risk at the time the report of injury is made shall make immediate payment of the claim until all employers and insurers agree on responsibility. This statute only applies to injuries occurring on or after 7-1-94.
EDI	Not Applicable.
In-State Adjusting Required	No
License or Certification Required	No

