

# Workers' Compensation – Employee Benefits

The Florida Workers' Compensation Law (FWCL) regulates the determination and payment of benefits for injured employees in the state. An injury in this context is any damage or harm an employee suffers as the direct result of an accident or exposure to a hazardous environment in the normal course of his or her employment.

Workers' compensation benefits include coverage for medical expenses, death benefits, burial costs and wage replacement. The [Florida Division of Workers' Compensation](#) (FDWC) investigates and handles workers' compensation claims.

## **MEDICAL BENEFITS**

Under the FWCL, an employer must cover all reasonable and necessary medical treatment expenses for any employee who is injured in the normal course of employment. However, the FWCL also sets the limits of this obligation and prescribes the extent of medical benefits employees may receive from their employer.

### ***Coverage***

An employee's medical benefits usually cover physician fees, hospital bills, prescription drugs, medical and surgical supplies, orthoses, prostheses, necessary apparatus, remedial treatment, remedial care, personal attendance and accredited work-hardening or pain-management programs (when approved or requested by a physician).

Chiropractic services may be covered on a limited basis—up to 24 treatments or 12 continuous weeks, whichever comes first—unless additional treatment is authorized by the insurance carrier or the employee is catastrophically injured.

Though an employer is required to provide medical benefits to its injured employees, the employer may choose the health care provider (or network of providers) that employees must visit to receive treatment. Employees who choose to receive treatment from an unauthorized health care provider may have to assume the costs of their treatment.

If an employer fails to provide necessary initial medical treatment for emergency situations, employees may receive treatment from any health care provider at their employer's expense. However, to recover the costs of initial treatment from an unauthorized health care provider, an employee must be able to show that the services were necessary and that his or her employer failed, refused or neglected to provide him or her with appropriate medical treatment within a reasonable time.

### ***Prescription of Treatment***

An employer cannot deny coverage of an employee's treatment when it receives a valid written prescription from an authorized health care provider. This includes nonprofessional attendant care (care provided by an injured worker's family member) when this care follows the regulations and parameters set out by the FWCL.

With the exception of emergency situations, a proposed course of treatment is valid if it complies with commonly accepted medical standards, practices, parameters and protocols. Health care providers must receive notification **within 10 business days** of any employer objections to a prescribed course of treatment.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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Employees may request a change of physician during the course of treatment. This request may be granted once during the course of treatment when the new physician is professionally unaffiliated with the previous one. Employers have **five days** after receiving a request to grant the change or the employee may select a new physician at the employer's expense.

## **DEATH AND BURIAL BENEFITS**

Under the FWCL, employers must pay **up to \$7,500** to cover an employee's actual funeral expenses if the employee dies within one year of a work-related accident or within five years following a continuous disability that resulted from a work-related accident. Employers must pay for this benefit **within 14 days** of receiving a request for payment from the employee's representative.

The employee's surviving dependents are also entitled to receive compensation **up to 66 and two-thirds percent** of the employee's average weekly wage (AWW). The maximum compensation payable to an employee's surviving dependents is **\$150,000**.

The actual amount that surviving dependents receive is based on the number of dependents, their marital status, and whether surviving children are under the age of 18 (22 if they are full-time students). The FWCL allows an employee's parent, brother, sister and grandchild to receive compensation if the employee leaves no surviving spouse or children.

In addition, a surviving spouse is entitled to receive compensation to cover **up to 1,800 classroom hours of instruction** at any community college during the first seven years after the employee's death. A surviving spouse claiming this benefit must show satisfactory academic progress to remain eligible for this compensation.

## **WAGE REPLACEMENT BENEFITS**

If an employee cannot return to work for more than seven days, he or she is entitled to receive wage replacement benefits (also called indemnity benefits) while he or she recovers from the injury. Under the FWCL, wage replacement benefits (except for the first payment) must be paid directly to the employee by check, prepaid card or direct electronic fund transfer.

Wage replacement benefits are immune from wage assignments, creditor claims, levies, executions, attachments and other remedies for the collection of debt except for the collection of child support and alimony obligations. Employees may not waive these provisions.

### ***Waiting Period***

Injured employees are not eligible to receive workers' compensation benefits for the **first seven days** of an employee's disability. However if the injury results in more than 21 days of disability, benefits for the first seven days must be paid retroactively.

### ***Minimum and Maximum Benefit Amounts***

An employee's minimum wage replacement benefit must be **\$20 per week** if the employee earned \$20 per week or more before the injury or the employee's full weekly wage if the employee earned less than \$20 per week before the injury.

An employee's maximum wage replacement benefit must not exceed the statewide average weekly wage (SAWW). By Nov. 30 of every year, the [Florida Department of Economic Opportunity](#) calculates and reports the SAWW for the following year. The SAWW for 2014 is **\$827**.

### ***Average Weekly Wage (AWW)***

An employee's wage replacement is a percentage of his or her AWW. If the employee was under 22 years of age at the time of the accident, and if under normal conditions that employee's wages would have been likely to increase during his or her disability, employers must adjust the employee's AWW to reflect earning potential.

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The FWCL has provided four methods to determine an employee's AWW:

Method	Average Weekly Wage
<b>Actual 13 workweek period:</b> The employee has worked for at least 13 weeks in the occupation for which he or she was employed at the time of the injury (for current or previous employer).	1/13 <sup>th</sup> of the employee's total compensation for the 13-week period prior to the injury.
<b>Equivalent 13 workweek period:</b> The employee has not worked for at least 13 weeks in the position for which he or she was employed at the time of the injury.	1/13 <sup>th</sup> of the total compensation an employee in a similar position would have earned during the 13-week prior to the injury.
<b>Alternative 52 workweek period:</b> The employee is a seasonal worker and can prove that the previous two 13-workweek-period methods are not applicable.	1/52 <sup>nd</sup> of the employee's total compensation for the 52-week period prior to the injury.
<b>Full time weekly wage:</b> None of the previous methods are applicable.	Use the employee's full-time weekly wages as the employee's average weekly wages.

## ***Permanent Total Disability (PTD)***

When an injury is so serious that it prevents the employee from working at all, the injured employee may receive benefits for the duration of his or her disability. This compensation provides employees **two-thirds of their AWW**, subject to the maximum amount described above). To receive PTD benefits, an injured employee must prove that he or she is physically unable to work, even on a sedentary position, within a 50-mile radius of his or her residence or that the injury caused:

- Second- or third-degree burns of 25 percent or more of the total body surface;
- Severe brain or closed-head damage;
- Spinal cord damage involving severe paralysis of an arm, a leg or the trunk;
- The amputation of an arm, hand, foot or leg;
- Third-degree burns of five percent or more of the face and hands; or
- Total or industrial blindness.

Employees claiming PTD benefits can be required to submit to vocational evaluations once a year if their treating health care provider recommends it, if the employee's medical condition improves or if the employee is making appropriate progress in recovery.

The FWCL allows an employee receiving PTD benefits to undertake a trial reemployment period, without prejudice to his or her return to PTD status, to determine the employee's earning capacity in the case that he or she becomes rehabilitated. PTD employees must receive notification of these evaluations in writing at least seven days before the assessment.

Employers may withhold paying PTD benefits to an employee for any period in which he or she refuses or fails to appear for evaluation without good cause.

Entitlement to PTD benefits may end for an employee once he or she is eligible for social security benefits.

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## ***Temporary Total Disability (TTD)***

An employee qualifies for TTD benefits when the injury prevents him or her to return to. Usually, TTD benefits are **two-thirds of an employee's AWW**, subject to the minimum and maximum benefits described above. TTD benefits are available for **up to 104 weeks** or until the date of maximum medical improvement (MMI), whichever comes earlier.

Injured employees are entitled to receive TTD benefits during any periods when they receive training in the use of artificial members and appliances.

The MMI date is the date in which a qualified health care provider determines an injured employee has reached the maximum recovery possible from a work-related injury. If an employee is not expected to make a full recovery after the 104-week period or the MMI date, the treating health care provider must conduct a permanent impairment assessment.

Under certain circumstances, an employee may qualify for TTD benefits of up to 80 percent of his or her AWW for up to six months. To qualify, an employee must not be eligible for, entitled to or collecting PTB and must have:

- Lost an arm, leg, hand or foot;
- Become paraplegic, paraparetic, quadriplegic or quadriparetic; or
- Lost the sight of both eyes.

Special compensation under these circumstances is not subject the minimum or maximum amounts described above but are rather subject to a maximum compensation of \$700 per week.

## ***Temporary Partial Disability (TPD)***

In some cases, employees are able to return to work under strict medical labor restrictions. When employer accommodations of medical restrictions lead injured employees to perform tasks other than what they were hired to do, employees may find themselves working less hours or receiving wages at a lower rate.

In these situations, the FWCL enables employees to receive TPD benefits. TPD benefits are available to employees whose earnings are **less than 80 percent** of their pre-injury wages. TPD benefits cover **80 percent of the difference** between an employee's pre-injury wages and the employee's post-injury wages and may not exceed 66 and two-thirds percent of the employee's AWW.

TPD benefits are also available to employees for up to 104 weeks. If after this period the employee has not made a full recovery, future benefits will depend on a permanent impairment assessment.

Florida law requires that employees receive an explanation of their TPD benefits and has provided [model language](#) that employers can use to fulfill this requirement.

## ***Permanent Impairment (PI)***

An injured employee has a PI when he or she has reached the maximum physical recovery possible but retains some level of incapacity. To receive PI benefits, an employee must first obtain an impairment rating from the physician who treated the injury.

The impairment rating is a percentage used to quantify how much an injury has affected an individual's working capacity. Employers must use the impairment rating to calculate the employee's PI benefit amount. Employers may also consider the employee's ability to earn wages at or above his or her AWW but cannot consider an employee's entitlement to social security or unemployment benefits when determining PI amounts.

PI benefits are paid biweekly at the rate of **75 percent of the employee's TTD benefits**, subject to the maximum described above. PI benefits may be reduced by 50 percent each week when the employee earns income equal to or greater than his or her AWW.

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An injured worker may receive PI benefits until death or until the expiration of the PI period, whichever comes first. The PI period is calculated by assigning a predetermined number of weeks for each percentage point of impairment. For example if the injury occurred on or after Oct. 1, 2003:

- The employee receives two weeks of PI benefits for every percentage point up to 10 percent;
- The employee receives three weeks of PI benefits for every percentage point between 11 and 15 percent;
- The employee receives four weeks of PI benefits for every percentage point between 16 and 20 percent;
- The employee receives six weeks of PI benefits for every percentage point above 21 percent.

## **ADJUSTING BENEFIT AMOUNTS**

A variety of factors, such as a change of circumstances, may alter an employee's recovery and need for benefits. The FWCL provides guidance on how to adjust workers' compensation benefits in situations affected by subsequent injuries, preexisting conditions, out of state work, a refusal to follow safety procedures, additional income and the employee's age.

### ***Subsequent Injuries***

Under the FWCL, employees may receive compensation for subsequent injuries only when there is sufficient medical evidence to show that the original injury (arising out of and in the course of employment) is the major contributing cause of the subsequent injury.

### ***Preexisting Conditions***

When a compensable injury combines with an employee's preexisting condition, the employer must pay compensation or benefits only to the extent that the accident arising out of and in the course of employment is **more than 50 percent responsible** for the injury and remains the major contributing cause of the employee's disability or need for treatment.

In addition, when an employee has a preexisting condition, workers' compensation benefits exclude any treatment and medical expenses for the preexisting condition. Coverage extends to treatment and disability after the accident or injury.

### ***Out of State Injury***

Sometimes, employees are injured while working out of state. When this happens, employees may receive benefits for out of state injuries if:

- They would be eligible for benefits had the accident happened within Florida; and
- Their employment contract was made in Florida; or
- Their employment was principally localized in Florida.

However, any compensation the employee receives from other states may offset the total amount of benefits so that the employee does not receive more than the FWCL maximum.

### ***Refusal to Follow Safety Procedures***

Sometimes, employees ignore safety procedures. Employers may reduce an employee's benefits by **25 percent** if the injury was caused because the employee refused to use a safety appliance, rule or procedure. In these situations, employers must be ready to prove that the employee knew about the safety appliance, procedure or rule before the accident took place and chose to ignore it.

### ***Additional Income***

The Division of Workers' Compensation has the authority to require injured employees to disclose additional sources of income. The Division also has the authority to suspend payment of benefits for any employee who refuses or fails to provide this information in a timely manner.

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## ***Benefits for Injured Minors***

As a general rule, underage employees are entitled to the same benefits as working adults.

However, if an employer violates Florida child labor laws in hiring a minor employee who is subsequently injured, the employer—not its insurance carrier—is solely responsible to cover any additional compensation imposed by a judge.

The amount of additional compensation depends on the gravity of the injuries or the seriousness of the violation. Additional compensation may be as high as **twice the amount** of regular benefits due to an adult employee.

## **MORE INFORMATION**

Contact The Holmes Organisation or visit the FDWC [website](#) for more information on workers' compensation laws in Florida.