

FLORIDA WORKERS' COMPENSATION LAW CHEAT SHEET

Waiting Period (§ 440.12, Fla. Stat.)

7 days. No compensation shall be paid for the first 7 days of disability except for medical benefits. However, if the injury results on disability of more than 21 days, compensation shall be allowed from the date of disability.

Compensation Rate (§ 440.15, Fla. Stat.)

In Florida, the compensation rate is 66-2/3 percent of the average weekly wage subject to the maximum compensation rates in effect on the date of the injury.

Maximum Rates (§ 440.12(b), Fla. Stat.)

After August 1, 1979, the maximum compensation rate shall not exceed 100 percent of the state-wide average weekly wage.

	2022	2023	2024
Max. \$	\$1,099	\$1,197	\$1,260

Temporary Disability (§ 440.15, Fla. Stat.)

In the case of disability total in character but temporary in quality, 66-2/3 percent of the average weekly wage shall be paid to the employee during the continuance thereof, not to exceed 260 weeks. Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined. In the case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and the other remuneration that the employee is able to earn post injury, as compared weekly. However, the weekly temporary partial disability benefits may not exceed an amount equal to 66-2/3 percent of the employee's average weekly wage at the time of the accident. Such benefits shall be paid during the continuance of such disability, not to exceed a period of 260 weeks. Once the injured employee reaches the maximum number of weeks, temporary disability benefits cease and the injured worker's permanent impairment must be determined. Section 440.15(2), Fla. Stat. (b)

Regarding a claimant who remains totally disabled after the 260-week disability period expires, the 1st District Court of Appeal, in an en banc decision, held that the claimant is deemed at maximum medical improvement by operation of law and is therefore eligible to assert a claim for permanent total disability benefits.

Permanent Total Disability (PTD) (§ 440.15(1) (a)-(f), Fla. Stat.)

- No compensation shall be payable under this section if the employee is engaged in, or is physically capable of engaging in, at least sedentary employment.
- PTD allows for 66.67% of the average weekly wage to be paid to the employee during the continuance of such total disability.
- In certain cases, an injured employee is presumed to be PTD unless the employer or carrier establishes that the employee is physically capable of engaging in at least sedentary employment within a 50-mile radius of the employee's residence.

Impairment Benefits (§ 440.15(3), Fla. Stat.)

Once the employee has reached the date of maximum medical improvement, impairment benefits are due and payable within 14 days after the carrier has knowledge of the impairment. Income impairment benefits are paid biweekly at a rate of 75 percent of employee's average weekly temporary total disability benefit not to exceed the maximum weekly benefit under § 440.12; provided, however, that such benefits shall be reduced by 50 percent for each week in which the employee has earned income equal to or in excess of the employee's average weekly wage. An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement or the expiration of temporary benefits, whichever occurs earlier, and continues until the earlier of: 1) the expiration of a period computed at the rate of 3 weeks for each percentage point of impairment; or 2) The death of the employee. Notwithstanding paragraph (c), for accidents occurring on or after October 1, 2003 an employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement or the expiration of temporary benefits, whichever occurs earlier.

Death Benefits (§ 440.16, Fla. Stat.)

If the death results from an accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

- Within 14 days after receiving the bill, actual funeral expenses not to exceed \$7,500

- Compensation, in addition to the above, in the following percentage of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in § 440.12(2), shall not exceed \$150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66-2/3 percent of the average wage:
 - To the spouse, if there is no child, 50% of the average weekly wage, such compensation to cease upon the spouse's death;
 - To the spouse, if there is a child or children, the compensation as above and, in addition, 16-2/3 percent on account of the child or children;
 - To the child or children, if there is no spouse, 33-1/3 percent, for each child, of the average weekly wage;
 - To the brothers, sisters, grandchildren, 15 percent for each brother, sister or grandchild.

Statute of Limitation (§ 440.19, Fla. Stat.)

Except to the extent provided elsewhere in this section, all employee petitions for the benefits under this chapter shall be barred unless the employee, or the employee's estate if the employee is deceased, has advised the employer of the injury or death pursuant to § 440.185(1) and the petition is filed within 2 years after the date on which the employee knew or should have known that the injury or death arose out of work performed in the course and scope of employment.

Payment of any indemnity benefit or the furnishing of remedial treatment, care, or attendance pursuant to either a notice of injury or a petition for benefits shall toll the limitation period set forth above for 1 year from the date of such of such payment or furnishing of medical care. This tolling period does not apply to the issues of compensability, date of maximum medical improvement, or permanent impairment.

New case law (*Ortiz v. Winn Dixie*) calls into question whether the two-year statute of limitations from the date of injury runs simultaneously with the one-year tolling of the statute which follows the provision of medical care or payment of indemnity benefits. It is unclear how the trial courts will apply this case law.

Time for Payment of Compensation Penalties for Late Payments (§ 440.20, Fla. Stat.)

Unless the carrier denies compensability or entitlement to benefits, the carrier shall pay compensation directly to the employee as requires by § 440.14, 440.15, and 440.16, in accordance with those sections. Upon receipt of the employee's authorization as provided for in § 440.12 (1) (a), the carrier's obligation to pay compensation directly to the employee is satisfied when the carrier directly deposits, by electronic transfer or other means, compensation into the employee's account at a financial institution as defined in § 655.005 or onto a prepaid card in accordance with § 440.12(1).

The carrier must pay the first installment of compensation for total disability or death benefits or deny compensability no later than the 14th calendar day after the employer receives notification of the injury or death, when disability is immediate and continuous for 8 calendar days or more after the injury.

If the carrier is uncertain of its obligation to provide benefits or compensation, the carrier shall immediately and in good faith commence investigation of the employee's entitlement to benefits under this chapter and shall admit or deny compensability within 120 days after the initial provision of compensation or benefits

as required under subsection (2) or § 440.192(8). Additionally, the carrier shall initiate payment and continue the provision of all benefits and compensation as if the claim has been accepted as compensable, without prejudice and without admitting liability. Upon commencement of payment as required under subsection (2) or § 440.192(8), the carrier shall provide written notice to the employee that it has elected to pay the claim pending further investigation, and that it will advise the employee of claim acceptance or denial within 120 days.

A carrier that fails to deny compensability within 120 days after the initial provision of benefits or payment of compensation as required under subsection (2) or § 440.192(8) waives the right to deny compensability, unless the carrier can establish material facts relevant to the issues of compensability that it could not have disclosed through reasonable investigation within 120-day period.

Medical Treatment (§ 440.13, Fla. Stat.)

Subject to the limitations specified elsewhere in this chapter, the employer shall furnish to the employee such medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require, which is in accordance with established practice parameters and protocols of treatment as provided for in this chapter, including medicine, medical supplies, durable medical equipment, orthoses, prostheses, and other medically necessary apparatus. Remedial treatment, care, and attendance, shall be considered as covered treatment only when such care is given based on a referral by physician as defined in this chapter. Medically necessary treatment, care, and attendance does not include chiropractic services in excess of 24 treatments or rendered 12 weeks beyond the date of the initial chiropractic treatment, whichever comes first, unless the carrier authorizes additional treatment or the employee is catastrophically injured.

Miscellaneous

- Mileage Reimbursement: .445¢ per mile effective July 1, 2006.

More Information

For more information, visit us online at carrallison.com or contact one of our workers' compensation attorneys.

Coverage:

