

Mississippi Workers' Compensation Law - At a Glance

Compensable Injury:

- To be compensable, injuries must arise out of and in the course of employment. The injury must result from an "untoward event", if contributed to or aggravated or accelerated by the employment in a significant manner.

Disability Benefits:

- Benefits are based on two thirds of the claimant's average weekly wage (AWW) subject to the minimums and maximums set forth in the chart below. The date of injury determines the applicable rates for that injury.
- Temporary Total Disability (TTD) is paid until a release to return to work or maximum medical recovery, subject to the applicable dollar maximum (450 weeks).
- Temporary Partial Disability (TPD) is paid at two thirds of the difference in claimant's pre-injury average weekly wage as compared to his partial wage earning capacity following the injury (i.e. return to light work before maximum medical recovery).
- Permanent Partial Disability (PPD) is separated into scheduled members as opposed to the "body as a whole". MCA § 71-3-17 sets forth a schedule of PPD benefits. As an example, 100% loss of an arm would be 200 weeks and 10% would be 20 weeks (200 x 10%) at the claimant's compensation rate as a minimum. But the claimant could get more. Call your Carr, Allison attorney for details. For the "body as a whole" case (or those things not covered by the schedule), benefits are based on two thirds of the **loss of wage earning capacity** paid out over 450 weeks. As an example, with an average weekly wage of \$450 and a 15% loss of wage earning capacity, multiply the AWW (\$450) times the rating (15%) times two thirds (\$45), payable for 450 weeks (\$20,250). But the issue is complicated; consult your Carr Allison attorney.
- Permanent total disability (PTD) is loss of both arms, hands, legs, feet, eyes, or any combination and can be found in other cases as the facts appear. Benefits are paid over 450 weeks. See the applicable maximums in the chart below.
- Death claims. MCA § 71-3-25 has the complicated details. Call your Carr Allison attorney.

Benefits Tidbits:

Waiting Period for TTD:
5 days that disappears after 14 days lost time.

Lost time is paid on a 5 day work week assumption.

Travel expense to and from medical treatment: 58¢ per mile as of 1/1/19

This handout is designed to provide the reader with basic information related to the Mississippi Workers' Compensation Law. Its limited size does not allow every important issue to be addressed nor can all pertinent legal details be included. To have a more complete answer to any questions encountered in the regular course of handling claims, consult Carr Allison's Mississippi attorneys.

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Comp Rates at a Glance

<u>Effective Date</u>	<u>Weekly Minimum</u>	<u>Weekly Maximum</u>	<u>Category Maximum</u>	<u>Overall Maximum</u>
1/1/02	\$25.00	\$322.90	\$145,125.00	\$145,125.00
1/1/03	\$25.00	\$331.06	\$148,977.00	\$148,977.00
1/1/04	\$25.00	\$341.11	\$153,499.50	\$153,499.50
1/1/05	\$25.00	\$351.14	\$158,013.00	\$158,013.00
1/1/06	\$25.00	\$364.57	\$164,056.50	\$164,056.50
1/1/07	\$25.00	\$387.68	\$174,456.00	\$174,456.00
1/1/08	\$25.00	\$398.93	\$179,518.50	\$179,518.50
1/1/09	\$25.00	\$414.29	\$186,430.50	\$186,430.50
1/1/10	\$25.00	\$422.31	\$190,039.50	\$190,039.50
1/1/11	\$25.00	\$427.20	\$192,240.00	\$192,240.00
1/1/12	\$25.00	\$436.68	\$196,506.00	\$196,506.00
1/1/13	\$25.00	\$449.12	\$202,104.00	\$202,104.00
1/1/14	\$25.00	\$454.42	\$204,489.00	\$204,489.00
1/1/15	\$25.00	\$463.59	\$208,615.50	\$208,615.50
1/1/16	\$25.00	\$468.63	\$210,883.50	\$210,883.50
1/1/17	\$25.00	\$477.82	\$215,019.00	\$215,019.00
1/1/18	\$25.00	\$487.04	\$219,168.00	\$219,168.00
1/1/19	\$25.00	\$494.48	\$222,516.00	\$222,516.00

\$25.00 minimum is not applicable to partial disability, but applies only in a case of death or total disability.

Filings

- IAIABC 1A - First Report of Injury
- B-18 - Notice of starting and stopping compensation benefits
- B-27 - Medical Report Form
- B-52 - Employer's Notice of Controversion
- B-31 - Notice of Final Payment
- B-5, 11 - Claimant's Petition to Controvert
- B-5, 22 - Answer to Petition to Controvert

Medical Benefits:

- **Medical benefits** are unlimited as to time and amount under the MWCA. It is the employer's obligation to provide the necessary and reasonable medical treatment and services such as the nature of the injury or process of recovery requires.
- There is a MWCC fee schedule in effect on which to rely for medical cost containment efforts.
- Medical case management is permissible but not required.
- Claimant's choice of physician is limited to acceptance of the physician tendered by the employer or choosing his own. Once the choice is pinned down *in writing*, the chosen physician may not refer claimant to more than one physician in a particular specialty. (As an example, referrals can be made to one neurosurgeon, one orthopaedic surgeon, one psychiatrist, one neurologist, etc.) The MWCC can allow a change of physicians even after the choice has been made in writing. For injuries occurring on or after July 1, 2012, a physician who has treated the claimant for six (6) months or who performed surgery on the claimant shall be deemed to be the claimant's choice of physician.
- The employer can have claimant examined by a physician of its choice. The employer sets up the appointment, gives the claimant and the MWCC notice in writing of the appointment, and prepays claimant's travel expense to the appointment. (The fee schedule does not limit fees for an Employer's Medical Exam (EME).

Defenses:

- There are **defenses** to a claim. No compensation is payable if:
 1. Claimant's intoxication is the proximate cause of the injury (for injuries on or after July 1, 2012, there is a rebuttable presumption that use of alcohol/drugs is the proximate cause of the injury); or
 2. The injury is the result of claimant's willful intent to injure himself or another.
 3. Independent contractor.
 4. Deviation - abandonment of employment and personal missions.
 5. Intervening cause of disability.
- There are 2 **Statute of Limitations** to remember and they are mutually exclusive:
 1. Where no compensation is paid (other than medical), claimant has 2 years from the date of injury to make a claim. The time bar applies to both indemnity and medical benefits.
 2. Where compensation benefits are paid, claimant has 1 year from the date of filing the B-31 with the MWCC to make further claim. Paying additional benefits tolls the running of the statute and a new B-31 has to be filed to start the year running again. Once it has run, the time bar applies to indemnity and medical benefits.
- **Apportionment** is a reduction in the payment of permanent disability or death benefits where it is shown that a pre-existing condition is a material contributing factor to the disability or death. The effects of the pre-existing condition must be proven from both an occupational as well as a medical standpoint. For injuries occurring on or after July 1, 2012, the pre-existing condition does not have to be occupationally disabling for apportionment to apply.

General Information:

- Once an injury is reported, there are three choices: Pay the claim; deny and litigate; or settle. Mississippi recognizes a separate cause of action outside the confines of the MWCA for a wrongful denial or refusal to pay. Punitive Damages for a "bad faith" claim are potentially recoverable and are tied to the net worth of the defendant. Therefore, proceed with a sense of urgency; be very careful in issuing any denial, even for a part of a claim; and seek legal counsel if in doubt.
- Settlements are permissible and are subject to the approval of the MWCC. They are called 9(i) settlements (a reference to the code section), and settlement of the future medical exposure is permissible and remains the norm. Your Carr Allison attorney can handle the paperwork timely, efficiently and in a cost-effective manner.
- Litigation of the exposure is before one of the 8 Administrative Judges (AJ) employed by the MWCC. A trial is held in the county where the accident occurs, and the decision of the AJ is final unless appealed within 20 days of the issuance of the Order. The 3 person Commission sits as an appellate review board for that appeal. Once the MWCC makes its decision, it may be appealed to the Mississippi Court of Appeals. Claimant's attorney's fees are 25% of the recovery (or up to 33 1/3% if appealed beyond the MWCC).

Mississippi's Workers' Compensation Legal Team:



Douglas Bagwell
dbagwell@carrallison.com
(228) 864-1060



Nicole M. Harlan
nharlan@carrallison.com
(228) 864-1060
