



# Workers Compensation Claim State Environmental Guide – West Virginia

WEST VIRGINIA – <http://www.wvinsurance.gov/WorkersCompensation.aspx>

## Indemnity issues

Temporary Total Benefits	<p>\$193.33 Min., \$1,010.41 Max (weekly compensation rate) for current fiscal year running 7/1/23 through 6/30/24). Requires 52 weeks earning history by quarter. No benefits for first 3 days unless “unable to work as a result of compensable injury for more than 3 consecutive calendar days following date of injury,” if unable to work more than 7 consecutive calendar days then can be paid from first day off work, maximum of 104 weeks.</p> <p>Compensation Rate is 66 2/3% of claimant’s AWW, wherever earned. AWW is based on a daily rate of pay at time of injury or weekly average derived from best quarter of wages out of preceding four quarters. Compensation rate is not to exceed 100% of the state AWW</p> <p>Payment for TTD must commence w/in 15 days of receipt of employee’s or employer’s report of injury, whichever is sooner, and also upon receipt of either a proper physicians report or any other information necessary for a determination.</p> <p>May immediately enter order granting TTD in your discretion after receipt of proper medical evidence of disability and after compensability ruling is entered. If injured worker is retired he/she is disqualified from receiving TTD unless application filed before retirement or if compensable injury/disease causes the retirement.</p> <p>No TTD for “reasonably ascertainable period of time during which the injured worker would not have been performing work for any employer.”</p>
Vocational TTD Benefits	<p>Paid at same rate as TTD benefits.</p> <p>Maximum of 52 weeks; can request extension for additional 52 weeks – not to exceed 104 weeks.</p>



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**Indemnity issues**

Permanent Partial Benefits	<p>66 2/3% of claimant's AWW not to exceed 70% of state AWW. \$193.33 min., \$ \$707.29 max. (weekly) – current fiscal year running 7/1/23 through 6/30/24) 1% of PPD equals 4 weeks of PPD.</p> <p>If on TTD more than 120 days and the EE isn't sent out for an IME, then PPD closure would not be in effect. Statutory awards in W. Va. Code § 23-4-6</p> <p>85 C.S.R. § 20 -OP, HL, CTS, and spinal injuries</p> <p>AMA Guides 4<sup>th</sup> edition except for rating impairment for OP, HL, or psychiatric conditions.</p> <p>Statute of Limitation – 5 years from date claim closed if no award or 5 years from date of initial PPD award; only 2 reopening within 5 years</p>
Permanent Total Benefits	<p>66 2/3% of claimant's AWW not to exceed 100% of state AWW. Max rate: \$ \$1010.41/week- for current fiscal year running 7/1/23 through 6/30/24) Minimum: 193.33/week, \$ \$4390.47 maximum (monthly).</p> <p>Must have 50% in prior PPD awards to apply.</p> <p>Must be found to have 50% in WMI by reviewing body or 35% statutory.</p> <p>Must be found unable to engage in employment within 75 mile radius.</p> <p>Benefits terminate at age 70.</p> <p>If IW dies while receiving PTD dependents receive 104 weeks of benefits.</p>
Fatality Benefits	<p>Maximum burial expense fixed by OIC - \$10,000.00</p> <p>Dependent Widow/Widower – until death or remarriage (death due to compensable injury § 23-4-10(b)(1) and (d)).</p> <p>Dependent – until 18 or 25 of full time student; if invalid child as long as child remains invalid (§ 23-4-10(b)(1) and (d)).</p> <p>Dependents entitled jointly to benefits.</p> <p>Amount the same as PTD.</p> <p>Widows – 104 weeks of benefits (claimant receiving PTD, dies from cause other than compensable condition § 23-4-10(e)).</p>
Vocational Rehabilitation	<p>Yes, if injured worker is unable to return to pre-injury employment or has permanent restrictions.</p> <p>7 Step hierarchy.</p> <p>Vocation TTD – 52 weeks with possible extension of 52 weeks – paid at TTD rate.</p> <p>Temporary partial rehabilitation benefits – 70% of difference between AWW at time of injury and AWW at new employment.</p> <p>TPR – not subject to minimum amount; cannot exceed TTD benefit amount; must be reviewed every 90 days; not paid for differences of 5% or less; no more than 52 weeks.</p>

**Indemnity issues**

Settlement Allowed	Yes, you can Full and Final a claim to include medical. For non-orthopedic occupational disease claims (OP), the claimant must be represented to settle medical benefits Statute revision in 2020 does not require the claimant to be represented if settling a claim for occupational hearing loss
Cap on benefits, exceptions	See above.

**Medical issues**

Initial Choice of Provider	Employee choice (within MCO, if applicable)
Change of Provider	Employee choice (within MCO, if applicable)
Medical Fee Schedule	Yes
Managed Care	Yes – if approved <u>See</u> 85 C.S.R. § 21
Utilization Review	<u>See</u> 85 C.S.R. § 21
Treatment Guidelines	85 C.S.R. § 20 “Rule 20”
Generic Drug Substitution	The state mandates generic substitution.
Medical Mileage Reimbursement Rate	\$0.65/mile for treatment and IME
Network Information	<u>See</u> 85 C.S.R. § 21
Ability to Terminate Medical Treatment	Use IME to manage treatment. Yes, you are able to terminate medical benefits due to supporting information. IME now called CPE Claimant Physical Exam
Settlement Allowed	Yes
Cap on benefits, exceptions	Yes

**Other Issues**

WC Hearing Docket Speed	Depends on issue Expedited hearing process available for claimant to opt-in for 1) rejection of claim, 2) denial of initial TTD benefits and 3) denial of medical treatment issues.
Staff Counsel	Yes, William J. Ferren & Associates Staff counsel contact in WV is Jeffrey Carder
Hearings require attorney or claim handler participation	Attorney required for employer at all levels.
Occupational Diseases	Yes, 6 factor causal connection test. Statutory requirements.
Second Injury Fund availability	No
Other Offset Opportunities	Apportionment for prior or subsequent conditions/injuries.
EDI	Claims EDI Release 3: FROI & SROI (7/1/2008)
In-State Adjusting Required	No
License or Certification Required	No, unless adjusting in state.