



Workers Compensation Claim State Environmental Guide – Rhode Island

RHODE ISLAND – www.dlt.ri.gov/wc/

Indemnity issues

Temporary Total Benefits

No Minimum. Maximum changes every October 1. As of 10/1/2023 the max is \$1,534.00. TT allows for \$15.00 added for each dependent. Effective January 1, 2025, the weekly compensation for total incapacity will include an additional \$25.00 for each wholly dependent person. For those receiving death benefits under section 28-33-12, the additional sum will be \$40.00.

Comp rate is 62% of the pre-injury average weekly wage for all injuries and disability occurring on or after 1/1/2022. Waiting period is three days and never retroactive. The average weekly wage (AWW) is computed by averaging 13 weeks of wages and 52 weeks of overtime and bonus (add together) to arrive at the AWW. The first payment should be paid within 21 days from the day the employer has knowledge. Unlimited benefits. COLA applicable effective May 10th each year after one year of TT benefits is received.

Temporary Partial Benefits

Definition: Capable of working in some capacity. Most people are placed on TP even when completely out of work.

No Minimum. Maximum changes every October 1. As of 10/1/2023 the max is \$1,534.00. TP does not pay for dependents. Comp rate is 62% of the pre-injury average weekly wage for all injuries and disability occurring on or after 1/1/2022. Waiting period is three days and never retroactive. The average weekly wage (AWW) is computed by averaging 13 weeks of wages and 52 weeks of overtime and bonus (add together) to arrive at the AWW. The first payment should be paid within 21 days from the day the employer has knowledge. Benefits are limited to 312 weeks.

Called "Specific Benefits." Scarring is allowed for any part of the body. The amount is based on weekly amounts – min \$45.00 and max \$90.00. The benefit amount is subjective and based on experience. We sometimes use a baseline of 10 wks per inch. Never to exceed 500 wks. Impairment is also allowed for all extremities, not the spine. Any impairment to the spine is based on how it affects an extremity. Based on the latest AMA guidelines. Some total losses and amputations are scheduled in the law under section 28-33-19. Paid all at once. Attorney fee separate. Can be by mutual agreement without the court or ordered by the court. There are specific guidelines for hearing loss.

Permanent Partial/Total Benefits

PT is treated the same as TT therefore there is rarely a need to label PT.

Fatality Benefits

Burial expenses allowed \$15,000

Payable to dependents if they are considered wholly dependent on the employee. The rate is calculated the same as TT rate. \$40.00 added for each dependent. Benefits end upon remarriage or death of spouse or dependents reaching 18.

Vocational Rehab

The law does have a voc rehab section that is rarely used. It is not required. Evaluations can be requested by the state owned facility, The Arrigan Rehabilitation Center and there is no cost.



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Indemnity issues

Settlement Allowed

Yes. Settlement includes indemnity and medical. Benefits must be paid for 6 months before settlement can take place.

Cap on benefits, exceptions

TT no cap, TP 312 weeks

When MMI is determined you can seek a reduction to 70% of the comp rate from the court.

Timeliness of Benefits (TT, TP, FA)

Effective 1/1/2023 Late payments: New law change; The due date is now determined as follows: Day 1 is the date the MOA/MUA is filed or the date the Judge signs the Order.

"due" date is now determined to be day one.

It is late after 14 days from the start date noted above, not date received.

Example: If the beginning of the pay period day one is 2/1, then it is due on 2/1. If the week of 2/1 through 2/7 is not paid by 2/15 (mailed by, not issued) it will be determined a late payment. The penalty is 10% if the benefits are by Memorandum of Agreement (MOA) and 20% by Dept of Labor order. The penalty runs for the whole week amount, not just the days that were over 14 days late. Plus it will be subject to a counsel fee. However, the penalty will not ripen unless a petition is filed before the payment is mailed. i.e. if the benefits were due to be paid by 2/15 and were not paid until 2/18 there can be 2 scenarios: 1. Counsel filed petition alleging late payments PRIOR to the mailing of the check – say 2/16 – then there will be a penalty and counsel fee. 2. If the petition was not filed until AFTER the mailing of the check, ie petition filed on 2/20, then the petition should be denied, no fee and no penalty.

Medical issues

Initial Choice of Provider

Employee choice. Treatment at an emergency room or with a doctor under contract with the employer does not count as the initial choice of a doctor.

Change of Provider

Initial provider may refer without permission. Provider changes within the same specialty can be done within reason. If the insurer or self-insured employer has a preferred provider network approved and kept on record by the medical advisory board, and change by the employee from the initial health care provider of records shall only be to a health care provider listed in the approved preferred provider network.

Medical Fee Schedule

There is a fee schedule.

Managed Care

None

Utilization Review

None

Treatment Guidelines The state has established protocols for certain areas of treatment. They can be found on the website for Medical Advisory Board

<https://www.courts.ri.gov/Courts/workerscompensationcourt/MedicalAdvisoryBoard/Pages/Protocols.aspx>

Most doctors follow them and then ask for authorization when they are planning to exceed them: Chiro, PT, Inject, etc.

Generic Drug Substitution

The state mandates generic substitution.

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Medical issues

Medical Mileage Reimbursement Rate

Yes, mileage reimbursement rate is equal to the per-mile rate allowed by the Internal Revenue Service; \$0.67 cents per mile to and from IME only, effective 1/1/2024.

Network Information

Focus (primary) and CorVel (secondary).

Ability to Terminate Medical Treatment

No limit on medical treatment reasonably and necessarily required to cure or relieve the injury. Can use IME to help stop excessive treatment. Can use IME to terminate benefits. IMEs can be requested within reason after compensation has been paid for 3 months.

Settlement Allowed

Yes. Both indemnity and medical settle.

Cap on benefits, exceptions

None

Other Issues

Compensability Decision Timeframe

Compensability decision made within -14 days..

WC Hearing Docket Speed

Initial pre-trials are scheduled within 30 days from filing. Follow up court hearings come up fast. The docket is usually quick.

Staff Counsel

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Hearings require attorney or claim handler participation

Must have attorney participation at all levels in court. Claim handler does not need to attend. Pre-trial is binding decision.

Jurisdictional Updates

Effective January 1, 2022

28-33-25.1 – Settlement of disputed cases – this statute was amended to *redact* the statutory requirement that the Judge hearing the D&D settlement consider the best interests of CMS, where applicable. They only changed this language with regard to disputed D&D cases, NOT, for accepted commutations.

Further the statute added that that for a late payment of a D&D settlement there will be a 100.00 per day fine for every day the payments are late. This puts it on par with the accepted case lump sum settlement penalties. This should take effect upon its passage, 7/14/21 as there is no provision for a later date.

28-33-17 – Weekly compensation for total incapacity –Permanent total disability – dependents' allowances – FOR ALL INJURIES ON OR AFTER 1/1/2022. Appears that the RI Legislature is now getting rid of the spendable base wage calculation from the calculation for the compensation rate. From 1/1/22 forward, the AWW is essentially the AWW calculation for the 13 weeks plus the bonus and OT provisions, and instead of then looking up the spendable base wage

Other Issues

for a 75% calculation, it is now just the AWW multiplied by 62%.

All injuries 12/31/2020 and prior will have the AWW calculated at the 75% of the spendable base wage.

Effective January 1, 2025, the weekly compensation for total incapacity will include an additional \$25.00 for each wholly dependent person. For those receiving death benefits under section 28-33-12, the additional sum will be \$40.00.

28-33-18 – Weekly compensation for partial incapacity – pits the same calculation into effect for partial as it does for the total above, with the same timelines.

28-33-18.2 Suitable alternative employment:

- Effective January 1, 2025, employers or insurers must pay an injured employee who accepts suitable alternative employment 62% of the difference between their pre-injury average weekly wage and their weekly earnings from the alternative employment.

28-33-20.1 – Computation of earnings for recurrence – Burden of employee to establish recurrence – Allows the same computation of AWW to be established on a recurrence as for 28-33-20. So if it is a prior WC injury and the employee had returned to the employer s/he was injured at for at least 26 weeks, the AWW will be computed in the same manner as 28-33-20, as opposed to dividing the gross wages earned by the number of calendar weeks worked.

This one is a little trickier, as the statute 28-33-20.1 does not indicate that the effective date is 1/1/22. So theoretically if someone suffers a recurrence after this passage (7/14/2021 to 12/31/2021) and had been returned to employment for at least a period of 26 weeks, the AWW would be calculated as per 28-33-20 to the previous 13 weeks the employee worked just before the recurrence happens. So the AWW may be different than the amount it used to be calculated at, but the compensation rate would be calculated the old way with the spendable base calculation. For recurrences after 1/1/22 the AWW would be calculated as per 28-33-20.1 and the compensation rate will be calculated as to the 62% without regard to the spendable base wages amounts.

***As this is a petition fee driven system, we know the plaintiff bar will be watching AWW with an even closer eye than they already have been. Be on the lookout for erroneous calculations/21 day demands re AWW calculation corrections when these passages are in effect as the plaintiff attys will find the environment ripe for petitions to review to correct the wages.

28-35-58 Liability of third person for damages:

- In case of a reimbursement or suspension period dispute, the court must assign it to the workers' compensation court's mediation program if either party petitions. Parties or attorneys can still pursue other available actions.

28-37-10 Dependents' allowances to totally incapacitated persons:

- Increases the weekly compensation for each dependent child to \$25, with an aggregate maximum of \$75 per week.

Occupational Diseases

Yes. Section 28-34-1, listed and specific as to what is allowed.

Other Issues

Second Injury Fund availability

None

Other Offset Opportunities

Apportionment can be proven in cases of multiple employers for cases of repetitive motion. Apportionment is based on court findings after a medical evaluation. The doctor apportions between jobs.

EDI

Claims EDI Release 3: FROI & SROI (3/1/2015)

In-State Adjusting Required

No

License or Certification Required

Yes. Must be licensed.