

Guide To Indiana Worker's Compensation

Frank O'Bannon, Governor

G. Terrence Coriden, Chairman, Worker's Compensation Board of Indiana

Other Publications on Indiana Worker's Compensation

A volume containing the Indiana Worker's Compensation Act, the Board's administrative rules, and applicable trial rules is available from Lexis Law Publishing for \$45. For more information, call 1-800-562-1197, or write to: Lexis Law Publishing, P.O. Box 7587, Charlottesville, VA, 22906-7587.

Open Lines, the periodic newsletter of the Worker's Compensation Board, is available on the Board's Internet home page at www.state.in.us/wkcomp. Each issue addresses legislative and legal developments and offers articles of general interest to those affected by Indiana worker's compensation. For more information, contact the Ombudsman Division at 317-232-5922.

The Indiana Chamber of Commerce publishes the *Worker's Compensation Handbook: A Comprehensive Guide to Worker's Compensation in Indiana* by Indianapolis attorney Robert A. Fanning. This publication would be especially useful to Indiana employers. For more information contact the Indiana Chamber of Commerce at (800) 824-6885.

From the Governor:

Worker's compensation laws can affect the life of every citizen of Indiana. For too long, our state's outmoded laws covering worker's compensation and occupational disease had left working men and women without adequate protections. For that reason, Governor Bayh appointed a task force in 1990, bringing together representatives from labor, business, and the medical community, to review those laws and recommend reforms.

Those recommendations formed the basis for amendments to the state's Worker's Compensation and Occupational Diseases Acts, approved by the General Assembly in 1991 and effective July 1, 1991. I am proud that labor, business, the medical community, the legislature, and the administration worked together effectively to produce a fairer system.

This handbook is a guide to Indiana's worker's compensation system. We hope it will enhance public understanding of Indiana's Worker's Compensation and Occupational Diseases Acts.

From the Chairman

This handbook was written for the purpose of giving readers a general explanation of the current status of the Indiana Worker's Compensation and Occupational Diseases Acts. Although great care has been taken to provide the best information concerning the Worker's Compensation Act, the need to offer general explanations and answers to complex questions can lead to an oversimplification of the entire process.

Therefore, although we expect and hope that you will use this book to aid your understanding of Indiana's worker's compensation system, you should always remember that the specific answers to questions concerning a specific case may vary from the general answers within this publication.

This agency hopes that this publication helps all those parties who are affected by the more than 150,000 injuries that occur in the work place each year.

Sincerely,

G. Terrence Coriden
Chairman

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Agency information

The office of the Worker's Compensation Board of Indiana is located in Room W-196 of the Indiana Government Center South at the corner of Washington Street and West Street in downtown Indianapolis.

Mailing Address

Worker's Compensation Board of Indiana
402 West Washington Street Room W-196
Indianapolis, Indiana 46204

Telephone Numbers

| | |
|-----------------------------------|------------------------------|
| Administrative Division | (317) 232-3808 |
| Office of the Executive Secretary | (317) 232-3809 |
| Ombudsman Division COMP | (317) 232-5922 or (800) 824- |
| Data Services Division | (317) 233-4930 |
| Insurance Division | (317) 232-3982 |

Indiana Worker's Compensation Board Hearing Districts

| <u>District</u> | <u>Board Member</u> | <u>Court Reporter</u> | <u>Ombudsman</u> |
|---------------------|---------------------|-----------------------|------------------|
| 1 8242667 | Susan Severtson | Laurie Krieger | (800) |
| 2 (317) 233-3907 | James Sarkisian | Diane Fogarty | Wendy Baker |
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William Howell

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PREFACE

This guide to Indiana worker's compensation is written for employers, employees, benefits administrators, union representatives, and other Indiana citizens in need of a brief guide to the rights and remedies available under Indiana's worker's compensation system.

While the information here is based on the Indiana Worker's Compensation and Occupational Diseases Acts, it cannot and should not be relied upon as legal advice.

Readers are invited to duplicate and distribute this book. Comments on the contents of this book are welcomed and should be directed in writing to the Worker's Compensation Board.

I. INTRODUCTION

[History](#)

[Overview of the Indiana Worker's Compensation Act](#)

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History

As the industrial revolution advanced and production became the business of capital rather than the family unit, farmer, or artisan, injured workers and their families were often devastated by work-related injuries. Workers often had no guaranteed means of recovery for medical expenses and lost wages resulting from work-related injuries or illness.

Prior to the enactment of worker's compensation laws, employees could sue for damages in civil lawsuits against employers. However, employees seldom prevailed because employers could invoke powerful legal defenses such as the "assumption of risk" doctrine, which held that workers had no remedy for the normal risks inherent to their jobs. Another doctrine, the "fellow servant" rule, held that employers were not liable to employees for injuries caused by the negligence of other employees. In order to prevail, the worker had to prove at a minimum that the employer was negligent. The employer could still use the employee's negligence as a defense to a lawsuit. It has been estimated that before the enactment of worker's compensation acts, over eighty percent of employee lawsuits against employers for on-the-job injuries failed. As a result, the cost of workplace injuries was passed on to injured workers and their families, and to the public at large.

Even if a lawsuit were successful, it could not provide for the employee's

immediate need for medical attention and temporary wage replacement. The common law system was also costly and time consuming for employers. Although employee recovery was rare, a large civil judgment and protracted litigation could be devastating to businesses.

Worker's compensation systems developed as a compromise between employers and employees. Under worker's compensation, the common law defenses to liability are unavailable to the employer, while remedies for pain and suffering and consequential damages are unavailable to the employee. The fault-based common law system was abandoned for a no-fault insurance system. This system provides a more expedient administrative remedy in place of civil litigation.

Overview of the Indiana Worker's Compensation Act

Like most states, Indiana has a private insurance worker's compensation system, which means that employers must carry an insurance policy in order to cover liability under the worker's compensation law. A small number of employers are "self-insured," meaning they have received special approval from the Worker's Compensation Board to pay claims out of their own funds.

The Worker's Compensation Board has exclusive jurisdiction to hear claims for personal injury or death by accident arising out of and in the course of employment. Worker's compensation provides limited benefits to injured workers in the form of medical treatment, compensation for lost wages, and compensation for the loss or loss of use of parts of the body. In the case an employee dies in a workplace accident, the employee's dependents may become eligible to collect death benefits.

When a compensable injury occurs, the employee should receive immediate medical treatment if necessary. If the employee is unable to work because of the injury, he or she is considered disabled and may receive limited wage-replacement compensation. The employee may be placed on light duty or on a reduced schedule, in which case partial disability payments may be provided. When the

injury heals to the point that it will likely get no better and no worse, the employee may be examined to determine if there is any [permanent impairment](#), meaning a permanent loss of a body part or function. If the injury is found to result in a [permanent impairment](#), the employee will be compensated according to a statutory schedule.

Claims for work injuries will be handled initially by the employer or its worker's compensation insurance carrier. If disputes arise, both the employer and the employee have the right to a hearing before a worker's compensation judge.

How to Order a Copy of the Act

A volume containing the Indiana Worker's Compensation and Occupational Diseases Acts, administrative rules, and related laws can be purchased by contacting Lexis Law Publishing at (800)562-1197 or the Indiana Compensation Rating Bureau at (317)842-2800.

The cost is \$45.

Political Structure of the Indiana Worker's Compensation Board

The Worker's Compensation Board is composed of seven administrative law judges who have the duty to administer Indiana's Worker's Compensation and Occupational Diseases Acts. Board members are appointed by the Governor to staggered four year terms. Not more than four members of the Board may belong to the same political party. In addition to administering the Worker's Compensation and Occupational Diseases Acts, the Board has the authority to pass administrative rules in order to carry into effect the provisions of the law. The Board's current administrative rules are found at Title 631 of the Indiana Administrative Code.

Board members have the authority to hear, determine, and review all claims for worker's compensation and [occupational diseases](#). Board members may order medical treatment for injured employees, approve claims for medical and attorney's fees incurred under the Acts, approve agreements between employers

and employees, and modify or change awards. Ind. Code §22-3-1-3.

Agency Staff Functions

The Worker's Compensation Board appoints an Executive Secretary who directs the staff of the Agency. The Executive Secretary and the staff are responsible for the day to day administrative functions of the Board, and are available to the public to answer questions during business hours by telephone, in writing, or in person. The staff of the Board is also available to address conventions or meetings. Requests for speakers may be submitted in writing to the Executive Secretary of the Board.

The employees of the Board are knowledgeable about worker's compensation and can answer general questions and offer assistance with the administrative steps necessary to proceed through the worker's compensation system. However, members of the staff cannot give legal advice to employers or employees. Questions such as "Is my claim [compensable](#)?" or "Can we deny this employee's claim?" are best left to an attorney, and ultimately, to the worker's compensation hearing judges. Agency staff members cannot act as the representatives or advocates of the parties to a worker's compensation dispute.

Agency Divisions

The [Ombudsman Division](#) has been established to assist employers and employees who have problems or disputes in worker's compensation matters. Upon receipt of a signed Request for Assistance Form the [Ombudsman division](#) may attempt to informally resolve disputes arising between employers and employees. The [Ombudsman staff](#) can be helpful when an employee feels that he or she is entitled to worker's compensation but is receiving no benefits. In a limited number of cases, the [Ombudsman Division](#) may recommend that the Board appoint an [Independent Medical Examination](#) if the employer and employee disagree as to the employee's readiness to return to work after a compensable injury. If the [Ombudsman](#)

[division](#) is unable to resolve a dispute, the parties may file for a hearing before a worker's compensation judge.

If you require the assistance of an [Ombudsman](#), you may call (800) 824-2667, or file the Request for Assistance. Upon receipt of the form, an [Ombudsman](#) will contact all parties involved in order to attempt to resolve the dispute.

The *Data Services Division* is responsible for processing and checking the accuracy of reports of injury and compensation agreements. If you have a question about the calculation of disability payments or [permanent partial impairment \(PPI\)](#) agreements, contact the Data Services division. Beginning in 1995, this division is utilizing new computer systems to keep detailed statistical records on Indiana worker's compensation matters.

The *Insurance Division* collects proof of insurance information from employers, administers the [Independent Contractor](#) Affidavit process (see page 13), and administers the self-insurance program. Applications for self-insurance are available upon request.

To determine whether an employer has current worker's compensation coverage, contact the Insurance Division. The Insurance Division provides certificates of compliance pursuant to 631 IAC 1-1-30. Written requests must be accompanied by a pre-addressed, stamped envelope for each party who is to receive a copy of the certificate.

The *Administrative Division* processes applications for hearings, various motions, settlement agreements, and other filings, schedules worker's compensation hearings, and administers the [Second Injury Fund](#). The administrative division can answer questions about single hearing member and Full Board hearings, continuances, and disputed cases (claims in which an Application for Adjustment of Claim has been filed).

Jurisdiction of the Worker's Compensation Board

The Worker's Compensation Board has subject matter jurisdiction of claims for "personal injury or death by accident [arising out of](#) and [in the course](#) of employment." This important phrase defines the circumstances under which a claim is [compensable](#) and will be discussed in detail later in this handbook. The Board's jurisdiction over such injuries reaches all employer-employee relationships covered by the [Indiana Worker's Compensation Act](#), affecting over two million workers. The Act covers Indiana employees working outside of the state or country at the time of an accident.

Which State Worker's Compensation Program Applies?

Every State has its own worker's compensation system. When work is performed in more than one state, it may be difficult to determine which state's compensation act applies. A common rule is that a state may apply its worker's compensation system if there is a contract for employment in the state. The employment contract can be written, oral, or implied. However, state worker's compensation laws may also be applied in:

- the employee's state of residence,
- any state in which the employee performs work, and
- the state in which the employer insured its worker's compensation liability.

The employee has the right to file a claim for benefits in *all states* in which there might be coverage. However, if a successive award is made, the employee will generally be required to repay the previous award (double compensation is not allowed). Employees should contact an attorney or the relevant state worker's compensation authorities for information on worker's compensation law and procedure in states other than Indiana.

Indiana can apply its worker's compensation law when the Board finds a contract of employment made in Indiana or a contract providing for performance (work) in

Indiana.

Although some states utilize election forms which state that the employee will only bring claims in that state, Indiana does not recognize such forms as barring the employee from filing a claim in Indiana under the above circumstances.

II. WHO IS COVERED BY THE WORKER'S COMPENSATION ACT?

[Employment that must be covered](#)

[Employment that is not covered](#)

[Employment covered at the option of employer or employee](#)

[How to elect coverage for casual, domestic, and farm/agricultural labor](#)

[Independent Contractors in the Construction Trades](#)

[Temporary, Leased, and Lent Employees](#)

[Lending Employees](#)

[Joint Employment](#)

For purposes of the [Indiana Worker's Compensation Act](#), all types of employment relationships may be divided into three categories:

1. Employment that *must* be covered by worker's compensation.
2. Employment that *are not* covered by worker's compensation.
3. Employment that are not automatically covered, but that *may* be

covered at the option of the employer. In some cases the consent of the employee is required.

Employment Relationships that Must be Covered

[Indiana employer-employee relationships](#)

[Executive officers of corporation](#)

[Employees working out-of-state](#)

[Members of Indiana General Assembly](#)

[Field examiners of the Indiana State Board of Accounts](#)

[Employees of boxing and wrestling exhibition](#)

[Part-time employees](#)

[Minor employees](#)

[Volunteer firefighters](#)

[Volunteer emergency medical technicians](#)

All Indiana public and private employer-employee relationships (with a few exceptions, discussed below) are covered by the Worker's Compensation and Occupational Diseases Acts. It does not matter how many workers are employed in a business; all employees must be covered. Employees who have been injured while working and have been told that they are ineligible for worker's compensation either because the employment is not covered by the Act, or because the employer does not consider the worker to be an employee, may contact the [Ombudsman Division](#) of the Worker's Compensation Board for information or an attorney for advice.

(1) *Executive officers* elected or appointed and empowered in accordance with the charter and bylaws of a private corporation are employees under the Act and are therefore covered. Ind. Code §22-3-6-1(b)(1).

(2) *Employees working outside of the State of Indiana*, whether in another state or outside of the United States, are covered by worker's compensation as long as there is an Indiana employment relationship. Ind. Code §22-3-2-

20.

(3) *Members of the Indiana General Assembly; Field Examiners of the State Board of Accounts* are covered. Ind. Code §22-3-2-2(g).

(4) *Employees of boxing, wrestling, and other ring exhibitions* must be covered by worker's compensation insurance, in addition to other types of insurance. 808 IAC 2-33-1.

(5) *Part-time employees* are covered.

(6) *Minor employees* are covered. If a child under the age of seventeen (17) years is forced, required, or permitted to work in violation of Ind. Code §20-8.1-4-24 or Ind. Code §20-8.1-4-25, the Board is required to award the child employee double the compensation ordinarily payable under the Act. Ind. Code §22-3-6-1(c). Ind. Code §20-8.1-4-25 prohibits child labor in any hazardous occupation designated under the federal Fair Labor Standards Act (29 U.S.C. §§201-219), as amended. Half of an award of double compensation for child labor violations would be payable *directly by the employer*; the other half would be the responsibility of the employer's insurance carrier. Ind. Code §22-3-6-1(c)(2).

Payments of compensation in excess of one hundred dollars (\$100) to employees under the age of eighteen (18) years must be made to a trustee or guardian, or to the parents of the employee if ordered by the Worker's Compensation Board. Ind. Code §22-3-3-28.

(7) *Students participating in on-the-job training under the federal School to Work Opportunities Act* (20 U.S.C. 6101 et seq.) are eligible to receive medical benefits, permanent partial impairment compensation, and in the event of death, burial compensation and a lump sum payment of one hundred seventy-five thousand dollars (\$175,000). Ind. Code §22-3-2-2.5.

(8) The limitations periods described in Ind. Code §22-3-3-3 and §22-3-3-27 do not run against minor employees that have no guardian or trustee. Ind.

Code §22-3-3-30.

(9) *Volunteer Firefighters/Emergency Medical Technicians*: Volunteer firefighters and EMT's working in a voluntary capacity for a volunteer fire company or ambulance company must be covered by the medical treatment and death benefit portions of the Worker's Compensation and Occupational Diseases Acts. Worker's compensation for lost wages and impairment is not covered. Any disputes as to compensability are resolved by the Worker's Compensation Board. Ind. Code §36-8-12-10. (See Dispute Resolution, pages 41-43.)

(10) *Recipients of Workfare* Under Ind. Code § 12-20-11 are covered by the medical treatment and burial expense provisions only of the Worker's Compensation Act. Ind. Code § 12-20-11-5(a). Recipients of workfare under Ind. Code § 12-20-11 apparently are not covered by the provisions of the Occupational Diseases Act at Ind. Code § 22-3-7.

(11) *Licensed employers regulated by the Indiana Horse Racing Commission* shall carry worker's compensation insurance as required by Indiana Statute. 71 IAC 5-1-10.

Employment Relationships Not Covered

[Railroad employees](#)

[Employees in federal commerce](#)

[Real estate professionals](#)

[Independent contractors](#)

[Independent contractors in the building and construction trades](#)

[Athletes on scholarship](#)

[Inmates of penal institutions](#)

[Volunteers](#)

The following categories of employees are exempt from the Indiana Worker's Compensation Act and cannot elect optional coverage:

1. *Railroad Employees.* Railroad engineers, firemen, conductors, brakemen, flagmen, baggage men, yard engine foremen and their helpers, are excluded from coverage by Ind. Code §22-3-2-2(b). These types of employment are covered by the Federal Employees Liability Act.
2. *Employees in Federal Commerce.* Ind. Code §22-3-2-19 provides that employees engaged in interstate or foreign commerce are not covered by Indiana worker's compensation *if* federal law has provided alternative compensation. For example, seamen are covered by the Jones Act, and Longshoremen are covered by the Longshoreman's and Harbor Workers Act. Currently, riverboat casino employees may be treated as seamen under the Jones Act. Riverboat casino employees who have been injured and are unsure of their rights should contact an attorney familiar with worker's compensation and with the Jones Act.
3. *Real Estate Professionals.* Real estate professionals are not employees, and therefore are not covered under Indiana worker's compensation if:
 - (a) they are licensed real estate agents;
 - (b) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
 - (c) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes. Ind. Code §22-3-6-1(b)(6).
4. [Independent Contractors](#). Independent contractors are not employees and therefore are not covered by the Act. The rules for determining who is an independent contractor are those applied by the Internal Revenue Service. The IRS weighs twenty factors in making such a determination. See IRS Publication 937 for more information. It is possible to file Form SS-8 with the IRS for a determination of a worker's status. Note

that special registration procedures are in effect for independent contractors working in the building and construction trades.

An injured worker who has been denied worker's compensation on the basis that he or she was an independent contractor has the right to file an Application for Adjustment of Claim with the Worker's Compensation Board. If the Board finds that the worker was an employee, the worker will be covered by the [Worker's Compensation Act](#).

5. [Independent Contractors](#) in the *Building and Construction Trades*. A person is an independent contractor in the construction trades and not covered as an employee under the Act if, and only if, the person is an independent contractor under the guidelines of the Internal Revenue Service. Ind. Code §22-3-6-1(b)(7). These guidelines may be found in IRS Publication 937. See page 13.

6. *Athletes on Scholarship*. A student athlete who accepted a "grant-in-aid" from a state university was held not to be an employee of the university.

7. *Inmates of penal institutions*. Inmates who work in a penal institution with or without pay have been held not to be employees. Inmates injured while incarcerated may have other rights and remedies under the common law.

8. *Volunteers*. A volunteer who provides service without receiving any type of compensation is not an employee and therefore is not covered by the Act. However, if a person receives *any* compensation for work, whether cash or in-kind, that person could potentially be considered an employee.

Employment Relationships that May Elect Optional Coverage

[Local police and firefighters](#)

[Volunteers; emergency hazardous materials response team](#)

[Executive officers of public or nonprofit corporations](#)

[Sole proprietors](#)

[Partner in a partnership](#)

[Owner-operators](#)

[Members of limited liability companies](#)

[Managers of limited liability companies](#)

[Rostered volunteers](#)

[Volunteers -- state-owned psychiatric institutions](#)

[Casual labor](#)

[Household Employees](#)

[Farm and agricultural employees](#)

The Board may be notified of the election of most optional coverages by filing the Election of Coverage Form.

1. *Local police officers and firefighters.* Worker's compensation does not apply to municipal employees if:

a) they are members of municipal police or fire departments, and

b) they are members of a police or firefighter's pension fund.

However, the municipal council may elect to bring such employees within the *medical* provisions of the Act (disability and impairment compensation would not be covered). Ind. Code §22-3-2-2(c).

If the medical benefits provided under worker's compensation terminate *for any reason* before the police or firefighter is fully recovered, the municipal council must provide necessary medical treatment until the employee is no longer in need of such treatment. Ind. Code §22-3-2-2(e). Local police officers or fire fighters covered by a medical-only worker's compensation policy should contact their benefits coordinators or the local clerk or treasurer for more information on coverage.

Other benefits *may* be available to injured police officers and firefighters outside of the Worker's Compensation Act. Ind. Code §36-8-4-5(a) provides

the following care to police officers and firefighters who are injured or made ill by the performance of their duties: medical and surgical care; medicines, laboratory, curative and palliative agents and means; X-ray, diagnostic, and therapeutic service including during the recovery period; and hospital and special nursing care if the physician or surgeon in charge considers it necessary for proper recovery. Note, however, that the Worker's Compensation Board has no jurisdiction over medical benefits payable pursuant to Ind. Code §36-8-4-5(a).

2. *Reserve Police Officers* as defined by Ind. Code 36-8-3-20 may be covered by the medical treatment and burial expense provisions of the Act. The administrative procedures of the Act apply if compensability of the injury is an issue. Ind. Code 36-8-3-20(j).

3. *Volunteers working for hazardous materials response team.* These workers may be covered by the medical benefit and burial expense provisions of the Act at the option of the employer and employee. Ind. Code §36-8-12-10.

4. *Executive Officers of Public or Nonprofit Corporations.* An executive officer of a municipal corporation, other governmental subdivision, or of a charitable, religious, educational, or other nonprofit corporation may be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers brought within the coverage of the insurance contract are considered covered as employees under the Act. Ind. Code §22-3-6-1(b)(2).

5. *Sole Proprietors.* A sole proprietorship may elect to cover the owner as an employee under the Act if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve written notice of the election upon the owner's insurance carrier. No owner of a sole proprietorship may be considered an employee under the Act

until the notice has been received. Ind. Code §22-3-6-1(b)(4).

If the owner of a sole proprietorship is an independent contractor in the construction trades and does not elect coverage, the owner must obtain an Affidavit of Exemption (See page A-16) under Ind. Code §22•3•2•14.5. See page 13.

6. *Partner in a partnership.* A partner may be insured as an employee under the Act if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve written notice of the election upon the partner's insurance carrier and the Worker's Compensation Board. No partner may be considered an employee under until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under Ind. Code §22•3•2•14.5.

7. *Owner operators.* An owner•operator that provides a motor vehicle and the services of a driver to motor carrier under a written contract that is subject to Ind. Code §8•2.1•18•46, 45 IAC 16•1•13, or 49 CFR 1057 is not an employee of the motor carrier and is therefore not covered under the Act. The owner•operator may elect to be covered and have the owner•operator's drivers covered under a worker's compensation insurance policy or authorized self•insurance that insures the motor carrier if the owner•operator pays the premiums as requested by the motor carrier. An election by an owner•operator under this subdivision does not terminate the independent contractor status of the owner•operator for any other purpose. Ind.Code '22-3-6-1(b)(8).

8. *Members/managers of limited liability companies.* A member or manager in a limited liability company (LLC) may elect to cover the member or manager under the Act if the member or manager is actually engaged in the limited liability company business. To make this election, the member or manager must serve written notice of the election upon the member's or

manager's insurance carrier and upon the Board. A member or manager may not be considered an employee under the Act until the notice has been received. Ind. Code §22-3-6-1(b)(9).

9. *Rostered Volunteers* A volunteer whose name has been entered and approved on a county, municipal, or township roster of volunteers for volunteer programs operated by the county, municipality, or township may be covered at the option of the governmental unit by the medical-only provisions of the Act. Lost wage and impairment compensation would not be covered. Ind. Code §22-3-2-2.1.

10. *Volunteer Workers -- State-owned or operated psychiatric institutions.* A person who performs volunteer work for a state-owned or operated psychiatric institution, receives no compensation of any kind, and who has been approved and accepted as a volunteer worker by the director of the Division of Disability, Aging, and Rehabilitative Services; the Division of Family and Children; or the Division of Mental Health is covered by the medical-only provisions of the Act. Ind. Code §22-3-2-2.3.

The following types of employment are not covered by the mandatory provisions of the Act but *may* be brought within the Act on a voluntary basis upon notice to the employer, employee, and the Board.

1. *Casual Labor.* Ind. Code §22-3-2-9 exempts "casual" labor from the coverage of the Worker's Compensation Act. The burden is on the employer to prove that the worker meets the definition of a casual laborer. Employment might be considered casual when it is not in the usual course of trade, business, occupation, profession of the employer or "irregular, unpredictable, sporadic, and brief in nature." One Indiana case defined casual as "happening or coming to pass without design, and without being foreseen or expected, coming without regularity, occasional, incidental, liable to happen, subject to chance or accident, uncertain, having the air of a chance, or incidental occurrence."

In defining "casual" employment, infrequency of employment or its duration is immaterial. The analysis is concerned with the service rendered or work done, rather than with the temporary nature of the employment contract.

2. *Household Employees.* The employment of "household employees" is exempted from mandatory coverage under the Act. However, individuals employing household help should check with an insurance expert or an attorney for advice on whether their employees meet the definition. If not, they must be covered. Some homeowner's insurance policies contain a contingent worker's compensation rider which would cover amounts awarded under the Worker's Compensation Act in the event a household employee is injured. Ind. Code §22-3-2-9.

3. *Farm and Agricultural Employees.* Under Ind. Code §22-3-2-9(a), farm and agricultural employees are excluded from coverage. However, the term "agricultural employee" is limited to workers performing *traditional types of farm labor directly related to the tending of crops and livestock*. Workers injured doing other types of work should be covered by worker's compensation insurance.

Remember that any worker has the right to file an Application for Adjustment of Claim with the Worker's Compensation Board to determine whether a certain situation is covered. The burden is on the employer to prove that the worker meets the definition of a farm or agricultural laborer and is therefore excluded from coverage.

Agricultural employees should determine whether they are considered by their employers to be exempt from worker's compensation. Even if considered exempt, employers have the option to cover employees with worker's compensation insurance. Some agricultural employers carry farm insurance to cover medical treatment of injured workers. These insurance policies do *not* provide the wage replacement and impairment benefits available through worker's compensation.

- Laborers performing strictly agricultural work, such as driving tractors, tending crops, or managing livestock, are probably not covered by the Act, unless the employer has elected coverage. If the employer has elected coverage, the employee can make a claim by contacting the employer or employer's insurance carrier.
- If the employee is found to be an "agricultural employee" by the Board, the employee may have common law rights against the employer.
- Agricultural employees whose employers have not elected to purchase coverage may or may not be covered by the Worker's Compensation Act, depending on the type of work performed.
- Farmers or other employers whose business is related in some way to agriculture, but who employ laborers to perform non-agricultural work, must provide worker's compensation coverage for those employees.
- Primarily non-agricultural employers who operate farms are probably exempt from covering employees whose labor is strictly limited to the tending of crops and livestock.

Migrant farm workers should be aware of the provisions of the Federal Migrant Farmworker Protection Act. Migrant farm workers may contact the Migrant Farmworker Project of the Legal Services Organization of Indiana at (317) 631-9410 for assistance.

How to Elect Worker's Compensation Coverage for Casual Laborers, Farm/Agricultural Employees, and Household Employees

Ind. Code §22-3-2-9(b) allows the *employers* of casual laborers, agricultural employees, and household employees to elect coverage under the Act. Once the Act is accepted by the employer and employee, the employer must continuously provide worker's compensation insurance. Ind. Code §22-3-2-9 provides that notice of acceptance of worker's compensation coverage must be given either:

- a) 30 days prior to any accident resulting in injury or death, or
- b) if the injury occurred less than 30 days after the date of employment, notice given at the time of employment is sufficient.

The notice of coverage must be posted in the place of employment in accordance with Ind.Code '22-3-2-22. The employee must also accept coverage by

- a) sending a registered letter to the employer at the employer's last known address, or
- b) personal delivery to the employer, or
- c) serving the notice on any of the employer's agents upon whom a summons in civil actions may be served under the laws of Indiana.

Finally, a copy of the Notice for Worker's Compensation and Occupational Diseases Coverage must be filed with the Worker's Compensation Board within five (5) days after service upon the employee and employer.

Independent Contractors in the Construction Trades

[Independent contractors](#) in the construction trades are required to register with the Worker's Compensation Board if they meet the guidelines of the U.S. Internal Revenue Service. Ind. Code §§22-3-2-14.5(a); 22-3-6-1(b)(7). The Independent Contractor Affidavit of Exemption is available from the Worker's Compensation Board. A five-dollar fee is required at the time of filing.

IRS Publication 937 lists the twenty factors applied by the IRS in determining whether a worker is an employee or an independent contractor. IRS Form SS-8 may be filed with the IRS for a determination (for tax purposes) as to a worker's status.

Registrants filing the Independent Contractor Affidavit must certify a desire "to be exempt from being able to recover under the worker's compensation policy or self-insurance of a person for whom the [independent contractor](#) will perform

work *only as an independent contractor.*” Ind. Code §22-3-2-14.5(h)(2). Injuries occurring while working as an independent contractor will NOT be covered by worker’s compensation. However, injuries occurring while working *as an employee* might be covered. If an injury occurs, the worker has the right to file a Request for Assistance with the [Ombudsman Division](#) or to file an Application for Adjustment of Claim asserting the existence of a covered Indiana employer-employee relationship, even if the worker has also filed the Independent Contractor Affidavit.

If the person filing the Independent Contractor Affidavit has employees, the contractor must certify that the contractor has worker’s compensation coverage for those employees. Ind. Code §22-3-2-14.5(h)(1).

Ind. Code §22-3-2-14.5(I) requires the Board to validate all signed affidavits, but provides the Board with no investigative power to determine whether or not the affiant is in fact an independent contractor and not an employee. The affidavit is merely a person’s written declaration of facts, which *must be made voluntarily* in order to be valid. Thus, contractors/ employers procuring a validated affidavit cannot rely on a Board determination of the worker’s status. Contractors who require workers to procure a validated affidavit while in fact engaged in an employment relationship run the risk of incurring uninsured losses, in addition to the penalties provided by the Act for failure to carry insurance. Furthermore, under Ind. Code §22-2-2-15(a), no employer can, by written or oral contract or agreement, rule, or other device, escape the requirement that all employees be covered by worker’s compensation insurance.

The independent contractor affidavit is no substitute for a thorough evaluation of the worker’s compensation risk incurred by an employer/contractor. The independent contractor registration process should not be used in an attempt to mask an employer-employee relationship which should be covered by worker’s compensation insurance. An employer who procures independent contractor affidavits from workers who are, in fact, employees may not be held harmless in a worker’s compensation action.

Temporary and Leased Employees

As employers, all employee leasing services and temporary agencies are required by Ind. Code §§22-3-2-5, 22-3-5-1, and 22-3-5-5 to maintain worker's compensation coverage for all employees. Proof of coverage is required to be furnished to the Worker's Compensation Board.

Worker's compensation coverage is required even though leased and temporary employees may not be directly supervised by officials of the leasing firm or temporary service. While in some cases the lessee may arrange for worker's compensation coverage for employees leased from a temporary agency, the temporary agency may ultimately be liable if no insurance policy is in place and the agency is found to be the employer of the leased workers. *Effective July 1, 2000, the General Assembly added language distinguishing between the lessor and the lessee as to which entity is the employer. IC 22-3-6-1(a).* In such a situation the leasing company should verify from the lessee that a worker's compensation policy is continuously in place by requesting a certificate of insurance from the lessee.

Employee Lending

In Indiana, employees who are lent have been held to be covered by the insurance of the regular employer. However, an employer who is “borrowing” the employee of another company should have worker’s compensation coverage, and the employee has the right to inquire as to the coverage of both employers. If either employer lacks coverage, the other might be held liable for worker’s compensation benefits.

Joint Employment

Joint employment means that an employee has an employment contract with two employers and performs work under the simultaneous control of both, and performs substantially the same task for both employers. In joint employment cases, both employers may be liable for worker’s compensation, in proportion to

the wages each pays the employee.

III. INSURANCE

[Insurance or Self-Insurance Required](#)

[Payroll Deductions for Compensation Insurance Impermissible](#)

[Contractual Waivers of Coverage Impermissible](#)

[Posting of Notice of Worker's Compensation Coverage](#)

[Penalties for Failure to Carry Worker's Compensation Insurance](#)

Insurance Required

All Indiana employment relationships, with the exception of the exempt relationships discussed above, must continuously insure the employer's liability to pay [medical benefits](#) and disability/impairment [compensation](#) to injured workers under the Indiana Worker's Compensation and Occupational Diseases Acts by purchasing a private insurance policy. Ind. Code §22-3-5-1. The employer/carrier must file proof with the Board that it has insured its liability under the worker's compensation act. Ind. Code §22-3-5-2. It is the responsibility of the employer, not of the Worker's Compensation Board, to determine whether a given employment relationship must be covered in Indiana. An assessment of potential liability can be made by an attorney or an insurance expert.

A small number of Indiana employers are "self-insured." A self-insured business pays for work-related injuries out of its own funds. Employers must apply to and be authorized by the Board to obtain self-insured status. Ind. Code §22-3-5-3.

Payroll Deductions for Worker's Compensation Insurance Impermissible

Employers are not permitted to take payroll deductions to pay for worker's compensation insurance. If this occurs, employees may contact the Employment Standards Division of the Indiana Department of Labor at (317) 232-2655. If an

employer has deducted worker's compensation premiums from an employee's check in amounts less than \$800, the employee may have the right to collect the amount deducted in a proceeding before the Department of Labor under Ind. Code §22-2-9. Employees may also pursue wage claims through civil/small claims actions. Wage claims exceeding \$800 must be pursued in small claims or civil court.

Contractual Waivers of Compensation Coverage Impermissible

Occasionally, employers ask employees to sign contractual waivers of worker's compensation rights. Such contracts are made invalid by Ind. Code §22-3-2-15, *even if agreed to and signed by the employee*. Even if there is a signed written agreement to waive worker's compensation rights, employees are still covered by worker's compensation and should apply for benefits if injured. If an employer does not carry worker's compensation insurance or has asked you to sign an agreement waiving coverage, contact the Worker's Compensation Board immediately.

Posting of Notice of Worker's Compensation Coverage

Employers are required to post a Notice of Worker's Compensation coverage in a conspicuous location in the workplace. The Notice must contain the name, address, and telephone number of the employer's insurance carrier or the person responsible for administering worker's compensation claims. Employers are obligated by law to provide employees with the name, address, and telephone number of the worker's compensation insurance carrier upon request. If an employer fails to comply with these posting requirements, the Board may assess a civil penalty of \$50. Ind. Code §22-3-2-22.

If you have a question as to whether an employer is covered by worker's compensation insurance, you may contact the Insurance Division at the Worker's Compensation Board. Employers suspected of operating without insurance coverage should be reported immediately to the Worker's Compensation Board.

Penalties for Failure to Carry Worker's Compensation Insurance

An employer who fails to carry insurance coverage sufficient to meet its obligations under the Worker's Compensation Act may be ordered to pay reasonable medical expenses, double compensation, and reasonable attorney's fees to an employee injured during the period in which the employer's liability is uninsured. Ind. Code §22-3-4-13(e).

The Worker's Compensation Board may pursue court action against an employer who fails to carry insurance. The court will have the authority to order an employer to cease doing business in Indiana until the employer files proof of insurance coverage with the Board. The court may also order the employer to provide proof of financial ability to pay any claims and to deposit a security, indemnity, or bond with the Board to secure payment for any injuries occurring during the lapse of insurance coverage. Ind. Code §22-3-4-13(f).

Finally, an employer who fails to carry insurance commits a Class A Infraction punishable by fines and imprisonment. Upon written referral from the Worker's Compensation Board, employers failing to carry insurance can be prosecuted in the county in which an employee was injured. Ind. Code §22-3-4-13(c).

IV. INJURIES COVERED BY WORKER'S COMPENSATION

[Elements of A Worker's Compensation Injury](#)

[The Exclusive Remedy Provision](#)

[Examples of Injuries that May be Covered by Worker's Compensation](#)

Elements of Compensability

Employers must pay the compensation and benefits provided under the Act when the following four elements of a worker's compensation claim are met (see Ind. Code §22-3-2-2). If the employer/carrier denies a worker's compensation claim and the dispute is heard by the Board, the employee has the burden of proving each of the elements.

1. [personal injury or death](#);
2. [by accident](#);
3. [arising out of the employment](#); and
4. [in the course of employment](#).

"Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment and do not include a disease in any form except as it results from the injury. Ind. Code §22-3-6-1(e).

"By accident" means that the injury was unexpected. To occur "by accident," the injury may be either an "unexpected event" or an "unexpected result." Under the first theory, an identifiable event occurs and causes an injury. For example, a worker slips and falls on a freshly waxed floor, spraining an ankle. Under the "unexpected result" theory, the injury to the employee may be the combined injurious effect of repetitive motions. For example, a secretary may develop carpal tunnel syndrome as a result of typing over a period of time. The definition of "by accident" as both an unexpected event and an unexpected result means that a broad range of injuries is potentially compensable in Indiana.

An injury "arises out of the employment" when there is some causal relationship between the injury sustained and the duties or services performed by the employee. This causal relationship is established when a reasonably prudent person considers an injury incidental to employment at the time of entering into it or when the facts indicate a connection between the condition under which the employee works and the injury.

"In the course of employment" means that the accident causing injury occurred at a time and a place at which the employee would reasonably be expected to be.

The Exclusive Remedy Provision

As discussed in the introduction, the worker's compensation system was designed

to replace the civil lawsuit as the means of recovering damages for work-related injuries. In Indiana, worker's compensation is the employee's "exclusive remedy" against the employer where there is personal injury or death by accident arising out of and in the course of employment. In other words, if there is personal injury by accident arising out of and in the course of employment, the employee must pursue any claim against the employer through the worker's compensation system. Ind. Code §22-3-2-6.

The Worker's Compensation Act *does not* bar lawsuits against parties (other than the employer or co-employees) who are responsible for work related injuries or who cause injuries independent of those covered in the Act. Ind. Code §22-3-2-13. For example, a delivery driver who is injured in a car accident may be covered by worker's compensation and may sue the driver of the other vehicle for civil damages. The employer/carrier would be entitled to reimbursement of amounts paid under the Act from any third party proceeds. See Third Party Lawsuits, page 54.

Effective July 1, 2000, IC 22-3-6-1, along with the language regarding lessors, now includes in the definition of employer the parent company of the employer and its subsidiaries.

Examples of Injuries that May be Covered

[Intentional injuries by the employer](#)

[Repetitive trauma](#)

[Assaults by co-employee](#)

[Horseplay](#)

[Personal needs](#)

[Parking lot injuries](#)

[Ingress and egress](#)

[Heart attack](#)

[Hernia](#)

[Heat](#)

[Psychological trauma/mental stress](#)

[Blood-borne pathogens \(HIV, Hepatitis\)](#)

[Lightning; other natural phenomena](#)

[On-call employees](#)

[Deviations from route](#)

[Lunch period.](#)

[Recreational activities](#)

[Employee parties](#)

[To and from employment](#)

[Traveling employees](#)

[Work outside of scheduled hours](#)

[Aggravation of existing condition](#)

The following types of injuries are included as examples to demonstrate the wide range of circumstances under which injuries may be covered by worker's compensation. These examples are general and do not mean that a particular injury will or will not be compensable. The compensability of a claim always depends on the specific facts of the individual case.

Intentional Injuries by the Employer are not considered to occur "by accident" in Indiana and therefore would not be covered. The worker might have cause for a civil lawsuit in such a situation. However, this kind of case is extremely rare because the injury would have to be caused *by the employer itself*, not merely by a manager, supervisor or foreman. Injuries intentionally caused by managers, supervisors, or foremen are generally covered by worker's compensation.

Repetitive Trauma injuries such as Carpal Tunnel Syndrome may be compensable in Indiana, if they can be shown to arise out of and in the course of employment.

Co-Employee Assaults The aggressor, if injured, is usually considered to be outside of the course of employment. The innocent victim of an assault by a fellow employee is generally covered.

Horseplay A worker injured while participating in horseplay is not entitled to worker's compensation unless he is an innocent victim of another person's horseplay. However, if the employer acquiesces in the horseplay (allows the horseplay to proceed without intervening), the injury may be compensable.

Personal Needs Activities undertaken for the employee's personal needs, comfort, and convenience are considered within the course of employment. In other words, injuries occurring when the employees get up to get a drink or a snack, to stretch, or to go to the bathroom, are probably covered.

Parking Lot Injuries in parking lots owned by the employer are generally considered to be covered, even if the accident occurs before the employee clocks in or after the employee clocks out.

Ingress and Egress The time required to enter and exit the employment premises is generally covered. Injuries occurring in employee parking lots are generally within the course of employment.

Heart Attack cases can be proven under worker's compensation if the worker can show that there was some kind of unusual stress or exertion that triggered the heart attack.

Hernia cases can be compensable under worker's compensation where it can be shown that a work injury caused the hernia or materially accelerated the occurrence of the herniation.

Heat Stroke, Heat Prostration, and Sunstroke injuries may be compensable if the employment puts the worker at a greater risk for such injuries than the general public.

Psychological Injuries/Mental Stress Injuries are potentially compensable in Indiana.

- A physical injury caused by psychological trauma is potentially

compensable assuming that the stimulus or stress arises out of and in the course of employment.

- Where there has been a physical worker's compensation injury and the injured worker's disability is prolonged or impairment is increased by accompanying psychological dysfunction, the full extent of disability and impairment may be compensable.
- Preexisting psychological shortcomings and weaknesses of the injured worker which are aggravated or precipitated by physical injury and trauma may be found to be compensable to the full extent of the aggravation of the pre-existing psychological dysfunction.

Exposure to Blood-Borne Pathogens (HIV, Hepatitis) There is some uncertainty as to the compensability of these exposure cases because no Indiana worker's compensation case has yet addressed the issue of exposure to HIV, although hepatitis exposure arising out of employment has been held to be compensable. However, other state worker's compensation systems that have addressed the issue uniformly provide diagnostic testing under worker's compensation if an employee is stuck with a needle, splashed with blood or body fluids, or otherwise exposed to risk of a blood-borne infection, as long as the exposure arises out of and in the course of employment.

Lightning, other Natural Phenomena Injury by lightning or other such natural causes may be compensable if the employee's risk of being so injured is greater than that of a person not so employed; that is, if the course of employment puts the employee in a place that is more likely to expose him to injury from the elements than would other places in the vicinity.

On-Call Employees summoned to work are generally considered to be in the course of employment.

Deviation from Route If the employee deviates from work activities and an injury occurs, the injury may not be considered to arise in the course of employment. If the employee deviates from a route for personal reasons, even if the employee is on company time, or in a company vehicle, the employee might be considered

outside of the course of employment. However, as soon as the employee returns from the deviation, he or she is back in the course of employment.

Lunch Period A very general rule on injuries occurring on an employee's lunch hour is that the employee is covered while eating lunch on the employer's premises and at a place generally considered safe with employer's consent. But if the employee leaves the premises for lunch, coverage ceases unless the employee leaves at the direction of the employer.

Recreational Activities, Employer-Sponsored Parties Injuries occurring at recreational activities connected with the employment where attendance is encouraged or mandatory may be compensable where the activity is sponsored by the employer, and where the event produces some benefit to the employer. Injuries may not be compensable if the activity is undertaken voluntarily by the employee.

To and From Employment Employees are generally not covered while traveling to and from work, if the place of employment is at a fixed location. However, travel to remote work sites may be compensable. If an employee is injured while being transported to or from work or work sites in vehicles provided by the employer, they are probably covered. Accidents occurring while traveling to or from work in the employee's personal vehicle may be covered if the travel is required for work, such as home solicitations.

Traveling Employees such as salespeople are covered while traveling.

Work Outside of Scheduled Hours An injury occurring outside of work hours can still be found compensable if it is caused by the employment and if it occurs at a time and place where the employee might reasonably be found, for example performing tasks at the direction of the employer.

Aggravation of Existing Condition The aggravation of an existing condition by an injury arising out of and in the course of employment is generally compensable.

V. EMPLOYER DEFENSES TO CLAIMS FOR WORKER'S COMPENSATION

[Self Inflicted Injuries](#)

[Intoxication](#)

[Commission of Offense](#)

[Failure to Use Safety Device](#)

[Failure to Obey Reasonable Written Safety Rule](#)

[Failure to Perform Statutory Duty](#)

[Burden of Proof](#)

[Procedure for Asserting Affirmative Defenses](#)

[Examples of Affirmative Defenses](#)

[Drug Screening](#)

Worker's compensation is theoretically a no-fault insurance system, in which the injured worker is "assured of a remedy" regardless of negligence or fault. Ind. Code §22-3-2-8, however, contains several "[affirmative defenses](#)" to claims for worker's compensation. If a claim is denied on the basis of these defenses, the employee may contact the [Ombudsman Division](#) for information. The employee may also consult with an attorney to determine whether to contest the denial.

The employer may utilize the following defenses where the employee's injury or death is

- 1) *due to* the employee's knowingly self-inflicted injury,
- 2) *due to* intoxication,
- 3) *due to* the commission of an offense (not including traffic infractions),
- 4) *due to a knowing* failure to use a safety appliance
- 5) *due to a knowing* failure to obey a *reasonable written or printed* safety rule which has been posted in a conspicuous position in the

place of work, and

6) *due to a knowing* failure to perform any statutory duty.

In asserting these defenses, the employer has the *burden of proving* that the misconduct *caused* the employee's injuries. To assert a defense for failure to use a safety device, to follow a reasonable safety rule, or to perform a statutory duty, the employer must prove that the failure was *knowing*. *Ind. Code §22-3-2-8*.

Finally, in order for the employer to raise any of the above defenses in a worker's compensation hearing, the issue must be raised in a legal pleading called a "special answer." *The special answer must be filed no later than forty-five days prior to the date set for hearing*, unless good cause is shown for a delay. If the employer wishes to raise more than one of the six defenses, *they must be raised separately*. *The failure of the employer to timely raise the defense waives the defense*, unless the parties proceed to litigate the defense at hearing. 631 IAC 1-1-8.

Two examples illustrate the statute.

EXAMPLE A: An employee arrives at a job which involves driving a delivery truck. The employee has just consumed a large quantity of alcohol and realizes that he is very drunk. While making deliveries, the employee blacks out and his truck runs off the road. Several tests revealed that the employee's blood alcohol content was well above the legal limit, and the employee admitted that his intoxication caused him to black out. The employee applies for worker's compensation benefits. Forty-five days before the hearing, the employer files a special answer arguing that no compensation is payable because the employee's injuries were due to his intoxication.

In this example, a good argument can be made that the law might bar the employee's compensation because the employee's intoxication almost certainly caused his injuries.

EXAMPLE B: The same employee arrives at the same job after consuming a large quantity of alcohol. Before the employee can get into his truck, he is

severely injured by merchandise which falls from warehouse shelves. The employer notices a strong smell of alcohol and the employee admits he was drunk at the time of the accident. In this example, the employer will be unable to use the employee's intoxication as a defense to a worker's compensation claim because the intoxication did not cause the employee to be injured by falling merchandise.

Drug Screening

Some employers perform a drug screening when an employee is injured in an accident. Remember that Ind. Code §22-3-2-8 requires the employer to pay worker's compensation *unless the employee's accident was caused by intoxication*. A positive drug screening may show the presence of an intoxicant, but does not necessarily demonstrate that an employee was 1) intoxicated at the time of the accident or 2) that the intoxication caused the injury. Therefore, a positive drug test alone might not provide a defense to a worker's compensation claim.

VI. EMPLOYER'S REPORT OF INJURY

[Filing Requirement](#)

[Compensability](#)

Filing Requirements

Ind. Code §22-3-4-13(a) requires that employers file the Employer's Report of Injury with the Worker's Compensation Board if an injury results in the death of an employee or in the employee's absence from work for more than one (1) day. Failure to comply with reporting provisions may subject the employer/carrier to a \$50 civil penalty to be collected by the Board. This report must be filed with the employer's insurance carrier

- a) within seven days of the occurrence of the injury or death, or
- b) within seven days of the employer's knowledge of the injury or death.

The employer's insurance carrier must then file the report with the Worker's Compensation Board

- a) not later than seven days after receipt of the report, or
- b) fourteen days after the employer's knowledge of the injury, whichever is later.

If an employee has been injured and is being treated, but has not missed any work, the employer is not required to file a Report of Injury with the Board. However, if the employee becomes disabled at any point (misses one day of work) because of the injury, the Report must be filed.

Compensability

The filing of a Report of Injury by an employer does not constitute the employer/carrier's acceptance of compensability. The report merely indicates that an injury occurred or may have occurred that may or may not be covered under the Indiana Worker's Compensation Act. The refusal or failure of the employer/carrier to file a Report of Injury does not constitute a denial of compensability. If the employer/carrier denies liability, the Board and the employee must be informed in writing on a form mailed not later than twenty-nine (29) days after the employer's knowledge of the injury.

If a claim has been denied by the carrier, a Report of Claim Status/Request for Independent Medical Examination should be mailed from the carrier to the employee. The box on the form marked "claim deemed non-compensable" should be checked. Once officially denied, the employee can pursue a claim only through the formal hearing process by filing the Application for Adjustment of Claim.

Questions on acceptance/denial of liability may be directed to the [Ombudsman Division](#).

VII. [MEDICAL BENEFITS](#)

[Who Chooses the Treating Physician?](#)

[How Long will Treatment Be Provided?](#)

[Future Medical Care in Case Involving Permanent Injuries](#)

[Rehabilitation Nurses & Medical Examinations](#)

[Medical Records \(employee right to copies thereof\)](#)

[Examination Reports](#)

[Mileage](#)

[Prosthetic Devices](#)

[Collections of Medical Bills](#)

Employees who are injured by accident arising out of and in the course of employment are entitled to reasonable and necessary medical treatment, rendered free of charge to the employee. *Effective July 1, 2000, IC 22-3-3-4 now requires employers/insurers to reimburse employees for lost work due to medical treatments or travel to or from the place of treatment based on their average daily wage.*

Who Chooses the Treating Physician?

With few exceptions, the employer/insurance carrier has the right to direct medical care in Indiana. In most cases, the employer provides a physician, free of charge, for the treatment of an employee's injuries.

In emergency situations, the employee may be sent to the nearest possible treatment facility, with follow-up treatment chosen by the employer/carrier. If the employee seeks emergency medical care without the prior knowledge of the employer/carrier, the employee should notify the employer/carrier as soon as possible, requesting coverage under worker's compensation.

If the employer fails to provide "reasonable and necessary" medical treatment, the employee may go to any physician. Ind. Code §22-3-3-4(d). However, if the employer/carrier refuses to pay for the treatment, the employee or the medical provider may have to file with the Board to seek reimbursement.

When the employer directs an employee to medical treatment for a worker's compensation injury, the employer's insurance carrier cannot later refuse to pay for the treatment. Ind. Code §22-3-3-4.

The employee always has the right to seek medical treatment and medical opinions at the employee's own expense.

Any time that an employee seeks medical treatment outside of the direction of the employer/carrier, the employee risks incurring liability for the medical bills. However, if the employee files an application for benefits with the Board, medical providers are to refrain from attempting to collect payment from the employee until it is determined who is liable for payment. Ind. Code §22-3-3-5.1.

How Long Will Medical Treatment be Provided?

The answer to this question varies from case to case, depending on the needs of the employee. Indiana law does not provide a length of time that the employer is liable for medical treatment. However, if the Board finds that an employee's application is barred by the [statute of limitations](#), it may be unable to order [medical benefits](#). If medical benefits are needed, the employee should file an Application for Adjustment of Claim within two (2) years from the date of injury.

Future Medical Care in Cases Involving Permanent Injuries

In cases where the employee has suffered permanent injuries, the Board may order future medical benefits to limit or reduce the extent of the employee's impairment. In some cases, the Board may order *palliative* treatment (medical treatment to reduce pain or other symptoms that accompany a permanent injury). In rare cases, long-term or lifetime care may be available. Future medical benefits must be provided in the final order in a disputed case, and application for such benefits must be made within the applicable limitations period.

Rehabilitation Nurses

In some cases, insurance carriers hire a rehabilitation nurse to manage the treatment of an injured employee. These nurses can be helpful in coordinating successful and rapid treatment. However, rehabilitation nurses *do not* have the right to be present during the actual examination or treatment of the worker *unless* authorized by both the physician and the patient. Either the physician or the patient can ask the rehabilitation nurse to leave the examination room at any time and the nurse must immediately comply.

Medical Records

The employee has the right to obtain medical records from any physician who has treated the employee under worker's compensation. If the physician has a reasonable charge for duplication of these records, the charge is the responsibility of the employee. Physicians are required by law to provide records upon a signed, written request by the patient or the patient's representative. A reasonable duplication charge may be made. Physicians must provide x-ray films at the physician's cost of duplicating the films.

Rehabilitation nurses have the right to obtain medical records from the treating physician selected by the employer/carrier.

Examination Reports

To be admissible in proceedings before the Board, examination reports must be submitted to all parties thirty days in advance of hearing. All medical statements prepared as part of an examination or evaluation of the employee must contain

- a) the history of the injury, or claimed injury, as given by the patient
- b) the diagnosis of the physician or surgeon concerning the patient's physical or mental condition.
- c) the opinion of the physician or surgeon concerning the causal relationship, if any, between the injury and the patient's physical or mental

condition, including the physician or surgeon's reasons for the opinion.

d) the opinion of the physician or surgeon concerning whether the injury or claimed injury resulted in a disability or impairment and, if so, the extent thereof, and the reasons for the opinion.

e) The *original* signature of the physician or surgeon.

See Ind. Code §22-3-3-6.

Mileage and Other Expenses

If the employee is requested or required by the employer/carrier to submit to *treatment* which requires the employee to travel *outside of the county of employment*, the employer must also pay the employee's reasonable expenses for travel, food, and lodging necessary during the travel. Payment or reimbursement for mileage and other expenses is to be made at the level the state reimburses its employees for travel under the policies and procedures established by the Department of Administration and approved by the State Budget Agency.

An employee requested to submit to an *examination* pursuant to Ind. Code §22-3-3-6 is entitled to mileage and expenses *in advance* of the time fixed for the examination. Ind. Code §22-3-3-6(b).

Currently, The current state mileage allowance applicable to travel to medical examinations and treatment under worker's compensation is 28 cents per mile, no matter how many trips are made and no matter how many miles are traveled as long as the employee is travelling within the State of Indiana. Outside of Indiana, mileage is reimbursed at 28 cents per mile for the first 500 miles, 14 cents per mile for the next 2,000 miles. In order to qualify for a meal allowance, the employee must be in travel status for more than twelve hours. If travel status begins and ends on the same day, the meal allowance is \$12.00. If the travel status lasts overnight, the meal allowance is \$24.00.

If the employee does not have transportation, the employer/carrier must provide a reasonable sum sufficient to defray the expenses of travel by the most convenient

means to and from the place of the examination. Ind. Code §22-3-3-6(b).

If the employee is required to miss work because of an examination scheduled by the employer to determine the compensability of a claim or to report on the employee's disability or impairment, the employee is entitled to *full* reimbursement for any loss of wages. *Effective July 1, 2000, employees are entitled to full reimbursement for lost wages during ordinary medical treatment or therapy for an injury. Ind. Code §22-3-3-6(b).*

Prosthetic Devices

If a compensable injury results in the loss by amputation of a body part, eye or natural teeth, the employer must provide an artificial replacement and braces, if necessary. Replacement or repair of prosthetic devices due to medical necessity or normal wear and tear shall be paid out of the [Second Injury Fund](#).

After June 30, 1997, the employer is also responsible for the repair or replacement of an artificial member, brace, implant, eyeglasses, prosthodontics, or other medically prescribed device that is damaged or destroyed in a compensable injury.

Illegal Collections of Medical Bills from Injured Workers

It is unlawful for medical providers to collect money from the employee or the employee's estate if medical bills are the responsibility of the employer/carrier under the Worker's Compensation Act. Ind. Code §22-3-3-5. Upon hearing, the Worker's Compensation Board has the authority to fine medical providers and their collections agents who attempt to collect such sums from employees. Ind. Code §22-3-3-5.1.

If the employer/carrier directs the employee to a medical provider but does not pay all of the bills, the responsibility to resolve the dispute lies between the employer/carrier and the medical provider. The insurance carrier cannot refuse liability for payment of a medical bill if the employer directed the employee to a

medical provider for treatment. Finally, if the employee seeks reasonable medical care in an emergency or because of the employer/carrier's failure to provide treatment, the bills may be the responsibility of the employer/carrier.

If a medical provider is attempting to collect money from an injured worker and the injured worker believes that the medical expenses should have been paid by the employer/carrier, the employee should immediately file a Request for Assistance and an Application for Adjustment of Claim with the Board. The filing of the Application may prevent the medical provider from collecting from the employee until a determination of liability for the bills is made.

VIII. COMPENSATION FOR LOST WAGES (TTD, TPD, PTD)

[Definition](#)

[Types of Disability Compensation](#)

[Waiting Period](#)

[How is Disability Compensation Paid?](#)

[Is Disability Compensation Taxable?](#)

[Calculation of Employee's Average Weekly Wages \(AWW\)](#)

Definition

["Disability"](#) means an inability to work.

Types of Disability Compensation

[Temporary Total Disability \(TTD\)](#)

[Temporary Partial Disability \(TPD\)](#)

[Permanent Total Disability \(PTD\)](#)

The Worker's Compensation Act covers three types of disability: Temporary

Total Disability (TTD), Temporary Partial Disability (TPD), and Permanent and Total Disability (PTD).

[Temporary Total Disability \(TTD\)](#) is paid for the time period an employee is completely unable to perform his or her regular work because of an injury. TTD is paid at the rate of two-thirds (2/3) of the employee's pre-injury [average weekly wage](#), subject to a maximum period of 500 weeks. Ind. Code §22-3-3-8; Ind. Code §22-3-3-22.

[Temporary Partial Disability \(TPD\)](#) is paid when the employee is partially unable to work. For example, an employee's injuries might limit the number of hours and employee is able to work, or might mean that the employee is temporarily assigned to a job that pays less than the employee's pre-injury job. TPD is paid at the rate of two-thirds (2/3) of the difference between the employee's pre- and post-injury average weekly wages, subject to a maximum period of 300 weeks. Ind. Code §22-3-3-9.

[Permanent Total Disability \(PTD\)](#) awards are paid when it is established that the employee will never again be able to work in a reasonable employment. A PTD award is paid for 500 weeks at the rate of two-thirds (2/3) of the employee's pre-injury average weekly wage. Ind. Code §22-3-3-8; Ind. Code §22-3-3-10. If a minor is permanently and totally disabled, the Board has the discretion to order the minor compensated in a lump sum. Ind. Code §22-3-3-25(b). For all others, a lump sum is payable upon agreement of the employee, the employer or insurance carrier, and the Worker's Compensation Board. Ind. Code §22-3-3-25(a). For injuries occurring on or after January 1, 1998, the minimum total benefit is \$75,000.

For injury dates between July 1, 1989 and June 30, 1991, awards for Permanent Total Disability are payable *in addition* to TTD payments of up to 125 weeks, subject to the maximum compensation limits contained in the Act. For injury dates after July 1, 1991, awards for Permanent Total Disability are payable *in addition* to TTD payments of up to 125 weeks, subject to the maximum

compensation limits in the Act. [See Chart 1](#). On and after July 1, 1997, awards for any combination of Permanent Total Disability, Temporary Total Disability and Temporary Partial Disability are limited to a total of 500 weeks

Waiting Period

When a compensable injury renders an employee unable to work, compensation for lost wages is paid starting on the eighth day. However, on the twenty-second day of disability, the employee will receive compensation for the first seven days. Ind. Code §22-3-3-7(a).

The first weekly installment of compensation is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment is due, the employer/carrier must tender to the employee an Agreement to Compensation, along with compensation due. Ind. Code §22-3-3-7(b).

If, however, the employer/carrier denies liability, a written notice of denial must be mailed within twenty-nine (29) days after the employer's knowledge of the alleged injury. The employer may obtain an additional thirty (30) day period if it establishes that the delay is due to an inability to obtain the medical information necessary to make a determination as to liability. Ind. Code §22-3-3-7(b).

How is Disability Compensation Paid?

All disability payments must be paid in weekly installments, unless the Board orders payment in biweekly or monthly installments. Ind. Code §22-3-3-24. Back payments can be brought up to date by payment in a lump sum.

Is Disability Compensation Taxable?

Disability compensation for lost wages under worker's compensation is not taxable income. See Internal Revenue Code §104.

Calculation of the Employee's Average Weekly Wages

[Sales commissions](#)

[Overtime](#)

[Tips](#)

[Wages from more than one employment](#)

The [Average Weekly Wage](#) of the employee is calculated by taking the total wages earned by the employee in the fifty-two (52) week period immediately preceding the date of injury, divided by fifty-two (52). Ind. Code §22-3-6-1(d).

If the employee lost seven (7) or more working days during the fifty-two weeks preceding the injury, the Average Weekly Wage must be found by dividing the employee's earnings over the number of weeks and days the employee actually worked. Ind. Code §22-3-6-1(d)(1).

If the worker was not employed for all of the fifty-two weeks preceding the injury, the employee's average weekly wage must be calculated by dividing the total earnings by the number of weeks actually worked, if this method results in a just and fair result to both parties. Ind. Code §22-3-6-1(d)(2).

If it is impracticable to calculate the average weekly wage by the above method because the employment is of short duration or is casual in nature, the employee's AWW may be calculated on the basis of the wages of another person performing the same work for the employer. If no such worker is employed, the AWW of a worker in the same grade in the same district must be used. Ind. Code §22-3-6-1(d)(2).

If the employee earns other allowances of any character in lieu of wages as a part of a wage contract, the earnings must be considered in calculating the employee's AWW. Ind. Code §22-3-6-1(d)(3).

Students working in Cooperative Programs with Employers pursuant to Ind. Code

§20-10.1-6-7 are considered to be full-time employees for purposes of calculating the average weekly wage. To determine the AWW, multiply the student's hourly wage rate by 40 hours. Ind. Code §22-3-6-1(c)(3); §22-3-6-1(d)(4).

Sales Commissions, Overtime, Tips

Sales commissions, overtime, and tips must be considered in calculating the employee's average weekly wage.

Wages from More than One Employment

Worker's compensation covers lost wages from the job at which the employee was working when in injured. Wages from other employments are NOT considered in calculating the employee's AWW unless the employments are the same or similar.

CHART 1. WEEKLY COMPENSATION FOR DISABILITY

Disability compensation is usually paid weekly and is based on 2/3 of the employee's average weekly wages (AWW) on the date of the injury. Disability payments are subject to minimum and maximum wages and compensation, which vary depending on the date of injury. For injuries occurring on or after July 1, 1994, the maximum average weekly wage is \$642, which is equivalent to full-time employee earnings of about \$16.05 per hour. The maximum disability compensation payable is $2/3 \times \$642 = \428 per week.

| Date of Injury | Min. AWW | 2/3 x Min. AWW | Max. AWW | 2/3 x Max. AWW | Maximum Compensation (TTD, TPD, PTD, PPI) |
|----------------|----------|----------------|----------|----------------|---|
|----------------|----------|----------------|----------|----------------|---|

| | | | | | |
|--------------------|------|------|-------|-------|-----------|
| On or after 7/1/90 | \$75 | \$50 | \$441 | \$294 | \$147,000 |
| On or after 7/1/91 | \$75 | \$50 | \$492 | \$328 | \$164,000 |
| On or after 7/1/92 | \$75 | \$50 | \$540 | \$360 | \$180,000 |
| On or after 7/1/93 | \$75 | \$50 | \$591 | \$394 | \$197,000 |
| On or after 7/1/94 | \$75 | \$50 | \$642 | \$428 | \$214,000 |
| On or after 7/1/95 | \$75 | \$50 | \$642 | \$428 | \$214,000 |
| On or after 7/1/96 | \$75 | \$50 | \$642 | \$428 | \$214,000 |
| On or after 7/1/97 | \$75 | \$50 | \$672 | \$448 | \$224,000 |
| On or after 7/1/98 | \$75 | \$50 | \$702 | \$468 | \$234,000 |
| On or after 7/1/99 | \$75 | \$50 | \$732 | \$488 | \$244,000 |
| On or after 7/1/00 | \$75 | \$50 | \$762 | \$508 | \$254,000 |
| On or after 7/1/01 | \$75 | \$50 | \$822 | \$548 | \$274,000 |
| On or after 7/1/02 | \$75 | \$50 | \$882 | \$588 | \$294,000 |

IX. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT (PPI)

[Definition of Impairment](#)

[“Maximum Medical Improvement”](#)

[Form 1043 Agreements](#)

[Impairments that Cause Permanent Total Disability](#)

[Lump Sum PPI Settlements](#)

[Is PPI Compensation Taxable?](#)

[PPI Examinations by Employer’s Physician; Second Opinions](#)

[How is PPI paid?](#)

[Degree Schedule](#)

Definition

Impairment means the partial or total loss of the function of a member or members of the body or the body as a whole. In Indiana, compensation for impairment is paid according to a statutory schedule. Ind. Code §22-3-3-10. For injuries occurring on and after July 1, 1991, the calculation of impairment compensation is not based on the employee's wages. Rather, impairment awards are designed strictly to compensate the employee for the loss or loss of use of body parts or functions.

“Maximum Medical Improvement”

An award of PPI can only be made after it is determined that the employee has reached [“maximum medical improvement”](#) (MMI). MMI may also be referred to as “quiescence” or [“permanence and quiescence.”](#) Each of these phrases means that the injury has healed to the fullest extent possible and no further treatment would improve the employee's condition. At that time, disability compensation will be terminated and a PPI rating may be assessed.

Form 1043 Agreement to Compensation

After the employee has been evaluated for PPI by a physician, the employer/carrier will furnish the employee with a written Agreement to Compensation stating the degree of impairment and the amount and method of payment. The employee should be certain that the agreement properly calculates the PPI rating and average weekly wage prior to signing the agreement. All of the spaces in the form agreement should be completed. Never sign an agreement in which important terms are omitted or spaces are left blank.

Employees may contact the Worker's Compensation Board or consult with an attorney before signing such an agreement. However, delay in signing the agreement may result in a delay in receiving compensation. Questions about the calculation of PPI compensation may be directed to the Claims Division of the Worker's Compensation Board at (317) 232-3479.

Impairments that Cause Permanent Total Disability

If the permanent loss or loss of use of a body part renders the employee permanently and totally disabled (unable to engage in any reasonable employment) the employee must be paid either a [permanent total disability](#) award (500 weeks at the employee's average weekly wage) or the amount payable for [PPI](#), whichever is greater. Ind. Code §22-3-3-10(c)(8). The award for permanent total disability is paid *in addition* to TTD compensation of up to 125 weeks, subject to the statutory limit.

Lump Sum PPI Settlements

Awards of PPI may be paid in a lump sum upon agreement of the parties and approval of the Board. However, an award of PPI is usually paid out in weekly installments equal to two-thirds (66 2/3%) of the employee's average weekly wage. Ind. Code §22-3-3-10(e).

Is PPI Compensation Taxable?

Payments of PPI are not taxable. See §104 of the Internal Revenue Code.

PPI Examinations by Employer's Physician; Second Opinions

An injured employee's PPI is assessed by the treating physician. Some physicians use the American Medical Association's *Guides to the Evaluation of Permanent Impairment* in evaluating the employee's impairment rating. A PPI rating is stated by the doctor in terms of a percentage of loss or loss of use of a body part or the whole body, for example "The employee has suffered a loss of 10% to the hand," or "The employee's impairment is 25% to the whole body."

If the employee disagrees with the treating physician's rating, the employee may seek another PPI evaluation at the employee's expense and submit it to the employer/carrier and the Worker's Compensation Board.

| | |
|------------------------|------------|
| Loss of one testicle | 10 degrees |
| Loss of both testicles | 30 degrees |

For the loss of any two of the following parts, in any combination:

| | |
|----------------------------|--|
| Loss of both hands | 100 degrees, or Permanent Total Disability award, whichever is greater. |
| Loss of both feet | 100 degrees, or Permanent Total Disability award, whichever is greater. |
| Loss of sight in both eyes | 100 degrees, or Permanent Total Disability award, whichever is greater. |

For the loss or loss of use of 2 or more phalanges of the:

| | |
|---------------|------------|
| Thumb | 12 degrees |
| Index Finger | 8 degrees |
| Second Finger | 7 degrees |
| Third Finger | 6 degrees |
| Fourth Finger | 4 degrees |

For the loss or loss of use of 1 or more phalange of the:

| | |
|------------|------------|
| Big toe | 12 degrees |
| Second toe | 6 degrees |
| Third toe | 4 degrees |
| Fourth toe | 3 degrees |
| Fifth toe | 2 degrees |

Loss of vision:

Permanent loss of vision or its reduction
to 1/10 of normal vision, with glasses: 35 degrees

Loss of hearing:

Complete loss of hearing in one ear 15 degrees
 Complete loss of hearing in both ears 40 degrees

Permanent Disfigurement: Up to 40 degrees, where PPI is not otherwise payable.

CHART 2. PERMANENT PARTIAL IMPAIRMENT COMPENSATION PER DEGREE OF IMPAIRMENT

After a PPI rating in degrees is obtained by applying the above schedule, an award is made based on the number of degrees using the following schedule. Note that the calculation of the award depends on the date of injury. **For detailed examples of PPI calculation, see Charts 3 and 4 in the Appendix.**

| Date of Injury | Degrees | Dollars per Degree |
|-----------------------------|----------------|---------------------------|
| On or after 7/1/1991 | 1-35 | \$500 |
| | 36-50 | \$900 |
| | 51-100 | \$1,500 |
| On or after 7/1/92 | 1-20 | \$500 |
| | 21-35 | \$800 |
| | 36-50 | \$1,300 |
| | 51-100 | \$1,700 |

| | | |
|---------------------------|--------|---------|
| On or after 7/1/93 | 1-10 | \$500 |
| | 11-20 | \$700 |
| | 21-35 | \$1,000 |
| | 36-50 | \$1,400 |
| | 51-100 | \$1,700 |
| On or after 7/1/97 | 1-10 | \$750 |
| | 11-35 | \$1,000 |
| | 36-50 | \$1,400 |
| | 51-100 | \$1,700 |
| On or after 7/1/99 | 1-10 | \$900 |
| | 11-35 | \$1,100 |
| | 36-50 | \$1,600 |
| | 51-100 | \$2,000 |
| On or after 7/1/00 | 1-10 | \$1,100 |
| | 11-35 | \$1,300 |
| | 36-50 | \$2,000 |
| | 51-100 | \$2,500 |
| On or after 7/1/01 | 1-10 | \$1,300 |
| | 11-35 | \$1,500 |
| | 36-50 | \$2,400 |
| | 51-100 | \$3,000 |

X. OFFSET CREDIT PROVISION FOR PPI; MAXIMUM COMPENSATION

[PPI Offset Credit](#)

[Maximum Compensation](#)

PPI Offset Credit Provision

The Worker's Compensation Act contains a provision that offsets the payment of PPI awards where the employee has received TTD payments in excess of a certain number of weeks.

- For injuries occurring between July 1, 1988 and July 1, 1991, if Temporary Total Disability is paid for over 78 weeks, the employer/carrier is eligible for a credit against any award of Permanent Partial Impairment (PPI).
- For injuries occurring on and after July 1, 1991, if TTD compensation is paid for over 125 weeks, the employer/carrier is eligible for a credit against any award of PPI. Ind. Code §22-3-3-10(c).

Maximum Compensation

The Worker's Compensation Act limits the amount that may be paid to the employee for disability and impairment compensation. For injuries occurring on and after July 1, 1994, and through June 30, 1997, the maximum amount payable is \$214,000. This figure is equal to the maximum possible award for Total Permanent Disability (TPD). (500 weeks X \$428 = \$214,000). For injuries occurring on and after July 1, 1997, and before July 1, 1998, the maximum amount payable is \$224,000. For injuries occurring on and after July 1, 1998, and before July 1, 1999, the maximum amount payable is \$234,000. For injuries occurring on and after July 1, 1999, and before July 1, 2000, the maximum amount payable is \$244,000. For injuries occurring on and after July 1, 2000, and before July 1, 2001, the maximum amount payable is \$254,000. For injuries occurring on and after July 1, 2001, and before July 1, 2002, the maximum amount payable is \$274,000. For injuries occurring on and after July 1, 2002, the maximum amount payable is \$294,000. This figure is equal to the maximum possible award for Permanent Total Disability (PTD). (500 weeks X \$448 = \$224,000). Ind. Code §22-3-3-22(b).

XI. WHEN CAN COMPENSATION AND BENEFITS BE TERMINATED?

[Without Prior Notice to Employee](#)

[Termination with Prior Notice to Employee](#)

[Partially Disabled Employees](#)

[Termination After PPI Award Is Made](#)

[Effect of Termination of Employment](#)

[Effect of Employee's Resignation](#)

Termination Without Prior Notice to Employee

Once begun, Temporary Total Disability (TTD) compensation may be terminated only if authorized by the Worker's Compensation Act see Ind. Code §22-3-3-7(c). The reasons for termination include:

- The employee has returned to any employment
- Refusal to accept suitable employment under Ind. Code §22-3-3-11.
- Death of the employee
- Refusal to undergo a medical examination pursuant to Ind. Code §22-3-3-6. The term "examination" should not be confused with the ordinary medical treatment of the employee's injuries. "Examinations" are held in order to determine the opinion of the physician as to the causal relationship between the injury and the patient's mental or physical condition, the extent and length of disability, and the extent of permanent impairment. Benefits must be immediately reinstated if the employee decides to attend the examination.
- Employee has received 500 weeks of TTD or the maximum compensation allowed under the Act.

- Employee is unable or unavailable to work for reasons unrelated to the compensable injury.

Termination of benefits for the above reasons may occur without prior notice to the employee. However, the employer/carrier is required by 631 IAC 1-1-27 to file a Report of Claim Status with the Board showing payments made, the date of the employee's return to work, the date of cessation of benefits, and the reason for termination of the payments. A copy of this report must also be sent to the employee.

Termination with Prior Notice to Employee

When benefits or compensation are terminated for any other reason, (i.e., the employer believes the employee has reached maximum medical improvement) the employer/carrier must furnish the employee with a Report of Claim Status/Request for Independent Medical Examination *prior* to the proposed date of termination. The employee may dispute the proposed termination by completing and signing the section of the form labeled "Independent Medical Examination Request." The signed form must be sent to the Worker's Compensation Board *and* the employer/carrier within seven (7) days. If the form is not returned within this time frame, the employer/carrier may terminate benefits and compensation.

If the Board receives a timely disagreement with the employer's proposed termination, an [Ombudsman](#) will contact the parties and attempt to resolve the dispute. In some cases, an [Independent Medical Examination \(IME\)](#) may be appointed to facilitate resolution of the dispute. If the IME determines that the employee is still temporarily totally disabled, benefits may be reinstated. If it is determined that the employee is ready to work, benefits may be terminated. Further disputes would be referred by the [Ombudsman Division](#) to the formal hearing process.

Partially Disabled Employees

The Worker's Compensation Act provides incentives to the employer and

employee to return to work as soon as possible. If the employee is partially disabled, that is, able to work light duty or for limited hours, [Temporary Partial Disability \(TPD\)](#) compensation is paid to help make up the difference between light duty wages and the employee's pre-injury wage. Ind. Code §22-3-3-9. No TPD is paid if light duty wages exceed the statutory maximum average weekly wage.

If the employee refuses to accept a *reasonable* (suitable to the employee's capacity) offer of employment, compensation may be suspended by the employer carrier during the period of refusal. Ind. Code §22-3-3-11(a). Before compensation can be suspended or terminated for the employee's refusal to work, the employee must be served a notice setting forth the consequences of the refusal. Ind. Code §22-3-3-11(b). If the employee's benefits are terminated for refusal to accept light duty or reduced hours, but the employee later decides to begin light duty work, the employer/carrier must immediately begin TPD compensation. If the Worker's Compensation Board finds that the employee's refusal to accept the offer of work was justifiable, full [Temporary Total Disability \(TTD\)](#) compensation might be payable.

The absence of light duty work for the employee does *not* relieve the employer/carrier from the obligation to pay Temporary Total Disability (TTD).

Termination of Compensation and Medical Benefits after PPI Award is Made

If the employee refuses to accept medical services and supplies provided by the employer to limit or reduce the employee's degree of permanent partial impairment *after the employee's injury has been adjudicated* on the basis of Permanent Partial Impairment, the employer/carrier may, upon notice to the employee setting forth the consequences of such refusal, suspend any further compensation and benefits until the employee complies with treatment. Ind. Code §22-3-3-4(c).

Effect of Termination of Employment on Worker's Compensation

The termination of an employee does not terminate the rights of the employee under the Worker's Compensation Act. However, eligibility for [Temporary Total Disability \(TTD\)](#) and [Temporary Partial Disability \(TPD\)](#) may be affected. The employee may still be entitled to medical care and to compensation for any [permanent impairment \(PPI\)](#).

The employer/carrier has the obligation to continue medical treatment until the employee reaches [maximum medical improvement \(MMI\)](#). Until the employee reaches MMI, the employee remains either partially or totally disabled and is entitled to TTD or TPD compensation for the full period of disability.

The employer/carrier may attempt to find the employee employment in a reasonable occupation that is the same or similar to the pre-injury employment when the employee reaches MMI. If the employee is partially disabled, the employer/carrier may tender employment within work restrictions and pay Temporary Partial Disability (TPD) compensation. However, if the employer/carrier is unable to make a reasonable accommodation, the employee is entitled to continued TTD until [maximum medical improvement](#) is reached.

Effect of Employee's Resignation

The employee's resignation from a job after an injury does not terminate the employer's obligations to the employee, although the employee's resignation may affect eligibility for [Temporary Total Disability \(TTD\)](#) and [Temporary Partial Disability \(TPD\)](#). The employee may still be entitled to medical care and compensation for any [permanent impairment \(PPI\)](#).

XII. DISPUTE RESOLUTION

[Ombudsman Division](#)

[Hearing Process](#)

[Full Board Review](#)

[Appeal to Court of Appeals; Indiana Supreme Court](#)

Most worker's compensation claims are resolved without dispute. If questions or disagreements arise between the employer, carrier, and employee, the Ombudsman division may be able to informally assist the parties in resolving the problem. Disputes may also be resolved through a hearing before the Worker's Compensation Board.

Informal Dispute Resolution: The Ombudsman Division

[Request for Assistance](#)

[Independent Medical Examinations \(IME\)](#)

Employees, employers, and insurance carriers with general questions or problems may contact the Ombudsman division for assistance by calling (800) 824-2667 or (317) 232-5922. Assistance is also available on a walk-in basis.

Employees who have been injured and have received no benefits, and employees whose benefits have been terminated may contact the Ombudsman Division for assistance. The employee will be asked to complete and sign a Request for Assistance. The employee's signature authorizes the Ombudsman to conduct a brief investigation and attempt to resolve the dispute by contacting both the employee and the employer/insurance carrier. If the Ombudsman Division is unable to resolve the dispute, it will advise the parties of their right to pursue a claim in a hearing before a worker's compensation judge.

In most cases, the employee will receive a form from the employer/insurance carrier called a Report of Claim Status/Request for Independent Medical Examination. This form is used to notify the employee the employee is being returned to work and benefits are being terminated. If the employee disagrees with the proposed termination, the employee can use the form to request an

Independent Medical Examination. *The form must be mailed to the Board within seven (7) days of receipt by the employee. Ind. Code §22-3-3-7(c).*

An Independent Medical Examination (IME) may be appointed if the employer and employee disagree as to the employee's readiness to return to work after an injury. The physician conducting the IME will be chosen from a list of specialists maintained by the Board. The Board usually orders the employer/insurance carrier to pay for the IME. The independent examiner will be asked to provide a written opinion as to the employee's condition within seventy-two (72) hours. Based on the IME findings, the Board will determine whether the employee is able to return to work or should receive continued disability payments. The IME process is used only to determine whether or not the employee is disabled, or unable to work. The process is not used to resolve other types of disputes, such as a disagreement over a PPI rating. See Ind. Code §22-3-3-7(c); Ind. Code §22-3-4-11.

FORMAL DISPUTE RESOLUTION: The Hearing Process

[Single-member hearings](#)

[Time limitations](#)

[Legal counsel](#)

Single Member Hearing

Any party may file for a hearing before a member of the Worker's Compensation Board by filing the Application for Adjustment of Claim. Ind. Code §22-3-4-5(a). The Application should be filed in triplicate by regular U.S. Mail. If the statute of limitations is an issue, the Application can be filed in person or by registered/certified mail.

A case file will be opened at the Board and the parties will be notified that the claim has been filed. The case will be scheduled for hearing on the first available date in the county in which the injury occurred, an adjacent county, the county in which the employer is located. If the employee was hurt or the employer was

doing business in Marion County, the hearing will likely be held at the office of the Worker's Compensation Board in Indianapolis. Ind. Code §22-3-4-5(b).

Hearings are held in a summary manner. Ind. Code §22-3-4-6. The Board is not bound by technical rules of practice. See 631 IAC 1-1-3. However, hearsay testimony may be barred and rules of evidence may be applied at the discretion of the hearing member.

Time Limitations for Filing

While the employee always has the right to file the Application for Adjustment of Claim, the hearing judge may find that the employee's claim is barred by applicable limitations statutes. Employers and employees should be aware that the calculation of time limitations can be highly technical. The assistance of an attorney may be necessary where either side raises the issue of time limitations.

The Application for Adjustment of Claim must be filed within two (2) years from the date of injury. Ind. Code §22-3-3-3. If a party wishes to allege that the employee's condition has changed, Form 29109 must be filed within two (2) years from the date for which compensation was last paid under the original award. Applications for increases in permanent partial impairment (PPI) and medical treatment must be filed within one (1) year from the date for which compensation was last paid. Ind. Code §22-3-3-27.

Limitations on time do not run against a person who is a minor or who is mentally incompetent, so long as such person has no guardian or trustee. Ind. Code §22-3-3-30.

Legal Counsel

All employers, except for sole proprietors and partners, must be represented by an attorney in proceedings before the Board. Because the employer must be represented by an attorney in a worker's compensation hearing, it is

recommended, but not absolutely necessary, that the employee also retain an attorney.

Full Board Review

If any party to a dispute disagrees with the findings of the worker's compensation judge, an appeal may be brought to the Full Worker's Compensation Board. Ind. Code §22-3-4-7 An Application for Review by the Full Board must be filed within thirty (30) days of the date of the single hearing judge's decision. Ind. Code §22-3-4-7. The Full Board meets in Indianapolis seven times per year.

The Full Board reviews the evidence presented at the initial hearing. It generally does not hear new evidence except in extraordinary cases. 631 IAC 1-1-15.

Full Board arguments may be made in person, by legal brief, or both. If the party chooses to file a brief, seven copies of the brief must be delivered to the Board thirty (30) days prior to the hearing. A copy of the brief must also be served, or delivered to, the opposing party. 631 IAC 1-1-15.

Appeal to Indiana Court of Appeals/Indiana Supreme Court

Final orders of the Full Worker's Compensation Board may be reviewed by the Indiana Court of Appeals, if filed within thirty (30) days of a final order of the Worker's Compensation Board. Ind. Code §22-3-4-8.

It is strongly recommended that any party desiring to take a case before the Court of Appeals retain the services of an attorney. The Board and its staff cannot be responsible for assisting parties in making the necessary filings with the Court of Appeals.

Any party desiring to appeal an order of the Full Board must file a written praecipe designating specifically the pleadings to be incorporated into the transcript for the appeal. The praecipe must be filed with the Executive Secretary of the Board within fifteen (15) days from the date of the award of the Full Board.

631 IAC 1-1-22. A copy of the praecipe must also be served on the opposing party or parties.

If the employer/insurance carrier appeals an award of the Full Board to the employee, and the award is affirmed by the court of appeals, the amount of the award will be increased by five percent (5%). The court of appeals has the discretion to increase the award by ten percent (10%). Ind. Code §22-3-4-8(f). Decisions of the Indiana Court of Appeals are reviewable by the Indiana Supreme Court.

XIII. COMPROMISE AGREEMENTS

The Act authorizes employers and employees to settle disputes over claims for worker's compensation where there exists a question as to the compensability of a claim. Ind. Code §22-3-2-15.

When an agreement is reached, a written document is drafted and submitted to the Board for approval. If the agreement contains a compromise on the issue of the amount of [Permanent Partial Impairment \(PPI\)](#) the employee has suffered, the Board requires that the parties attach copies of medical opinions addressing the issue of PPI. The Board will review the terms of the document for fairness and double check the calculation of compensation payments. Heightened review will be given to settlement agreements in which the employee is not represented by an attorney. The Board has complete discretion in approving settlement agreements.

The party submitting settlement agreements for review by the Board should always submit three copies of the document, along with stamped envelopes addressed to both the employer/carrier's legal counsel and the employee or employee's attorney. The original document must be signed by all parties and/or their legal representatives and will be maintained in the Board's files. Approved copies of the document will be returned to the parties.

XIV. CAN A WORKER'S COMPENSATION CASE BE REOPENED?

A worker's compensation case may be reopened within certain time limitations. Reasons for reopening a case might include the following:

- Light duty assigned by the employer has stopped
- The employee becomes totally disabled (unable to work)
- The employee's condition changes or becomes worse because of the injury
- Impairment caused by the injury becomes apparent
- The employee's impairment increases after the initial PPI settlement

A case may be reopened by the employer or the employee if there is a change in conditions. Cases are usually reopened by filing the Application for Adjustment of Claim. Employers and employees should be aware that the calculation of time limitations can be highly technical. The assistance of an attorney may be necessary where either side raises the issue of time limitations. The statutory time limitation periods for reopening a case are as follows:

- For a recurrence of total disability, two (2) years from the date for which disability compensation was last paid pursuant to the original award made either by agreement or upon hearing.
- To reopen the case to make a claim for permanent partial impairment (PPI), two (2) years from the date for which disability was last paid pursuant to the original award made either by agreement or upon hearing.
- To reopen for increased permanent partial impairment (PPI), one (1) year from the date for which compensation was last paid pursuant to the original

award made either by agreement or upon hearing.

- To reopen for further medical treatment, two (2) years from the date for which compensation was last paid pursuant to the original award made either by agreement or upon hearing.

XV. ATTORNEYS

[Qualifications](#)

[How to find](#)

[Attorney's fees](#)

[Attorney fee schedule](#)

All employers and employees have the right to consult with or to retain an attorney regarding worker's compensation matters at any time. All employers, except for sole proprietors and partnerships, must be represented by an attorney once an Application for Adjustment of Claim has been filed.

There is no requirement that employees retain an attorney in order to file for a hearing. However, because the employer/insurance carrier will be represented, employees filing or planning to file the Application for Adjustment of Claim may wish to retain an attorney. *Employees who elect to pursue a worker's compensation claim without the benefit of counsel may be held to the same legal rules that attorneys are bound to follow.*

Qualifications

Any person representing a plaintiff or defendant before the Worker's Compensation Board must be admitted to practice law in the circuit or superior courts and Supreme Court of Indiana. Ind. Code §22-3-8-1. All attorneys are required to file an oath with the Board affirming the above qualifications. The Board may prevent representatives from practicing before the Board if they have

not filed the oath. Ind. Code §22-3-8-2(b).

How to find an attorney

In selecting an attorney, employees should be certain that the attorney is familiar with the provisions of the Worker's Compensation Act and has complied with the above requirements. The best way to find a competent attorney is by word of mouth or by contacting state and local bar association referral services. The Indianapolis Bar Association offers a free Lawyer Referral Service. This service may be contacted at (317) 269-2222.

How are attorneys paid in worker's compensation cases?

Claimant/Plaintiff attorneys take worker's compensation cases on a contingent fee basis, meaning that the attorney is paid a percentage of the amount recovered on behalf of the employee. Attorneys are entitled to a minimum fee of one hundred dollars (\$100) for handling a case, even if no compensation or benefits are recovered. The costs of bringing the claim may also be the responsibility of the employee. Some attorneys collect a small retainer fee from clients in order to help cover the costs of medical records, medical examinations, and other costs. Attorneys are required to furnish worker's compensation claimants with a *written* fee agreement. All attorney fees are subject to the approval of the Worker's Compensation Board.

Worker's Compensation Attorney Fee Schedule

In all cases, whether the claimant recovers or not, attorneys are authorized to charge a fee of \$100. Where the attorney succeeds in collecting a recovery of TTD, TPD, PTD, PPI, a death benefit, the attorney may charge a minimum fee of \$100 plus

20% of the first \$10,000 of recovery;
15% of the second \$10,000 of recovery;
10% of all recovery in excess of \$20,000.

Where the attorney expends time and effort to collect disputed medical bills, the attorney may charge a fee of 10% of the amount actually in dispute and collected by the attorney, but the attorney must petition the Board for approval of such fees. If the attorney succeeds in collecting money from the employer/carrier to reimburse the employee for out-of-pocket medical expenses, the ten percent fee will be deducted from the reimbursement. If the money is collected from the employer/carrier to pay unpaid medical bills, the ten percent fee is deducted from the money collected for payment of the bills, not from the claimant's funds. See 631 IAC 1-1-24.

XVI. THE SECOND INJURY FUND

[Second Injuries](#)

[Exhaustion of Compensation](#)

[Applying to the Fund](#)

[Attorney's Fees](#)

Second Injuries

The [Second Injury Fund](#) created by Ind. Code §22-3-3-13 is designed to prevent discrimination in hiring workers who have lost or lost the use of an arm, hand, leg, or foot. When an employee loses the use of any two of these parts of the body, the employee is considered totally impaired, because a loss of any two of these parts is compensated by an award of 100 degrees of impairment pursuant to Ind. Code §22-3-3-10(c)(2). Such injuries must be compensated by an award of 100 degrees of impairment or [Permanent Total Disability \(PTD\)](#), whichever is greater.

Obviously, employers would hesitate to hire any employee who had already lost or lost the use of an arm, hand, foot, or leg, for fear that a second injury would expose them to liability for an award of PTD. Under §22-3-3-13(a), the employer is held liable only to the extent of compensation due for the second injury. The Second Injury Fund is liable for the remainder of the compensation award.

Exhaustion of Compensation

The Second Injury Fund serves a second purpose unrelated to second injuries. In cases where the employee is permanently and totally disabled and exhausts the maximum compensation payable under the Act, application may be made to the Fund for benefits. The Fund may award benefits at the rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages at the time of the injury, payable at six week intervals for a total of 150 weeks. If the employee remains permanently and totally disabled after 150 weeks, he or she may reapply to the fund. The Board may award additional benefits for successive periods not to exceed one hundred fifty (150) weeks each. Hearings are held to determine eligibility for benefit extensions. See Ind. Code §§22-3-3-13(d); 22-3-3-13(e).

A third purpose of the Second Injury Fund was created by legislation passed in 1997. This legislation allows an employee to apply to the Second Injury Fund for the cost of repairs to or replacement of an artificial member, braces or prosthodontics resulting from a compensable injury pursuant to a prior award. The repairs or replacement may be due to medical necessity or normal wear and tear, but not in cases of abuse by the employee. The compensable injury resulting in the prosthetic must have caused the amputation of a body part, the enucleation of an eye, or the loss of natural teeth. This provision is available regardless of when the injury occurred, so long as the employee can prove that it was a compensable injury and that the prosthetic was received pursuant to a prior award. See Ind.Code §22-3-3-4(e).

Applying to the Fund

The Application for Adjustment of Claim may be used to apply for benefits from the Fund after a second injury of the type described above has occurred or after compensation has been exhausted. The Second Injury Fund should be named defendant. Either party may also move to add the Fund as a defendant. The Fund may be defended by the office of the Indiana Attorney General if a question of legal entitlement to benefits exists. See 631 IAC 1-1-31.

An Initial Application for Prosthetic Repair/Replacement from Second Injury Fund should be used to apply to the Fund for the cost of repairs to or replacement of a prosthetic device. For further requests a Subsequent Application should be filed.

Attorney Fees

If successful, attorneys retained by permanently and totally disabled applicants to the Second Injury Fund may be awarded fees not to exceed one hundred fifty dollars (\$150).

XVII. DEATH BENEFITS

If an employee dies by accident arising out of and in the course of employment, or dies as a result of injuries sustained by accident arising out of and in the course of employment, the employee's dependents become eligible to receive death benefits under the Worker's Compensation Act. An additional allowance for funeral expenses (currently up to \$6,000) is also made. Ind. Code §22-3-3-21.

If the employee dies immediately, the dependents of the employee are entitled to weekly payments at 2/3 of the employee's average weekly wage, up to a maximum of 500 weeks. If the employee dies within 500 weeks of the date of injury causing the death, the dependents are entitled to payment at the same rate, until the total compensation paid to the employee and the employee's dependents equals 500 weeks. Average weekly wages for payment of the death benefit are calculated in the same manner as average weekly wages for disability payments. Ind. Code §22-3-3-17.

A dependent spouse's dependency terminates upon remarriage, at which time the spouse receives a lump sum settlement of 104 weeks of compensation, or the remainder left unpaid, whichever is less.

The employer, at its own expense and upon application to the Worker's

Compensation Board, has the right to an autopsy. If the Board orders an autopsy which is refused by the employee's surviving spouse or next of kin, death benefits may be suspended during the period of refusal. Before termination of benefits, the employer must serve the dependents with a notice setting forth the consequences of refusing the autopsy. Ind. Code §22-3-3-6(h). No autopsy can be performed without notice to the employee's surviving spouse or next of kin, allowing reasonable time and opportunity for the surviving spouse or next of kin to have a representative present to witness the autopsy. If no notice is given, the surviving spouse or next of kin has the right to move that any evidence obtained by an autopsy be suppressed.

XVIII. DEPENDENTS

[Presumptive Dependents](#)

[Total Dependents in Fact](#)

[Partial Dependents in Fact](#)

[Order of Payment](#)

There are three types of dependents identified by the Worker's Compensation Act for purposes of disbursing the death benefit: Presumptive Dependents, Total Dependents in Fact, and Partial Dependents in Fact.

Definitions

Presumptive dependents are presumed to be entirely dependent on the deceased employee for support. Presumptive dependents include:

- A spouse with whom the employee is living at the time of death, or upon whom the laws of the state impose the obligation of support at the time of death. Ind. Code §22-3-3-19(a)(1), (a)(2).
- An unmarried child under the age of twenty-one (21) years who lives with the parent (including stepparents and parents by adoption) at the time of

the parent's death. Ind. Code §22-3-3-19(a)(3). The dependency of the child terminates when the child reaches the age of twenty-one (21) years. Ind. Code §22-3-3-19(c).

- An unmarried child under twenty-one (21) years who may not be living with the parent, stepparent, or adoptive parent, where the laws of the state impose the obligation of the parent to support such child. Ind. Code §22-3-3-19(a)(4). The dependency of the child terminates when the child reaches the age of twenty-one (21) years. Ind. Code §22-3-3-19(c).
- A child over the age of twenty-one (21) years who has never been married and who is either physically or mentally incapacitated from earning the child's own support, where the laws of the state impose the obligation of the parent to support such child. Ind. Code §22-3-3-19(a)(5).
- A child over the age of twenty-one (21) years who has never been married and who at the time of the death of the parent (including stepparents and parents by adoption) is keeping house for and living with such parent and is not otherwise gainfully employed (Ind. Code §22-3-3-19(a)(6)). The dependency of such a child terminates if the child marries or becomes gainfully employed. Ind. Code §22-3-3-19(e).

In each of the above examples, the term "child" includes stepchildren, legally adopted children, posthumous children, and acknowledged children born out of wedlock. The term "parent" includes stepparents and parents by adoption. Ind. Code §22-3-3-19(b).

If the dependent is a spouse who remarries, the spouse is entitled to a lump sum settlement equal to the lesser of one hundred four (104) weeks of compensation or the compensation for the remainder of the maximum statutory benefit period of five hundred (500) weeks. Ind. Code §22-3-3-19(d).

Dependents in Fact and Partial dependents in fact are relatives of the deceased employee by blood or marriage, not including unmarried children under the age of

eighteen (18) years who are totally or partially dependent for support upon the deceased employee. The right to compensation of such a person terminates upon the person's remarriage subsequent to the death of the employee. If the person later divorces, dependency in fact cannot be reinstated. Ind. Code §§2-3-3-20; 22-3-3-28; 22-3-3-29; 22-3-3-30.

Payments to Dependents

Presumptive Dependents are entitled to compensation to the complete exclusion of total and partial dependents in fact. If there is more than one presumptive dependent, compensation will be distributed in equal shares.

Total Dependents in Fact are entitled to compensation to the exclusion of partial dependents in fact. If there is more than one dependent in fact, each is entitled to compensation in equal shares.

Partial Dependents in Fact are not entitled to any compensation if presumptive or total dependents in fact exist. The weekly compensation to partial dependents in fact is proportionate to the support contributed by the employee to the partial dependent at the time of the accident. Ind. Code §22-3-3-18.

XIX. MISCELLANEOUS ISSUES

[Child support](#)

[Vacation days, personal days, sick days, retirement](#)

[Employee benefit plans paid by employer](#)

[Amounts owed to creditors](#)

Child support. Compensation awards under Ind. Code §22•3•3•8 are subject to child support income withholding under Ind. Code §31•2•10 and other remedies available for the enforcement of a child support order. The maximum amount that may be withheld under this subsection is one-half (½) of the compensation award. See Ind. Code §22-3-2-7.

Vacation days, personal days, sick days, retirement. The Worker's Compensation Act does not require that employees continue to accrue vacation, personal, or sick days during a period of total or partial disability. The employer is not permitted to require an employee to use these days instead of receiving worker's compensation. Provisions for vacation, personal, and sick days cannot be used to reduce the employee's Average Weekly Wage.

Employee benefit plans paid by employer. The Worker's Compensation Act does not contain a specific requirement that employers continue to pay for employee benefit plans (such as health insurance) while an employee is on worker's compensation. Nor does the Act authorize the employer to discontinue such plans. If such fringe benefits are discontinued, the employer may be required to take into account amounts it pays for benefits on behalf of employees in calculating the employee's average weekly wage, if the benefits are paid pursuant to a wage contract in lieu of wages.

Amounts owed to creditors. Ind. Code §22-3-2-17(a) provides that no claims for compensation under the Worker's Compensation Act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors. However, compensation is subject to child support income withholding under Ind. Code §22-3-2-17(b).

XX. INSOLVENCY OF EMPLOYER OR CARRIER/ENFORCEMENT

What if the Employer Doesn't Pay?

If a worker's compensation hearing member, the Full Board, the Court of Appeals, or the Indiana Supreme Court has made a final award or order in a case, and the employer/carrier does not pay as ordered, contact the Worker's Compensation Board immediately. On the employee's motion, the Board may issue a Five Day Order giving the employer/carrier five days in which to satisfy the award. Thereafter, the order becomes fully enforceable in civil court. The Board may forward a certified copy of the award to the circuit or superior court in the county in which the injury occurred. Ind. Code §22-3-4-9.

What if the Employer's Insurance Carrier is Unable to Pay?

In the unlikely event that an employer's worker's compensation carrier is financially unable to pay amounts awarded under the Act, the employee should contact the Worker's Compensation Board or the Indiana Insurance Guaranty Association, 251 East Ohio, Indianapolis, 46204. (317) 636-8204.

The Guaranty Association does not guarantee amounts owed by self-insured or uninsured employers.

XXI. THIRD PARTY LAWSUITS

Lawsuits against Third Parties Liable for the Workplace Injury

Although civil lawsuits against employers for workplace injuries are generally barred, employees can bring lawsuits against third parties (drivers of motor vehicles, manufacturers of defective products, etc.) who are responsible for accidents. For example, a delivery driver who is injured in a car accident would be able to collect worker's compensation for immediate medical treatment and wage replacement. If another driver is to blame for the accident, the employee may sue the driver. The worker's compensation insurance carrier then becomes entitled to be reimbursed from amounts collected by the employee in the third party lawsuit. Ind. Code §22-3-2-13.

Employees should consult with an attorney for advice where there is a possibility of third party liability. The Worker's Compensation Board has no jurisdiction over claims against third parties.

Lawsuits against the Worker's Compensation Insurance Carrier

The employee generally cannot sue the workers compensation insurance carrier for actions amounting to lack of diligence, bad faith or an independent tort (such as negligence or intentional infliction of emotional distress). The Workers

Compensation Act provides that the Board has exclusive jurisdiction in such cases. An award for such behavior on the part of the carrier is subject to a minimum of \$500 and a maximum of \$20,000. In addition, the Board may award attorney fees up to 33 1/3% of the amount of the award. *Effective July 1, 2000, IC 22-3-4-12.1 limits employee claims for bad faith or lack of diligence to \$20,000 for the duration of that claim.*

In extraordinary situations, it is possible for a worker's compensation claimant to sue insurance carriers for independent injuries caused by the carrier's fraud, intentional infliction of emotional distress, and gross negligence. Such claims fall outside of the Worker's Compensation Act where the harm caused by the carrier's behavior is distinct from the accidental injury.

Where it is alleged that the insurance carrier's denial or termination of worker's compensation benefits was fraudulent, grossly negligent, or intended to inflict emotional distress, the underlying worker's compensation case would have to be resolved in favor of the employee before the courts could hear a civil suit.

XXII. OCCUPATIONAL DISEASES ACT

The Indiana Occupational Diseases Act is similar to the Indiana Worker's Compensation Act and is administered by the Worker's Compensation Board. To be compensable, an [occupational disease](#) must arise out of and in the course of employment. The disease must be fairly traced to the employment as the proximate cause, and not from a hazard to which the employee could have been equally exposed outside of employment. A physician's opinion that the disease is an occupational disease would be required to prove a case for benefits for a disease. The physician's statement should be filed along with the Application for Adjustment of Claim.

Disability under the Occupational Diseases Act

Disablement under the Occupational Diseases Act is defined by statute as “. . . becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he claims compensation or equal wages in other suitable employment. . .” Ind. Code §22-3-7-9(e).

Limitations

Calculation of time [limitations](#) can be highly technical. Employees should consult with an attorney when there is a limitations issue in an Occupational Disease claim.

Compensation for occupational diseases may not be payable under the Act unless the disease leads to disablement (inability to work) within two (2) years after the last exposure to a hazard. In cases of disease caused by the inhalation of silica or coal dust, the limitation period is three (3) years after the last day of the last exposure to the hazard. Ind. Code §22-3-7-9(f)(1).

In cases of disease caused by exposure to radiation, the limitations period is two (2) years from the date on which the employee had knowledge of the nature of the occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to the employment. Ind. Code §22-3-7-9(f)(2).

In cases of disease caused by the inhalation of asbestos dust, the limitations period is three (3) years after the last day of the last exposure, if the last day of the last exposure was before July 1, 1985. Ind. Code §22-3-7-9(f)(3). If the last date of exposure is on or after July 1, 1985, and before July 1, 1988, the limitations period is twenty (20) years after the last day of the last exposure. Ind. Code §22-3-7-9(f)(4). If the last date of exposure is on or after July 1, 1988, the limitations period is thirty-five (35) years after the last day of the last exposure. Ind. Code §22-3-7-9(f)(5).

XXIII. VOCATIONAL REHABILITATION

Injured workers who are unable to return to their pre-injury jobs may be eligible for Vocational Rehabilitation under Ind. Code §22-3-12-1 et seq. The employer is not required to pay for private vocational rehabilitation under the Indiana Worker's Compensation Act. For more information, contact the Office of Vocational Rehabilitation at (317) 232-1319.

XXIV. REEMPLOYMENT RIGHTS

The Worker's Compensation Board has no jurisdiction over employment issues other than actions for injuries or death arising out of and in the course of employment. Usually, the employer will return the employee to work as soon as the employee's recovery permits. However, the Worker's Compensation Act contains no specific provision requiring the employer to maintain the employee at the employee's pre-injury job status. Workers represented by collective bargaining agreements may have special contractual provisions covering these situations.

Workers may not be terminated for exercising the right to file a worker's compensation claim. Workers who are terminated for exercising this right should consult with an attorney about filing a civil lawsuit for wrongful discharge.

The federal Americans with Disabilities Act (ADA) prohibits employers with fifteen (15) or more employees from discriminating against workers with disabilities. The ADA may apply to cases where an employee has been injured in a previous work place accident and where the injured employee desires to return to work. For more information, contact the Indiana Civil Rights Commission, the Equal Employment Opportunity Commission, or a labor attorney.

XXV. RESIDUAL ASBESTOS INJURY FUND

The Residual Asbestos Injury Fund (see Ind. Code §22-3-11-1 et seq.) was created to provide compensation to workers who suffer from work-related asbestos injuries who are not eligible for benefits and compensation under the Occupational

Diseases Act.

An employee who:

(1) Becomes permanently and totally disabled:

(A) On or after July 1, 1985, from an exposure to asbestos in employment before July 1, 1988; or

(B) Before July 1, 1985, from an exposure to asbestos in employment and files a claim for benefits from the Asbestos Fund before July 1, 1990;

(2) Is unable to be self-supporting in any gainful employment because of the disability caused by the exposure to asbestos; and

(3) Is not eligible for benefits under the Indiana Occupational Diseases Act

may be eligible for benefits from the Asbestos Fund if the employee is not entitled to other benefits from social security, disability retirement, or other retirement benefits or third party settlements equal to or greater than sixty-six and two-thirds percent (66 2/3%) of the average weekly wage at the date of disablement.

If the employee has other available benefits but they are less than sixty-six and two-thirds percent (66 2/3%) of the average weekly wage at the date of disablement, the employee is eligible to receive from the fund a weekly benefit not to exceed the difference between the other available benefits and sixty-six and two-thirds percent (66 2/3%) of the average weekly wage for a period not to exceed fifty-two (52) weeks.

If the employee dies before exhausting the remainder of the benefits to which the employee was entitled for the fifty-two week period, the employee's dependents are entitled to the greater of the remainder of the benefits or four thousand dollars (\$4,000).

GLOSSARY

Accident. An unexpected event or an unexpected result.

Acquiescence. Conduct which, without approving of a condition, act, or behavior, allows it to continue. For example, an employer may witness horseplay without requiring the employees to cease.

Affirmative defense. Legal defenses to worker's compensation liability in which it is recognized that a workplace injury has occurred, but that an act or omission on the part of the employee relieves the employer of the obligation to pay compensation and benefits. For example, the employee's intoxication may relieve the employer of liability if the intoxication was the cause of the accident.

Agricultural employee. An employee who performs traditional types of farm work such as tending crops and livestock.

Arising out of the employment. The requirement that, to be compensable, an injury must be work-related.

Average weekly wages. A figure upon which the amount of the employee's compensation for death or disability will be determined.

Balance billing. The practice of billing an employee for the portion of a medical bill which has not been paid by the employer/carrier. Balance billing is prohibited by law in Indiana.

Benefits. Medical treatment provided under the Worker's Compensation Act.

Compensable claim. A claim in which it can be proven that there is a personal injury or death by accident, which was caused in some way by the employment duties and which occurred at a time and place at which the employee could be expected to be.

Compensation. Payments for wage replacement (TTD, TPD, PTD) and loss of use of body parts (PPI).

Compensation Act. The collection of statutes found at Title 22, Articles 2 through 6 of the Indiana Code which create Indiana's worker's compensation system.

Continuance. The postponement or delay of a hearing.

Dependent. One who relies on another for support.

Disability. Incapacity or inability to work. Under the Occupational Disease Act, the inability to earn wages.

Impairment. The loss of a body part or the total or partial loss of use of a body

part

Independent contractor. A worker who meets the definition of the IRS independent contractors.

Independent Medical Examination. An examination appointed by the Board to obtain an independent assessment of a worker's condition.

In the course of employment. The requirement that an injury occur at a time and place at which the employee could reasonably be expected to be.

Lien. A charge, security, or encumbrance upon property. In worker's compensation, the legal assertion by an insurance carrier or attorney that it is entitled to a sum of money from a worker's compensation award.

Limitations, statute of limitations. A law providing a time period during which the Board has jurisdiction to hear a claim for compensation and benefits.

Maximum medical improvement. The point at which an injured worker's medical condition has stabilized and will get no better or worse.

Medical provider. A physician or other person who provides medical treatment under the **Worker's**

Occupational disease. A disease arising out of and in the course of employment, not including ordinary diseases of life to which the general public is exposed outside of the employment, unless the disease follows as an incident to an occupational disease.

Ombudsman. A staff member of the worker's compensation agency who can assist employees and employers in the resolution of some disputes.

Partial dependents. A person who is related by blood or marriage to a deceased employee, except an unmarried child under the age of eighteen (18) years, who relied on the deceased employee for part of the person's economic support.

Permanence and quiescence. See [maximum medical improvement](#).

Permanent Partial Impairment (PPI). The permanent partial loss or loss of use of a body part or a bodily function.

Permanent Total Disability (PTD). A permanent inability to work in a reasonable employment.

Presumptive dependent. Persons who are presumed by law to be completely dependent on an employee for economic support.

Second Injury Fund. A special fund established to compensate employees who, having previously lost or lost the use of an arm, hand, leg, foot, or eye, lose or lose

the use of another such part in a work-related accident.

Section 15 compromise agreement. A form of settlement in which the employer and employee resolve a dispute as to the compensability of a worker’s compensation claim and the amount payable therefor. A section 15 agreement must be approved by the Board to be valid.

Settlement. The resolution without hearing of all or some of the issues to a dispute.

Temporary Partial Disability (TPD). Compensation for lost wages paid during the time the employee is unable to work at full capacity.

Temporary Total Disability (TTD). Compensation for lost wages paid during the time the employee is completely unable to work because of a work-related injury.

Total dependents. A person who in fact relies completely on an employee for economic support, but is not presumed by law to be a dependent.

CHART 1. TEMPORARY TOTAL DISABILITY COMPENSATION

Note: Temporary Total Disability (TTD) is paid weekly and is based on 2/3 of the employee’s average weekly wages (AWW) on the date of the injury. TTD payments are subject to a maximum which varies depending on the date of injury.

| Date of Injury | Maximum AWW | 2/3 x Max. AWW | Maximum Compensation |
|-----------------------|--------------------|-----------------------|-----------------------------|
| On or after 7/1/90 | \$441 | \$294 | \$147,000 |
| On or after 7/1/91 | \$492 | \$328 | \$164,000 |
| On or after 7/1/92 | \$540 | \$360 | \$180,000 |
| On or after 7/1/94 | \$642 | \$428 | \$214,000 |

| | | | |
|--------------------|-------|-------|-----------|
| On or after 7/1/94 | \$642 | \$428 | \$214,000 |
| On or after 7/1/95 | \$642 | \$428 | \$214,000 |
| On or after 7/1/96 | \$642 | \$428 | \$214,000 |
| On or after 7/1/97 | \$672 | \$448 | \$224,000 |
| On or after 7/1/98 | \$702 | \$468 | \$234,000 |
| On or after 7/1/99 | \$732 | \$488 | \$244,000 |
| On or after 7/1/00 | \$762 | \$508 | \$254,000 |
| On or after 7/1/01 | \$822 | \$548 | \$274,000 |
| On or after 7/1/02 | \$882 | \$588 | \$294,000 |

CHART 2. PERMANENT PARTIAL IMPAIRMENT COMPENSATION PER DEGREE OF IMPAIRMENT

| Date of Injury | Degrees | Dollars per Degree |
|-----------------------------|----------------|---------------------------|
| On or after 7/1/1991 | 1-35 | \$500 |
| | 36-50 | \$900 |
| | 51-100 | \$1,500 |
| On or after 7/1/92 | 1-20 | \$500 |
| | 21-35 | \$800 |
| | 36-50 | \$1,300 |
| | 51-100 | \$1,700 |

| | | |
|---------------------------|--------|---------|
| On or after 7/1/93 | 1-10 | \$500 |
| | 11-20 | \$700 |
| | 21-35 | \$1,000 |
| | 36-50 | \$1,400 |
| | 51-100 | \$1,700 |
| On or after 7/1/97 | 1-10 | \$750 |
| | 11-35 | \$1,000 |
| | 36-50 | \$1,400 |
| | 51-100 | \$1,700 |
| On or after 7/1/99 | 1-10 | \$900 |
| | 11-35 | \$1,100 |
| | 36-50 | \$1,600 |
| | 51-100 | \$2,000 |
| On or after 7/1/00 | 1-10 | \$1,100 |
| | 11-35 | \$1,300 |
| | 36-50 | \$2,000 |
| | 51-100 | \$2,500 |
| On or after 7/1/01 | 1-10 | \$1,300 |
| | 11-35 | \$1,500 |
| | 36-50 | \$2,400 |
| | 51-100 | \$3,000 |

**CHART 3: PERMANENT PARTIAL IMPAIRMENT (PPI)
COMPENSATION:
DATE OF INJURY JULY 1, 1991 - JUNE 30, 1992**

DEGREES

\$ PER DEGREE

| | |
|--------|---------|
| 1-35 | \$500 |
| 36-50 | \$900 |
| 51-100 | \$1,500 |

EXAMPLES OF PPI CALCULATION

1. Total loss of foot = 35 degrees

35 degrees X \$500 = \$17,500 (maximum compensation for total loss or loss of use of foot)

2. Total loss of hand or arm below elbow = 40 degrees

35 degrees X \$500 = \$17,500
5 degrees X \$900 = \$ 4,500
40 \$22,000 (maximum compensation)

3. Total loss of arm above elbow = 50 degrees

35 degrees X \$500 = \$17,500
15 degrees X \$900 = \$13,500
50 \$31,000 (maximum compensation for total loss or loss of use of arm above elbow)

**CHART 4: PERMANENT PARTIAL IMPAIRMENT (PPI)
COMPENSATION:
DATE OF INJURY JULY 1, 1992 - JUNE 30, 1993**

| <u>DEGREES</u> | <u>\$ PER DEGREE</u> |
|----------------|----------------------|
| 1-20 | \$500 |
| 21-35 | \$800 |
| 36-50 | \$1,300 |
| 51-100 | \$1,700 |

EXAMPLES OF PPI CALCULATION

1. Total loss of foot = 35 degrees

| | | |
|-----------|-------------------|---------------------------------|
| 20 | degrees X \$500 = | \$10,000 |
| <u>15</u> | degrees X \$800 = | <u>\$12,000</u> |
| 35 | | \$22,000 (maximum compensation) |

2. Total loss of hand or arm below elbow = 40 degrees

| | | |
|----------|---------------------|---------------------------------|
| 20 | degrees X \$ 500 = | \$10,000 |
| 15 | degrees X \$ 800 = | \$12,000 |
| <u>5</u> | degrees X \$1,300 = | <u>\$ 6,500</u> |
| 40 | | \$28,500 (maximum compensation) |

3. Total loss of arm above elbow = 50 degrees

| | | |
|-----------|---------------------|---------------------------------|
| 20 | degrees X \$ 500 = | \$10,000 |
| 15 | degrees X \$ 800 = | \$12,000 |
| <u>15</u> | degrees X \$1,300 = | <u>\$19,500</u> |
| 50 | | \$41,500 (maximum compensation) |

CHART 5: PERMANENT PARTIAL IMPAIRMENT (PPI) COMPENSATION: DATE OF INJURY JULY 1, 1993 – June 30, 1997

| <u>DEGREES</u> | <u>\$ PER DEGREE</u> |
|----------------|----------------------|
| 1 - 10 | \$500 |
| 11 - 20 | \$700 |
| 21 - 35 | \$1,000 |
| 36 - 50 | \$1,400 |
| 51 - 100 | \$1,700 |

EXAMPLES OF PPI CALCULATION

1. Total loss of foot = 35 degrees

| | | |
|-----------|----------------------|---------------------------------|
| 10 | degrees X \$ 500 = | \$ 5,000 |
| 10 | degrees X \$ 400 = | \$ 7,000 |
| <u>15</u> | degrees X \$ 1,000 = | <u>\$15,000</u> |
| 35 | | \$27,000 (maximum compensation) |

2. Total loss of hand or arm below elbow = 40 degrees

| | | |
|----------|---------------------|---------------------------------|
| 10 | degrees X \$ 500 = | \$ 5,000 |
| 10 | degrees X \$ 700 = | \$ 7,000 |
| 15 | degrees X \$1,000 = | \$15,000 |
| <u>5</u> | degrees X \$1,400 = | <u>\$ 7,000</u> |
| 40 | | \$34,000 (maximum compensation) |

3. Total loss of arm above elbow = 50 degrees

| | | |
|-----------|---------------------|---------------------------------|
| 10 | degrees X \$ 500 = | \$ 5,000 |
| 10 | degrees X \$ 700 = | \$ 7,000 |
| 15 | degrees X \$1,000 = | \$15,000 |
| <u>15</u> | degrees X \$1,400 = | <u>\$21,000</u> |
| 50 | | \$48,000 (maximum compensation) |

CHART 5: EXAMPLES OF PPI CALCULATION FOR PARTIAL

LOSSES

DATE OF INJURY JULY 1, 1993 – JUNE 30, 1997

| <u>DEGREES</u> | <u>\$ PER DEGREE</u> |
|----------------|----------------------|
| 1 – 10 | \$500 |
| 11 – 20 | \$700 |
| 21 – 35 | \$1,000 |
| 36 – 50 | \$1,400 |
| 51 – 100 | \$1,700 |

1. 25% impairment of foot:

Foot = 35 degrees of impairment.

25% of 35 degrees = $.25 \times 35 = 8.75$ degrees

8.75 degrees X \$ 500 per degree = \$4,375

2. 50% loss of hand or arm below elbow:

Hand = 40 degrees

50% of 40 degrees = $.50 \times 40 = 20$ degrees

| | |
|-------------------------|------------|
| 10 degrees X \$ 500 = | \$ 5,000 |
| + 10 degrees X \$ 700 = | \$ 7,000 |
| <hr/> | |
| = 20 degrees | = \$12,000 |

3. 75% loss of arm above elbow:

Arm above elbow = 50 degrees

$$75\% \text{ of } 50 = .75 \times 50 = 37.5 \text{ degrees}$$

$$10 \text{ degrees} \times \$ 500 = \$ 5,000$$

$$10 \text{ degrees} \times \$ 700 = \$ 7,000$$

$$15 \text{ degrees} \times \$1,000 = \$15,000$$

$$+ \underline{2.5 \text{ degrees} \times \$1,400} = \underline{\$ 3,500}$$

$$= 37.5 \qquad \qquad \qquad \$30,500$$

CHART 6: PERMANENT PARTIAL IMPAIRMENT (PPI)

COMPENSATION:

DATE OF INJURY JULY 1, 1997 - JUNE 30, 1999

DEGREES

\$ PER DEGREE

1 - 10 \$750

11 - 35 \$1,000

36 - 50 \$1,400

51 -100 \$1,700

EXAMPLES OF PPI CALCULATION

1. Total loss of index finger = 8 degrees

$$8 \text{ degrees} \times \$750 = \$6,000$$

(maximum compensation for total loss or loss of use of index finger)

2. Total loss of hand or arm below elbow = 40 degrees

$$10 \text{ degrees} \times \$750 = \$7,500$$

$$25 \text{ degrees} \times \$1,000 = \$25,000$$

$$\underline{5 \text{ degrees} \times \$1,400} = \underline{\$7,000}$$

$$40 \qquad \qquad \qquad \$39,500$$

1. Total loss of index finger = 8 degrees

$$8 \text{ degrees} \times \$900 = \$7,200$$

(maximum compensation for total loss or loss of use of index finger)

2. Total loss of hand or arm below elbow = 40 degrees

$$10 \text{ degrees} \times \$900 = \$9,000$$

$$25 \text{ degrees} \times \$1,100 = \$27,500$$

$$\underline{5 \text{ degrees}} \times \$1,700 = \underline{\$8,500}$$

$$40 \qquad \qquad \qquad \$45,000$$

(maximum compensation for total loss or loss of use of arm below elbow)

3. 25% impairment of foot or leg below knee:

Foot = 35 degrees

$$25\% \text{ of } 35 \text{ degrees} = .25 \times 35 = 8.75 \text{ degrees}$$

$$8.75 \text{ degrees} \times \$900 \text{ per degree} = \$7,875$$

4. 50% loss of arm above elbow:

Arm above elbow = 50 degrees

$$50\% \text{ of } 50 \text{ degrees} = .50 \times 50 = 25 \text{ degrees}$$

$$10 \text{ degrees} \times \$900 = \$9,000$$

$$\underline{15 \text{ degrees}} \times \$1,100 = \underline{\$16,500}$$

$$25 \qquad \qquad \qquad \$25,500$$

EMPLOYEES:

If you are injured at work or believe that an injury or illness is work-related, the following steps may be helpful. The steps in this list are not required by statute. If you are unable to do these things for yourself, ask someone to do them for

you.

- Note the hour, date, cause of the accident or illness, and the names of any witnesses to the accident. If possible, obtain a written statement from these witnesses. This information may be important in pursuing your claim.
- Immediately report the accident and injury to your supervisor, first aid person, company nurse or physician, or directly to your employer. Do not wait to report injuries or illnesses and do not conceal injuries or illnesses if you wish to pursue a worker's compensation claim.
- If you work for a unionized employer, report the injury to your union representative.
- Request medical treatment under worker's compensation.
- Do not sign any papers unless you understand what you are signing. However, remember that your signature may be required at various steps in the handling of your claim. Your delay in signing may lead to a delay in receiving compensation.
- You do not have to allow claims investigators to take a tape recorded statement from you as a condition for receiving worker's compensation.
- If your claim is denied, you have the right to a hearing before the Worker's Compensation Board.

EMPLOYERS:

Employers can control worker's compensation costs and prevent worker injuries by establishing and maintaining a strong safety ethic in the workplace.

- Create and maintain health and safety initiatives.
- Make sure that injuries and illnesses receive immediate treatment.
- Take remedial steps to reduce known safety problems.
- Establish safety procedures that are reasonable and that employees can easily follow.
- Require employees to report all accidents immediately.
- Establish and make known procedures to be followed by workers and

management in the event of an accident.

- Inform the treating physician of the physical demands of an injured employee's job so that the doctor can make a realistic determination of the employee's ability to return to work.
- If possible, offer reasonable light duty assignments so that the employee can return to work.
- Post the required notice in a conspicuous location informing all employees of the name, address and telephone number of your insurance carrier and person responsible for administering worker's compensation claims.

Worker's Compensation Board of Indiana
402 West Washington Street W-196
Indianapolis, Indiana 46204