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INDIANA WORKER'S COMPENSATION LAW SUMMARY 2018

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Statute of Limitations		
Notice of / Obligation to Assert Injury Claim	IND. CODE §§ 22-3-3-1, 22-3-3-3	2 years from occurrence of accident, or if death results therefrom, 2 years after such death. 30 days – Actual notice to employer required within 30 days after the injury or within 30 days after employee <i>knew or ought to have known</i> the nature of their disability and its relation to the employment, unless the employer or its representative has actual knowledge of the occurrence of an injury or death.
Radiation Claims	§ 22-3-3-3	A claim for compensation resulting from exposure to radiation shall be filed with the Board within 2 years of the date on which the employee had knowledge of the injury or by reasonable exercise of diligence should have known of the existence of such injury and its causal relationship to the employment.
Insurance and Reporting Requirements		
Insurance Requirement	§ 22-3-5-1	An employer as defined by § 22-3-2 through § 22-3-6 must insure liability for worker's compensation. Employers can be self-insured if they furnish the Worker's Compensation Board with satisfactory proof of the employer's financial ability to pay directly the compensation in the amount and manner when due as provide in § 22-3-2 through § 22-3-6.
Responding to Claims	§ 22-3-4-13	Employers must report a work injury claim to insurer <u>within 7 days</u> of the incident and knowledge thereof. The insurer must file the First Report of Employee Injury, Illness, State Form 34401, with the Worker's Compensation Board not later than 7 days after receipt of the report or 14 days after the employer's knowledge of the injury, whichever is later. An employer or insurer who fails to comply with this requirement is subject to a civil penalty of \$50.00.
Agreement to Compensation of Employee & Employer	Form 1043	If temporary total or partial disability benefits are payable, or if a PPI settlement is reached, the employer or insurer must file State Form 1043 within fifteen (15) days following the date the first payment of compensation is due..
Inability to Determine Liability/Request for Additional Time	Form 488557	If an employer or insurer is unable to determine liability within 30 days of knowledge of the injury, the employer or insurer may request additional time by filing State Form 488557, notice of Inability to Determine Liability/Request for Additional Time.
Denial	§ 22-3-3-7	Notice of Denial of Benefits, completed via State Form 53914, must be made in writing and received by the Board not later than thirty (30) days after the employer's knowledge of the injury, of by the end of any period extended by the Board following the filing of State Form 488557..
Elements of Work Related Injury		
Employee Status	§ 22-3-6-1(b)	Every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, is an employee.
Employer Status	§ 22-3-6-1(a)	An employer, including the State and any political subdivision, any municipal corporation within the State, any individual or legal representative of deceased individual, firm, association, LLC, or corporation or receiver or trustee of the same, using the services of another for pay.
Injury (defined)	§ 22-3-6-1(e)	Injury and personal injury mean only injury by accident arising out of and in the course and in the course of the employment.
Occupational Disease	§ 22-3-7-10	A disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of employment are not compensable, except where such diseases follow as an incident of an occupational disease.

Average Weekly Wage (AWW)		
Average Weekly Wage	§ 22-3-6-1(d)	Average weekly wage is generally calculated using the 52 weeks of compensation prior to the claimant's injury. Special situations may arise if the employee has not been employed for 52 weeks, or if the employee had another injury, for example, at which time the average wages of a similarly situated employee could be used or a period of less than 52 weeks may be used to arrive at a just result.
Temporary Total Disability (TTD)		
TTD (defined)	§ 22-3-3-8	For injuries causing temporary total disability for work, the employee is to be paid during disability a weekly compensation of 66 2/3% of his or her average weekly wages, for a period not to exceed 500 weeks. This compensation is not taxable as income and the only attachment that can be withheld is for child support obligations.
TTD – 7 Day Waiting Period	§ 22-3-3-7(a)	Compensation shall be allowed for injuries producing temporary total disability to work beginning with the 8 th day of such disability, except for medical benefits. Compensation is allowed for the first 7 days only if the disability continues for more than 21 days.
TTD Terminates Upon	§ 22-3-3-7(c) State Form 38911	Once begun, TTD benefits may not be terminated by the employer unless: Employee has returned to any employment; Employee has died; Employee has refused to undergo a medical examination or has refused to accept suitable employment; Employee has received 500 weeks of TTD benefits or has been paid the maximum compensation allowed; or Employee is unable or unavailable to work for reasons unrelated to the compensable injury. Termination must be preceded by the service and filing of State Form 38911. Even if the Employee is justifiably terminated for reasons unrelated to the injury, if the injury is compensable, the Employer must either provide work within the Employee's restrictions or TTD until the Employee reaches MMI.
TEMPORARY PARTIAL DISABILITY (TPD)		
TPD benefits	§22-3-3-9	If employee's wages, prior to reaching MMI, are less than 66 2/3% of his or her average weekly wages, he or she is eligible for payment of the difference for up to 300 weeks.
Permanent Partial Disability (PPD)		
PPD	§ 22-3-3-10	PPD is not available in Indiana. Instead, only scheduled loss for physical impairment (PPI) is compensable. The whole person is valued at 100° (degrees), and body parts are given proportional values. For example, the leg above the knee (which includes knee injuries) is valued at 45°. Therefore, an impairment rating of 25% of the lower extremity due to a knee injury would equate to 11.25°. The number of degrees is then multiplied by the statutory dollar value per degree. In this example, if the injury occurred on or after July 1, 2016, the first ten degrees are valued at \$1,750 each, and degrees 11-35 are worth \$1,952 each. 25% PPI to the knee would calculate as follows: 45° x 25% = 11.25. (10 X \$1,750 = \$17,500) PLUS 1.25 x \$1,952 = \$2,440). The total PPI award would be \$19,940.00. Please contact us for more information.
Permanent Total Disability (PTD)		
PTD benefits	§ 22-3-3-8	For injuries causing permanent total disability for work, the employee is to be paid during disability a weekly compensation of 66 2/3% of his or her average weekly wages, for a period not to exceed 500 weeks.
Other Miscellaneous		
Affirmative Defenses	§22-3-2-8	The employer may utilize the following defenses where the employee's injury or death is: <i>due to</i> the employee's knowingly self-inflicted injury, <i>due to</i> intoxication, <i>due to</i> the commission of an offense (not including traffic infractions), <i>due to</i> a <i>knowing</i> failure to use a safety appliance, <i>due to</i> a <i>knowing</i> failure to obey a <i>reasonable written or printed</i> safety rule which has been posted in a conspicuous position in the place of work, or <i>due to</i> a <i>knowing</i> failure to perform any statutory duty. In asserting these defenses, the employer has the <i>burden of proving</i> that the misconduct <i>caused</i> 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 <i>knowing</i> The Board tends to disfavor affirmative defenses and the burden of establishing all elements of the defense is on the employer.
Medical Treatment	§22-3-3-4	The employer directs the employee's medical care. The Employee has no choice of physician. If a claim is accepted, medical treatment must be provided until which time the employee

		<p>reaches maximum medical improvement.</p> <p>The treating doctor must provide Permanent Partial Impairment (PPI) rating upon finding of MMI. If he/she refuses, referral to another qualified physician for a rating is necessary. Future medical is not a statutory benefit. However, the Board may award future medical if necessary to reduce or limit impairment; for pain management, for employee to continue working and for daily activities.</p> <p>If employee is requested or required to travel outside of the county of employment for treatment, the employer must pay reasonable expense of travel, food and lodging necessary during the travel, but not to exceed the amount paid at the time of the travel by state to its employees under the state travel policies and procedures.</p> <p>If the treatment or travel to and from treatment causes employee to lose time from work, the employer shall reimburse the employee for the loss of wages using the basis of the employee's average weekly wage.</p> <p>If the employee refuses to accept medical treatment provided by the employer, the employer may suspend benefits. However, any such suspension must be preceded by providing statutory notice to the employee via the filing of State Form 54217, Notice of Suspension of Benefits.</p>
Board IME	<p>§ 22-3-4-11</p> <p>§ 22-3-3-7(c)</p>	<p>Upon Application by either party or the Board's own motion, an IME will be scheduled by the Board. A reasonable physician fee, traveling expenses are paid by the State.</p> <p>Usually used for employees who cannot afford their own examinations.</p> <p>Used where the employee is never taken off work so a State Form 38911 was never filed.</p> <p>2 weeks of TTD is NOT owed under this section.</p> <p>When TTD is terminated using State Form 38911, the employee has seven (7) days after the receipt of 38911 to notify the Board in writing of his/her disagreement and request for an IME. If the employee does not notify Board within 7 days, the Board will deny the IME request..</p> <p>Doctor is usually agreed upon by the parties. If cannot agree, doctor will be chosen by Board.</p> <p>Cost of the examination is the responsibility of the employer.</p> <p>Employer/carrier is responsible for sending all medical records</p> <p>Employer/carrier owes two (2) week advance payment of TTD benefits. If the IME finds that plaintiff is not at MMI, the advance covers the first two weeks of additional disability – dating back to the termination of TTD. If the employee is at MMI, advance may be credited against a PPI award.</p> <p>Only addresses MMI and whether additional treatment is needed for accepted body parts.</p> <p>Does not address PPI.</p>
Death Benefits	<p>§22-3-3-21</p> <p>§22-3-3-17</p>	<p>Funeral/burial expense – up to \$7,500.00.</p> <p>Maximum payout to statutory dependents is 500 weeks at TTD rate. Can be made in weekly payments to dependents or lump sum. Dependents are defined in §22-3-3-18 and §22-3-3-19.</p> <p>Employer must pay all medical associated with the injury/death.</p>
Second Injury Fund	§ 22-3-3-13	<p>Encourages employment of partially disabled employee.</p> <p>Previously totally deprived of use of eye, hand, foot or entire limb then subsequently hired and sustains a new injury resulting in permanent total disability.</p> <p>The last employer is only responsible for benefits associated with the second injury. Benefits are calculated as if there were no preexisting injury.</p> <p>Balance of PTD claim is paid by the Second Injury Fund.</p> <p>The employee receives 150 weeks of benefits at TTD rate in 6 week intervals.</p> <p>Second Injury Fund also pays for the repair/replacement of prosthetics.</p> <p>Every carrier/self-insured employer is required to contribute an assessed amount based on premium amounts and indemnity payments.</p>
Offsets Unemployment Benefits	Determined by case law	<p>Per <i>Platinum Construction Group, LLC v. Collings</i>, 988 N.E. 2d 1153 (Ind.Ct.App. 2013).the receipt of unemployment benefits does not automatically preclude entitlement to TTD benefits. The court ordered that TTD benefits be paid for the time that plaintiff was taken off work, and gave the employer a credit for the unemployment benefits paid so that the employee did not obtain a double recovery.</p> <p>If the amount a claimant is receiving in unemployment benefits is less than the amount he/she would receive in TTD benefits, employer would be required to pay the difference.</p> <p>A strong argument can be made that where an employee was fired for cause and is receiving unemployment benefits, would not owe TTD benefits.</p> <p>Although currently no case law on point, it is reasonable that Court would apply the logic used in <i>Platinum Construction</i> to also apply to situations where employee is receiving short-term disability benefits.</p>
Short Term Disability Benefits		
Penalties		
Bad Faith	§22-3-4-12.1	The Board has exclusive jurisdiction for claims of bad faith in worker's compensation matters.

		<p>Bad faith can only be found in regards to a compensable claims; therefore, either the claim must have been accepted as compensable or ruled compensable by the WC Board before the issue of bad faith may be considered.</p> <p>Applies to an employer, carrier or TPA.</p> <p>Bad faith claims can be made for lack of diligence, bad faith, or committed an independent tort in adjusting or settling claim for worker's compensation.</p> <p>Awards range from \$500-\$20,000.00 (capped at \$20,000.00) and are dependent on the degree of culpability and actual damages sustained.</p> <p>Attorney fees can be awarded in addition to bad faith up to 1/3 amount of the bad faith award.</p> <p>High burden of proof. Must be more than just bad judgment or negligence. Requires conscious wrongdoing because a dishonest or immoral purpose, ill will state of mind.</p> <p>Bad faith can include: Unfounded refusal to pay benefits, unfounded delay in paying benefits, deceiving employee regarding benefits, exercising unfair advantage/pressure in settling claim, lack of good faith dispute to pay benefits, or lack of diligence.</p> <p>Does not require conscious wrongdoing</p> <p>Failure to exercise attention and care of a prudent person</p> <p>Negligence</p> <p>Board will look at the reasonableness of investigation, communications between parties and reasonableness of determination of liability</p>
Practice and Procedure & State Forms		
First Report of Injury	State Form 34401	<p>When an employee is injured at work, the injury must be reported to the Board within 14 days by electronically filing the First Report of Injury or Illness.</p> <p>There is no need to determine compensability at that time. Form merely indicates that an accident has been alleged.</p> <p>No other forms can be filed with the Board until First Report of Injury is filed.</p>
Determining Compensability		<p>Within 30 days of the employer's knowledge of an injury, a determination must be made as to whether the claim will be accepted as compensable or denied.</p>
Request for Additional Time	State Form 48557	<p>If unable to complete an appropriate investigation within 30 days, the employer/carrier may request additional time to determine compensability by filing: Notice of Inability to Determine Liability/Request for Additional Time, which allows the employer an additional 30 days to investigate to determine whether compensable. You can request additional time more than once; however, subsequent requests require significant grounds before approval.</p>
Denial of Claim	State Form 53914	<p>If after investigating the claim, it is determined that the claim will be denied, file Notice of Denial of Benefits.</p> <p>A penalty may be assessed if filed after 30 days of knowledge of injury if no request for additional time was previously filed.</p> <p>For medical-only claims – can file after 30 days of knowledge of claim as long as medical treatment was authorized up until date of denial.</p>
Worker's Compensation Board of Indiana Request for Assistance (informal – attorney representation not mandatory)	State Form 45442	<p>Employee has two options for initiating claim with the Worker's Compensation Board:</p> <p>Request For Assistance Typically filed by an employee who has not hired an attorney. The case is assigned an Accident number only, not Cause number. Informal process—Ombudsman Division tries to resolve dispute by working with the employee and employer/carrier. Many times the dispute, whether it be over medical care or TTD benefits, can be resolved and an Application is never filed. Filing State Form 45442 does not meet the requirements under the non-claim statute, which gives the employee 2 years to file an Application for Adjustment of Claim.</p>
Application for Adjustment of Claim (formal – defendants must be represented by an attorney admitted to practice before the Board)	State Form 29109	<p>Application for Adjustment of Claim Can be filed by Employee, with or without attorney Employee has 2 years from the date of the injury to file the Application for Adjustment of Claim within the non-claim statute. This starts the formal administrative litigation process. Cause Number is assigned as well as first pre-trial docket setting. Immediately refer to defense counsel so that employer's interests can be represented at hearings before the Board.</p>
Discovery		<p>Discovery can involve an informal exchange of information or formal requests for production of documents and interrogatories. Local Court rules are followed; however, formal discovery requests are strongly discouraged by the Board.</p> <p>Depositions of treating and/or examining doctors are rarely utilized.</p>
Obtaining Medical Records		Employee signs a HIPAA and employer is able to request all medical records. Formal Non-

		Party Requests for Production may also be utilized pursuant to Indiana Trial Rule 34(c).
Nurse Case Manager (NCM)		The Board allows the use NCMs on claims; however, there are strict rules regarding the NCM role. Per Board's Website: a NCM may be involved in a claim to schedule appointments, help facilitate care suggested by the medical provider, and to report back to the employer and/or carrier. However, a NCM should not express opinions, to either the injured worker or the medical provider, regarding an injured worker's course of medical care or otherwise attempt to influence the process. Additionally, a claims adjuster should not attempt to direct the care provided to an injured worker by the authorized treating doctor.
Mediation		Mediation can be a helpful tool for resolution of cases, especially when a claimant has unreasonable expectations regarding the value of his/her case. About 70-75% of cases that are mediated settle. The Board has 5 certified mediators available that charge a flat fee of \$350 for 5 hours and \$50/hour thereafter. Parties can elect to use another mediator, certified or not.
Vocational Exam / Experts		Vocational experts are needed on both sides when a permanent total disability claim will be heard by the Board.
Settlements		
PPI Settlement Only	State Form 1043 State Form 53913	Agreement to Compensation Form can be filed to settle a claim for the value of a PPI rating given by the treating doctor. This is not a full and final settlement. Claimant will have two years to reopen claim for increased PPI or change of condition. Back date PPI payment to date of loss to shorten the 2 year statute of limitations. Employee waiver of Examination must be filed with Agreement to Compensation.
Stipulated Agreement	§22-3-4-7; §22-3-3-27	Sets forth the issues, stipulation of facts, satisfaction of employer obligations. Used in claims where compensability is accepted. There are no other issues to resolve. Use a stipulated agreement when there is no attempt to terminate the employee's right to reopen the case. Defense counsel must be on the case. Board will not approve a Stipulated Agreement drafted by plaintiff's attorney and signed by a claims adjuster.
Compromise/Section 15 Agreement	§22-3-2-15	Most commonly-used settlement agreement. Disputes liability and terminates all benefits on a full and final basis. The employee waives the right to reopen case unless mutual mistake, fraud, trickery or duress. Defense counsel must be on the case. Board will not approve a Compromise Agreement drafted by plaintiff's attorney and signed by a claims adjuster. Pro se claimants: The Board has indicated they will not approve settlement agreements in a compensable claim with an unrepresented claimant unless there is a MMI/PPI report included
Pretrial Conferences, Hearings and Appeal		
Pretrial Conferences		Hearing Members hold periodic pretrial conferences for status update on cases. Some hearing members only hear pretrials by request. Many pretrial conferences are continued by agreement of the parties. Board engages in minimal activity June-August.
Hearings		Hearings are scheduled periodically after pre-trial conferences or by request Expeditious: stipulate to as much as possible. Evidence heard only on disputed issues Emergency hearings on less than the merits of case only in extreme situations Decision from Single Hearing Member typically runs 90-120 days. No continuances permitted on matters more than three (3) years old.
Appeal to Full Board	State Form 1042	Must be filed 30 days from date of Decision of Single Hearing Member Must file Notice of Application for Review by Full Board Briefs are due 30/10 days before Full Board Hearing Argument only, no new evidence or testimony 7 Member Board sits for argument and discussion (including the Hearing Member whose decision is being heard)
Appeal to Indiana Court of Appeals		Notice of Appeal due to Court of Appeals 30 days from date of Decision of Full Board \$250.00 filing fee Court of Appeals typically makes ruling on briefs only.

RESOURCES

<http://www.in.gov/wcb/index.htm> Indiana Worker's Compensation Board
<https://iga.in.gov/legislative/laws/2015/ic/titles/022/> Indiana Worker's Compensation Code
<http://www.in.gov/legislative/iac/title631.html> Indiana Administrative Code

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