

ALABAMA: SUMMARY OF WORKERS' COMPENSATION PROVISIONS

WORKERS' COMPENSATION BENEFITS

A. INDEMNITY

Average Weekly Wage (AWW) — Three methods to calculate:

1. Fifty-two weeks wages total prior to DOI (divided by 52)
2. If employment is less than 52 weeks on DOI, use total wages, divided by available weeks (if results are just and fair – the judge has discretion to make this determination)
3. If the period of time is too short (no specific weeks laid out in code) and the court deems method #2 unfair, then use a similarly situated employee's AWW

*Fringe benefits (employer paid portion of health, life and disability premiums): Included in AWW if employer no longer providing.

Calculate Compensation Rate: $AWW \times 66 \frac{2}{3}$ = compensation rate. Alabama publishes annual maximums and minimums (if the AWW is less than the minimum, the compensation rate is the AWW).

Temporary Total Disability (TTD): Paid if employee is unable to work. Payable on fourth day after the claimed injury. If disability over 21 days, then the first three days due and payable with the first payment due after the 21 days (failure to pay within 30 days after due, permits for a 15 percent penalty). TTD paid is credited against body as a whole permanent partial disability award (300 weeks), but no credit for TTD paid against scheduled member injuries. There is no maximum number of weeks that TTD may not go past.

Stopping TTD: TTD may be stopped if: (1) the employee is at maximum medical improvement (MMI), (2) the employee, not at MMI, returns to work, (3) the employee, not at MMI and not working, is released to work without restrictions and (4) the employee, not at MMI, is offered a suitable job within restrictions and refuses. Court approval is not needed prior to TTD stoppage, but TTD stoppage must be reported within 10 days (on Workers' Compensation Combination Supplementary & Claim Summary Form). Once TTD stopped, you may settle case in a lump sum or begin making payments per the permanent partial disability (PPD) rating.

Temporary Partial Disability (TPD): Paid when employee returns to work, with restrictions and not earning the same or greater wage as of the date of injury. Maximum = 300 weeks. TPD paid at $66 \frac{2}{3}$ percent of the difference in the employee's earnings at the time of injury and the earnings in his restricted capacity. TPD ends at MMI.

Maximum Medical Improvement (MMI): MMI = employee has recovered as much as medically possible from the injury (not necessarily completely cured, but date the authorized treating physician (ATP) determines). If employee does not fully recover, any deficit is considered permanent, resulting in a permanent partial or total impairment.

Permanent Partial Impairment (PPI): Once employee is at MMI, the ATP may assign an impairment rating (by him/herself) or order a functional capacity evaluation (FCE), then have a therapist calculate the PPI rating. PPI may be to a scheduled member, body as a whole or both. Ultimately, the judge renders a decision (within the judge's broad discretion) as to a claimant's final physical impairment rating and the judge is not bound by the physician-assigned impairment rating.

Scheduled Versus Body as a Whole (BAW) Injuries: Ala. Code § 25-5-57(a)(3) contains a "schedule" of body parts, with corresponding weeks of benefits for each scheduled member injury. The claimant is entitled to compensation for the weeks specified or the percentage of the loss to a scheduled member. With BAW injuries outside of the schedule (shoulder, hip, back, neck), the claimant is entitled to 300 weeks or compensation (minus a credit for TTD weeks paid). Scheduled member injuries that affect or extend to other parts of the body (or cause total or virtually total debilitating pain) may be removed to a BAW scenario (e.g.: a leg injury affecting the gait, causing back pain or totally debilitating foot pain).

Hernia: Special provisions per Ala. Code § 25-5-57(a)(6)a.

Permanent Partial Disability (PPD): PPD calculated differently for scheduled injuries and BAW. For scheduled injuries, it is $\frac{2}{3}$ of AWW x percentage of disability for the number of weeks for which compensation is due per the schedule, with a maximum of \$220 per week. For BAW, it is $\frac{2}{3}$ of AWW for 300 weeks, less any weeks of TTD paid, capped at \$220 per week. At trial, the judge determines the disability rating and he is not bound by the doctor's rating, but bases it on "all the evidence."

PPD Calculations:

BAW (Ala. Code § 25-5-57(a)(3)g.): Three hundred weeks of PPD benefits (subject to weekly maximum of \$220); TTD paid credit from 300 weeks (no TTD credit for scheduled member injuries). Judges not bound by medical evidence alone when awarding PPD.

Scheduled Member (Ala. Code § 25-5-57(a)(3)a.):					
Member	Weeks	Member	Weeks	Member	Weeks
Thumb	62	Arm	222	Eye & leg	350
First finger	43	Big toe	32	Eye & arm	350
Second finger	31	Other toes	11	Eye & hand	325
Third finger	22	Foot	139	Two arms	400
Fourth finger	16	Leg	200	Two hands	400
Hand	170	Eye	124	Two legs	400
Two feet	400	Hearing one ear	53	Hearing two ears	163

*Amputation between the elbow and wrist considered the equivalent to the loss of a hand.

*Amputation between the knee and ankle considered the equivalent of the loss of a foot.

Return to Work Provision (Ala. Code § 25-5-57(a)(3)(i)): Once the employee is at MMI, if he/she returns to work at a wage equal to or more than the pre-injury wage, the worker's PPD rating shall be equal to his/her physical impairment (as determined by the judge's broad discretion and not bound by the doctor's assigned permanent partial impairment rating) and the court shall not consider evidence of vocational disability.

Permanent Total Disability Benefits (PTD) Ala. Code § 25-5-57(a)(4): PTD paid if permanent inability to perform one's trade, obtain gainful employment (with or without reasonable accommodations) or be retained for reasonably gainful employment. Weekly PTD benefits paid at 2/3 of AWW (subject to state max and min) may last for life (as long as employee remains totally disabled). Employer may file a petition to set-aside a PTD order if changed conditions. Attorney's fees in a PTD award may be awarded lump sum, based upon an employee's life expectancy and six percent present-day value discount.

Death Benefits Ala. Code § 25-5-60 and § 25-5-67: Death benefits owed if death is work related and within three years of work injury; may be payable to dependents or estate:

Burial expenses for deceased employee	\$6,500.00 (liability not reduced because of private burial insurance of deceased)
One-time payment to estate if no dependents	\$7,500.00
One dependent	50 percent of AWW (500 weeks max)
Two or more dependents	66 2/3 of AWW (subject to weekly max/min and 500 week max)

*Death benefits should be court approved. Wife is dependent until remarriage and a child is a dependent until marriage or reaching 18 years.

*Non-resident alien dependents are excluded from recovering death benefits. Ala. Code § 25-5-82.

Double Compensation for Illegally Employed Minors: Double compensation if an illegally employed minor is injured/killed. Ala. Code § 25-5-34.

Set-off for Other Recovery: If the employee recovers against a third party or the employer paid for a disability plan, which pays the employee benefits or continues the salary of an injured employee during the benefit period, the *employer can claim a set-off/credit in weeks versus compensation owed.*

B. MEDICAL

Medical Benefits: Lifetime medical benefits if work-related injury and reasonably and medically necessary, and no SOL on medical benefits.

- Employer designates initial ATP. Employee may designate pharmacy (per case law). Employee may request a panel of four if dissatisfied. Physicians on panel cannot be in same practice. Panel can have fewer than four if four are not in that area (second panel of four surgeons may be requested if surgery is recommended and employee *has seen and is dissatisfied with the surgeon*). Employers responsible for treatment recommended by ATP.
- All undisputed medical bills must be paid within 25 working days of claim receipt or there is a possible 10 percent penalty.
- No obligation to pay for unauthorized medical treatment, but Alabama case law provides that an employee, in some situations, may be justified in *failing to obtain authorization from his employer (and the employer would be on the hook) before incurring medical expenses* for a work-related injury. These situations would apply where: (1) the employer has neglected or refused to provide necessary medical care, (2) the employer has consented to the employee's selection, (3) notice of, and a request for, alternative care would be futile and (4) other circumstances exist that justify the employee's selection of alternative care.
- Employers/insurers required to pay no more for medical expenses than the applicable prevailing rate of reimbursement for medical services, limited to the maximum fee schedule (per Ala. Code § 25-5-77 and § 25-5-313) and established by the Workers' Compensation Services Board (five appointed physicians) for similar treatment.
- Employer may challenge medical necessity or reasonableness through utilization review and the Dept. of Labor Admin. Code Rules 480-5-5.01 through .37 and Ala. Code § 25-5-293 (although employee can always petition the court for a final determination on medical treatment).
- Employers/carriers may also contract with medical providers for mutually agreed upon rates. Ala. Code § 25-5-314.
- The Act allows the employer/insurance carrier/agents to communicate directly with the employee's treating physician/medical provider. *Ex parte Smitherman Bros. Trucking Inc.*, 751 So. 2nd 1232 (Ala. 1999).
- If employee refuses a reasonable request for examination/medical treatment, the employer can suspend compensation during the period of refusal.

C. VOCATIONAL

Vocational Benefits: Vocational rehabilitation available and employer may require. Ala. Code § 25-5-77(c).

Return to Work Provision and Interplay with Possible Right to Re-open: If an injured worker returns to work at a wage equal to or greater than the pre-injury wage and has sustained a PPD, the employee is not entitled to any vocational disability. PPD is paid on the physical impairment rating only (as determined by the judge), but *if the employee loses his job through no fault of his own within 300 weeks from the date of injury, or if returned to a job paying less than his pre-injury wage, he may petition for his vocational disability.* If the injured worker returns to work and the wage is less than his pre-injury wage, he is entitled to a vocational disability and is not paid PPD based on a physical impairment rating.

Every case is different. For further questions, please contact Trey Dowdey at 205.314.2409 or trey.dowdey@swiftcurrie.com.

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