

QUICKGUIDE TO INDIANA WORKERS COMPENSATION ACT
AWW/ TTD/ TPD/ PTD **PERMANENT PARTIAL IMPAIRMENT (PPI)**

“Average Weekly Wage” means the **total wages earned** by the employee **in the 52-week period** immediately preceding the date of injury, **divided by 52**. The minimum AWW before 07/01/14 is \$50. On or after 07/01/14, the minimum AWW is \$50.

Most workers’ compensation cases in Indiana settle on the basis of PPI, which is compensated according to a statutory schedule. See IC §22-3-3-10. Impairment awards are designed strictly to compensate the employee for the loss or loss of use of body parts or functions. AWW is not a factor.

<u>Date of Injury</u>	<u>Max AWW</u>	<u>Max TTD</u>
07/01/07 – 06/30/08	\$930	\$620
07/01/08 – 06/30/09	\$954	\$636
07/01/09 – 06/30/14	\$975	\$650
07/01/14 – 06/30/15	\$1,040	\$693.33
07/01/15 – 06/30/16	\$1,105	\$736.67
07/01/16 – 06/30/23	\$1,170	\$780
07/01/23 – 06/30/24	\$1,205	\$803.37

A settlement or award of PPI can only be made after the employee has reached maximum medical improvement (MMI). In Indiana, **the employer is obligated to provide the injured employee with an initial PPI rating**. Memorial Hospital v. Szuba, 705 N.E.2d 519 (Ind.App. 1999). It is only where the employee disagrees with the initial PPI determination provided by the employer’s physician that the burden of production shifts.

The impairment ratings assessed by the physician are converted into dollars through the use of the “degree system.” The entire body is worth 100 degrees, with lower degree values being assigned to individual body parts in IC §22-3-3-10 (i). Use whole-body impairment (and 100 degrees) for injuries to the **spine, hips, and shoulders**. Once the degree of impairment for the injury is obtained, compensation can be calculated.

“Temporary Total Disability” refers to the complete inability to work because of an injury. Compensation is paid at 2/3 of the employee’s pre-injury average weekly wage beginning with the eighth day of disability. Compensation shall be allowed for the first seven (7) days only if the disability continues for longer than 21 days. TTD benefits may be terminated when:

- 1) the employee returns to any employment
- 2) the employee dies
- 3) the employee refuses to submit to an IME
- 4) the employee refuses to accept “suitable employment
- 5) the employee has received 500 weeks of OTD
- 6) the employee is unable or unavailable to work for reasons unrelated to the compensable injury
- 7) the treating physician finds the employee at MMI
- 8) the treating physician releases the employee to work
- 9) the employee refuses medical services

Step 1: Impairment Rating x Degrees for Body Part
 = Degree of Impairment for Step 2

Step 2: Determining value of each Degree of Impairment using the following schedule.

<u>Date of Injury</u>	<u>Value of Each Degree</u>	
07/01/09 - 06/30/10	1-10	\$1,380
	11-35	\$1,585
	36-50	\$2,600
	51-100	\$3,330
07/01/10 - 06/30/14	1-10	\$1,400
	11-35	\$1,600
	36-50	\$2,700
	51-100	\$3,500
07/01/14 - 06/30/15	1-10	\$1,517
	11-35	\$1,717
	36-50	\$2,862
	51-100	\$3,687
07/01/15 - 06/30/16	1-10	\$1,633
	11-35	\$1,835
	36-50	\$3,024
	51-100	\$3,873
07/01/16 – 06/30/23	1-10	\$1,750
	11-35	\$1,952
	36-50	\$3,186
	51-100	\$4,060
07/01/23 - 06/30/24	1-10	\$1,803
	11-35	\$2,011
	36-50	\$3,282
	51-100	\$4,182

“Temporary Partial Disability” is paid when the employee is partially unable to work (e.g. limited hours or less pay). TPD is paid at the rate of 2/3 of the difference between the employee’s pre- and post-injury average weekly wages, subject to a maximum of 300 weeks.

“Permanent Total Disability” means that as a result of the employee’s injury, s/he is **so incapacitated that s/he cannot carry on reasonable types of employment** as measured by his/her physical and mental fitness for them and their availability. A PTD award is paid for **500 weeks** at the rate of 2/3 of the pre-injury average weekly wage.

Maximum Compensation (excluding medical):

<u>Date of Injury</u>	<u>Max Compensation</u>
07/01/07 – 06/30/08	\$310,000
07/01/08 – 06/30/09	\$318,000
07/01/09 – 06/30/14	\$325,000
07/01/14 – 06/30/15	\$346,665
07/01/15 – 06/30/16	\$368,335
07/01/16 – 06/30/23	\$390,000
07/01/23 – 06/30/24	\$401,685

** This Quick Guide is intended for general informational purposes only and is not meant to replace legal counsel. We urge you to consult an attorney for any issue regarding applicability or interpretation of any provision of the Indiana Workers’ Compensation Act. This is not intended to be a complete summary of Indiana law.*

Examples:

8/1/14 thumb injury with 50% impairment to the thumb (worth 12 degrees).

Step 1: 50% X 12° = 6°

Step 2: 6° x \$1,517 per degree = \$9,102 PPI

2013 cervical injury with 28% impairment to the whole body (worth 100 degrees).

Step 1: 28% X 100° = 28°

Step 2: \$1,400 x 10° = \$14,000 for degrees 1-10

\$1,600 x 18° = \$28,800 for degrees 11-28

Total PPI = \$42,800

*** THIS IS AN ADVERTISEMENT**

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STATUTE OF LIMITATIONS

The injured worker must file an Application for Adjustment of Claim within two (2) years from the date of injury. IC §22-3-3-3; or within two (2) years of the last payment of TTD benefits. IC §22-3-3-27. Compensation for occupational diseases may not be payable under the Act unless the disease leads to disablement within two (2) years after the last exposure to hazard.

NOTICE

*“Unless the employer...shall have **actual knowledge** of the occurrence of an **injury**...at the time thereof or shall acquire such knowledge afterward, the injured employee...**as soon as practicable** after the injury...shall give written notice to the employer of such injury... Unless such notice is given or knowledge acquired within thirty (30) days from the date of the injury...no compensation shall be paid...no lack of knowledge by the employer...shall bar compensation, unless the employer shall show that he is **prejudiced** by such lack of knowledge...”* IC 22-3-3-1

MEDICAL BENEFITS

Entitlement to medical benefits is governed by IC §22-3-3-4 which requires the employer to provide “an attending physician” and “such surgical, hospital and nursing services and supplies as the attending physician or the workers’ compensation board may deem necessary.” **In general, the employer is liable for an employee’s medical treatment until MMI is reached.** The Board may order prospective relief if the employee establishes that the treatment is “necessary to limit or reduce the amount and extent of the employee’s impairment.” This could include palliative care to control pain and discomfort. Grand Lodge Free and Accepted Masons v. Jones, 590 N.E.2d 653 (Ind.Ct.App. 1992). Lifetime medical treatment at the expenses of the employer has only been ordered in a handful of cases. See e.g. Bloomington Hospital v. Stofko, 705 N.E.2d 515 (Ind.Ct.App. 1999).

Indiana case law has long held that the employer has the choice of physician. However, the Board can determine that “unauthorized” medical expenses should be paid by the employer if the employee can prove that the treatment was ought (1) “because of an emergency” (2) “because of the employer’s failure to provide an attending physician” or (3) “because of any other **good reason**.” See Daugherty v. Industrial Contracting & Erecting, 802 N.E.2d 912 (2004).

REOPENING

Under IC §22-3-3-27, a case may be reopened by the employer of the employee “on account of a change in conditions.” To reopen for recurrence of TTD, PPI, or medical treatment, the employee has two (2) years from “the last day for which compensation was paid.”

SPECIAL DEFENSES

Pursuant to IC §22-3-2-8, the employer may use any of the following in an attempt to bar the employee’s right to compensation: (1) self-inflicted injury (2) intoxication (3) commission of an offense (4) failure to use a safety appliance (5) failure to obey a reasonable written or printed safety rule and (6) failure to perform any statutory duty.

In asserting these defenses, the employer has the burden of providing that the employee knowingly engaged in the misconduct and that the misconduct proximately caused the alleged injury.

SUBROGATION

IC §22-3-2-13 provides an employee the opportunity to choose between workers’ compensation and third-party judgments in some situations, so that he might maximize the recovery. The workers’ compensation insurance carrier then becomes entitled to reimbursement from amounts collected by the employee in the third-party lawsuit.

BAD FAITH

The Indiana Worker’s Compensation Board has exclusive jurisdiction to determine whether a workers’ compensation insurance carrier commits bad faith. Sims v. United States Fidelity & Guaranty Company, 782 N.E.2d 345 (Ind. 2003) interpreting IC §22-3-4-12.1. In order to sustain a claim against the Defendant under I.C.22-3-4-12.1, the Plaintiff must show that the Defendant has acted “with a lack of diligence, in bad faith, or has committed an independent tort in adjustment or settling the claim for compensation.” Further, there can be no bad faith if the employer did not act improperly in denying benefits in the underlying claim. Ag One Co-Op & Trane Co. v. Scott, 914 N.E.2d 860 (Ind. Ct. App. 2009)

The Indiana Workers’ Compensation Act appears in Title 22, Article 3 of the Indiana Statutes. The relevant regulations concerning procedures before the Indiana Workers’ Compensation Board appear in Title 631, Article 1 of the Indiana Administrative Code. Additional information regarding Indiana Workers’ Compensation is available on the Internet. The address for the Indiana Workers’ Compensation Board website is [“http://www.in.gov/workcomp/”](http://www.in.gov/workcomp/).