

QUICKGUIDE TO KENTUCKY WORKERS' COMPENSATION ACT

DEFINITIONS

"Injury" means "any work-related **traumatic event or series of traumatic events, including cumulative trauma**, arising out of and in the course of employment **which is the proximate cause producing** a harmful change in the human organism **evidenced by objective medical findings.**"

"Objective medical findings" is defined as "**information gained through direct observation and testing of the patient applying objective or standardized methods.**"

"Temporary Total Disability" means "the condition of an employee who has not reached maximum medical improvement from an injury **and** has not reached a level of improvement that would permit a return to employment."

"Permanent Partial Disability" means "the condition of an employee who, **due to an injury**, has a permanent disability **rating but retains the ability to work.**"

"Permanent impairment rating" is defined as the "percentage of **whole body impairment** caused by the injury" as determined by the Guides to the Evaluation of Permanent Impairment.

"Permanent disability rating" is defined as "the permanent impairment rating" times the factor set forth in the table in KRS 342.730(1)(b)

<u>AMA IMPAIRMENT</u>	<u>FACTOR</u>
0 to 5%	.65
6 to 10%	.85
11 to 15%	1.00
16 to 20%	1.00
21 to 25%	1.15
26 to 30%	1.35
31 to 35%	1.50
36% and above	1.70

"Permanent total disability" is defined as meaning "the condition of an employee who, due to an injury, **has a permanent disability rating** and has a **complete and permanent inability to perform any type of work.**"

"Work" is defined as "providing services to another in return for remuneration on a regular and sustained basis in a competitive economy." *Source: KRS 342.0011*

Termination of Indemnity (i.e. Income) Benefits: As of July 14, 2018, for all claims in which the date of injury or last exposure occurred on or after December 12, 1996 and which have not been fully and finally adjudicated, are in the appellate process, or for which time to file an appeal has not lapsed, KRS 342.730(4) holds that weekly indemnity benefits are to be terminated either on the date the employee turns seventy (70), or four years after the employee's injury or last exposure, whichever last occurs. This termination also applies to benefits to spouses and dependents.

INDEMNITY RATES

Maximum Rates: It is important to note that the maximum rates for PPD, PTD, and TTD changed effective July 14, 2018, due to the passage of HB2. Specifically, HB2 increases the percentage of the employee's average weekly wage that is to be paid as an income benefit, from a maximum amount equaling 75% of the state average weekly wage to 82.5% for PPD, and from 100% of same to 110% for PTD, TTD, and PPD when 342.730(1)(c)1 is also applicable (see below). Note also that the minimum rates immediately below do not apply to PPD benefits, per KRS 342.730(1)(b).

<u>YR/INJURY</u>	<u>MAXIMUM</u>	<u>MINIMUM</u>
1/1/18 thru 7/13/18	\$848.41	\$169.67
7/14/18 - 12/31/18	\$933.25	\$169.67
2019	\$955.32	\$173.69
2020	\$979.00	\$178.00
2021	\$1,009.56	\$183.56
2022	\$1,074.12	\$195.29
2023	\$1,118.43	\$203.35

PTD & TTD Calculation: Average weekly wage multiplied by 66 2/3%, and then reduced to the statutory maximum or raised to the statutory minimum. For injuries occurring before July 14, 2018, the maximum rate is 100% of the state average weekly wage; for injuries occurring thereafter, it is raised to 110% of the state average weekly wage. The minimum rate, 20% of the state average weekly wage, has remained the same.

PPD Calculation: Subject to the above termination provisions in KRS 342.730(4) as applicable, PPD benefits are payable for a maximum period of 425 weeks if the permanent disability rating is 50% or less, or for a maximum period of 520 weeks if the permanent disability rating is greater than 50%. To calculate PPD benefits, first, the average weekly wage is multiplied by 66 2/3%. This figure is then subject to a statutory maximum amount, which, when applicable, caps the figure at 82.5% of the state average weekly wage for injuries occurring after July 14, 2018 (75% of the state average weekly wage for injuries before that date). Next, the figure is multiplied by the applicable permanent disability rating, defined above, to produce the weekly PPD benefits payment.

KRS 342.730(1)(c)1 & (c)2 Multipliers: KRS 342.730(1)(c) sets forth the scenarios in which PPD benefits are to be multiplied when, due to the injury, the employee has lost the physical capacity to return to the type of work performed at the time of injury. In that instance, PPD benefits are multiplied by a factor of at least three, though the employee's age and level of education at the time of injury may enhance the factor even further, as follows:

<u>Years of Education</u>	<u>Age on DOI</u>
<8 years of education .4	60 years or older on DOI .6
<12 years of education .2	55-59 years old on DOI .4
	50-54 years old on DOI .2

If, after the date of injury, the employee returns to work earning an average weekly wage equal to or greater than the average weekly wage earned at the time of injury, and then that employment ceases, during any such period of cessation, whether it be temporary or permanent, and for any reason, with or without cause, PPD benefits are to be multiplied by a factor of two.

Discounting Future Indemnity Benefits: The present value of indemnity benefits owing in the future may be calculated using a discount rate published by the DWC. Note that the statute now provides that the discount rate to be used for weekly PPD benefits totaling \$40.00 or less is to be 0.5% higher than other awards, beginning July 14, 2018. The two most common discount rates used are below, with rates for payments below \$40 in parentheses:

**520 wks: 500.9946 (488.8398)
425 wks: 412.2418 (404.0207)**

Statute of Limitations

The injured worker must file an Application for Resolution of Claim, or reach a settlement, within two years of the date of the injury or within two years of the last payment of TTD benefits. [KRS 342.185(1)] A claim for occupational disease must be filed within three years of the date of last injurious exposure to the occupational hazard, and if the symptoms that apprise him he has the disease do not arise until after the last exposure, within three years of the onset of symptoms, but not later than five years from the date of last injurious exposure to the occupational hazard. [KRS 342.316(4) (a)] A claim for AIDS or human immunodeficiency virus, must be filed within five years of the exposure to the virus. [KRS 342.185(2)] In cases of radiation disease or asbestos-related disease or cancers found in KRS 61.315(11)(6), the claim must be filed within twenty years from the last injurious exposure to the occupational hazard. [KRS 342.316 (4) (a)] If a claim is barred by limitations, the employee is not entitled to workers' compensation benefits for that injury or disease. This includes income benefits and medical benefits. Notice of cumulative trauma claim must be given within two (2) years from the date the employee is told by a physician that the cumulative trauma is work-related. That claim must be filed with the DWC within two years after the employee is told by the physician, as above, and must be filed no later than five years after the last injurious exposure to the cumulative trauma.

Notice

An injured worker is required to give the employer notice of an injury as soon as practicable. If the employee does not give due and timely notice, the claim will be dismissed, unless there is a reasonable excuse for the failure to give timely notice. Source: KRS 342.185 (1) Notice of a cumulative trauma injury must be given within two (2) years from the date the employee is told by a physician that the cumulative trauma is work-related.

Reopening Claims

After a claim results in a finalized award or order, it may be reopened upon motion by a party or upon the ALJ's own motion, so long as no such motion has been made within the previous year by the same party. Both an award and an order are considered "original" once they are deemed final and non-appealable. This is significant because it clarifies that the four-year limitation period for reopening following such an award or order runs only one time, overruling judicial precedent which had held that a subsequent award or order entered by an ALJ upon reopening restarts the four-year limitation period anew. The four-year limitation does not apply to reopening on issues of compensability of medical expenses, fraud, increasing indemnity benefits pursuant to KRS 342.730(1)(c)2 (i.e., for periods when the employee fails to continue to earn equal or greater wages), reducing a PTD award when the employee returns to work, or seeking TTD benefits during the period of an award.

Offsets Against Income Benefits

If the employee receives unemployment benefits, there is a corresponding offset as against an award of TTD or PTD benefits, but not as against PPD benefits. If the employee receives benefits from a disability plan, that is, an exclusively employer-funded disability plan, exclusively employer-funded disability retirement plan, exclusively employer funded sickness and accident plan, or salary continuation, there is an offset against PPD, TTD, and PTD income benefits, if two conditions are present. First, the plan must be entirely employer-funded. Second, the plan must not contain an internal offset provision for receipt or an award of workers' compensation benefits. Source: KRS 342.730(6)

Medical Benefits

Entitlement to medical benefits is governed by KRS 342.020, which provides: "the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter. The employer's obligation to pay medical benefits in claims resulting in an award of permanent total disability shall continue for so long as the employee is disabled regardless of the duration of income benefits. In most PPD claims, the employer's obligation to pay the benefits shall continue for seven hundred eighty (780) weeks from the date of injury or last exposure (15 years). Continuation of these benefits may extend beyond 15 years upon proper motion, and a finding by the ALJ that the continued treatment is reasonably necessary and related to the work injury or occupational disease. If the designated physician is not providing proper medical care or is proposing treatment or surgery that is not reasonable and necessary, the employer or insurer can file a motion to allow the employer or insurer to select the treating physician.

The employee can seek medical treatment from the physician of his choice, unless the employer has an approved managed care organization, in which case the employee must select a treating physician from the physicians approved in that plan. The employee is required to designate the treating physician by completing a Form 113, and providing that to the employer or its insurer. The employee can then make one change in designated physician without approval of the employer or insurer. After that one change, the employee cannot change the designated physician without the agreement of the employer or insurer. Source: 803 KAR 25:096

Only the designated physician can make a referral to another medical provider. In an MCO, the referral must be made to another provider in the MCO. When the employer has an MCO, the only medical treatment that is compensable is that received within the MCO, except for two situations: (1) emergency treatment and (2) the MCO does not include the needed medical specialty.

Safety Enhancement or Decrease

KRS 342.165(1) provides that if an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable shall be increased by thirty percent (30%) in the amount of each payment. There is also a 15% decrease in the employee's benefits if the accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public. This 15% decrease applies only to income benefits, (TTD, PPD, and PTD), and not to medical benefits.

Employee's Failure to Follow Medical Advice

KRS 342.035(3) provides that no compensation shall be payable for the death or disability of an employee if his death is caused, or if and in so far as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.

Voluntary Intoxication

If an employee voluntarily introduces an illegal, non-prescribed substance or substances or a prescribed substance in amounts in excess of the prescribed amounts into his or her body, detected in the blood, and measured by a scientifically reliable test, that could cause a disturbance of mental or physical capacities, then it is presumed compensation shall not apply to any resulting injury or death. KRS 342.610(4).

The Workers' Compensation Act appears in Chapter 342 of the Kentucky Revised Statutes (KRS). Access to the statute is available at "<http://www.lrc.ky.gov/statutes/chapter.aspx?id=38914>". The regulations promulgated by the Kentucky Department of Workers' Claims appear in Chapter 25 of Title 803 of the Kentucky Administrative Regulations (KAR), and are available at "<http://www.lrc.state.ky.us/kar/803/025/010.htm>". Additional information regarding Kentucky Workers' Compensation is available on the internet. The address for the Kentucky Department of Workers' Claims website is "<http://www.labor.ky.gov/workersclaims/pages/statutes-and-regulations.aspx>". That site contains various publications, including a Workers' Compensation Guidebook, forms, current and proposed regulations, and information on the various programs, such as Electronic Data Interchange (EDI).