

# Delaware Workers' Compensation Overview Quick Guide

**FRANKLIN & PROKOPIK**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

## Time Periods for Filing:

First Report of Injury:	10 days
Waiting Period for TTD:	3 days
Filing a claim (notice):	90 days
Notice of Occupational Disease:	6 months
Initial notice of denial or acceptance:	15 days after knowledge of alleged injury
Payment or denial of Medical exp:	30 days from receipt of bills and records
Payment of agreed upon benefits:	14 days
Filing for dependency benefits:	18 months from date of death.

## Statute of Limitations:

File Initial Claim:	2 years
Occupational Disease	1 year (from date claimant had knowledge).
File Additional Claims:	5 years (From date of last compensation paid)
Appeal from UR:	45 days
Appeal from IAB Award:	30 days

## Failure to Reach an Agreement:

The claimant has 2 years from the date of injury to file a Petition to Determine Compensation Due following the denial of a claim. The carrier must provide notice of the SOL to the claimant at the time of denial.

## Penalties for Late Payment (Huffman Demand):

Failure to pay or late payment of compensable benefits can result in liquidated damages up to the amount of the benefits owed. Upon proper demand a carrier has 30 days to pay all benefits owed. At the expiration of 30 days damages accrue at 10% per day up to 100% of the amount due, plus attorney fees and costs.

## Penalties for Late Medical Payments:

Bills submitted by certified providers with the invoice and medical records must be paid or denied within 30 days. Failure to comply subjects the invoice to interest at a rate of 1% per month to the provider. Failure to pay could also subject the carrier to a fine of up to \$5,000.00 per occurrence.

## Forms:

See <https://dia.delawareworks.com/workers-comp/forms.php> for available forms.

## Hearing:

Hearings are held before the Industrial Accident Board, consisting of 2 Board members and a Hearing Officer (Dept. of Labor attorney). Parties may stipulate to have the case heard by a Hearing Officer in lieu of a full Board. Prior to the hearing parties exchange discovery, subpoena records and depose expert witnesses unavailable to testify live (no deposition of Claimant permitted). No other discovery (e.g. interrogatories) is permitted.

## Board Decision:

The Board is supposed to issue its decision in 2 weeks, but in practice it takes much longer. If the claimant receives any award, he/she is entitled to reimbursement of medical witness fee. If award is more than offered outside 30 day rule, Claimant may be entitled to an attorney fee of 30% of award or

10 times maximum AWW, whichever is less.

## 30-Day Rule:

- 30 days before the hearing witnesses must be named, all production exchanged, defenses and issues noticed. Anything after this date may be excluded at hearing.

- Settlement offers must be made to avoid the imposition of an attorney fee.

## Appeal:

Any party dissatisfied with the Board's Award may file an appeal to the Superior Court. An appeal is on the record and the Court will only review for legal error or lack of substantial evidence to support the decision. A decision may be appealed in part; however, any award not appealed must be paid.

If the claimant prevails on appeal they are entitled to attorney fees for prosecution of the appeal. A party may appeal a decision of the Superior Court to the Supreme Court; however, a carrier appealing an award at this level must post a bond.

## Terminating Benefits:

An employer/carrier may file a Petition for Review when warranted, including but not limited to, claimant is physically capable of returning to work, has returned to work, or has failed to comply with medical treatment/voc rehab. The carrier cannot stop payments without an order or a signed receipt from the claimant. When a Termination Petition is filed the Workers' Compensation Fund will pay benefits to the claimant if the employer is not self-insured. If the Termination Petition is not granted, must repay the fund.

## Compensability of Injuries:

The scheme for compensation for work-related injuries is without regard to fault. Compensation is paid for injuries that "but for" a work accident would not occur, for occupational disease and for cumulative detrimental effect. Work accidents can aggravate, accelerate, cause or contribute to pre-existing injuries.

## Occupational Disease (OD):

An occupational disease is compensable if it arose in the course and scope of employment, and if the exposure occurred during employment. For prolonged exposure use "last injurious exposure" rule.

## Compensation Prohibited:

Limited defenses available are voluntary horseplay, assault personally motivated, coming and going rule, employee's own intoxication, and willful, wanton disregard for safety.

## Exclusivity:

The claimant/employee may not sue the employer, or a co-employee for a compensable work injury.

## Intentional Acts by Third Parties:

The employee must show that the actions of the third party arose in the course and scope of his employment to be compensable. Actions of a personal nature are not compensable.

**Worker's Compensation Fund (Second Injury Fund):**

The SIF pays benefits when a subsequent permanent injury results in total disability. Additionally the SIF pays weekly benefits during the pendency of a Petition for Review.

**Settlements:**

Claims, including medicals, may be completely closed by a "full and final" settlement. Settlements, however, must be approved by the IAB. Settlements including Medical benefits must protect the interests of Medicare, which may include obtaining a Medicare Set Aside.

**Average Weekly Wage:**

The AWW is calculated based upon the 26 weeks of gross wages prior to the date of injury. Subject to maximum and minimum set by Department of Labor. If the AWW is lower than the State minimum, the compensation rate will also be the AWW.

**Medical Benefits:**

The employer/carrier must provide reasonable and necessary medical treatment causally related to the injury. In order to contest causally related treatment in a compensable claim the carrier must submit the bill(s) to Utilization Review (UR) with the Delaware Department of Labor within 15 days of denial of the bill.

**Medical Examinations:**

The employer/ carrier has the right to request a defense medical examination (DME) on the issues in dispute. There is no right to control treating physicians.

**Indemnity Benefits:**

- Temporary Total Disability (TTD): Paid at 2/3 the AWW not to exceed the State Maximum or go below minimum (See chart), except if AWW is less than the minimum then AWW is also the compensation rate.
- Temporary Partial Disability (TPD): Employee can recover up to 300 weeks for loss of earning power due to physical restrictions, paid at 2/3 of such loss.
- Permanent Partial Disability (PPD): Awarded for permanent disability (See chart). Compensation rate can change to maximum or minimum at time these benefits become permanent.
- Disfigurement Benefits: Benefits for visible and offensive scarring. Benefit is up to 150 weeks or weeks given for permanency plus 20%. Compensation rate can change to maximum or minimum at time these benefits become permanent.
- Permanent Total Disability/ Displaced Worker: Awarded for one who due to age, lack of skills, education, etc. cannot find work without specially created job.

**Death Benefits/Dependency:**

Burial benefits are paid to a maximum of \$3,500 although excess expenses may be approved by the Board. Benefits of 66.67% to 80% of the deceased's AWW are to be paid for 400 weeks to the surviving spouse until remarriage/death, or to children for 400 weeks or until the child reaches 18, unless a resident full time student then until 25.

**Vocational Rehabilitation:**

A carrier may retain a vocational expert to conduct a Labor Market Survey to prove job availability within the employee's medical restrictions. No personal interview unless permitted by the claimant's attorney. The Board may also order vocational rehabilitation.

**DELAWARE WORKER'S COMPENSATION  
MAXIMUM BENEFITS TABLE**

State Maximum AWW and RATE CHART

Max = 66 2/3% of the State AWW  
Min = 22 2/3% of the State AWW

	State AWW	Max. Rate	Min. Rate
7/01/2019	\$1,088.84	\$725.65	\$241.96
7/01/2018	\$1,070.48	\$713.65	\$237.88
7/01/2017	\$1,030.49	\$686.99	\$229.00
7/01/2016	\$1,034.18	\$689.45	\$229.82
7/01/2015	\$1,019.44	\$679.83	\$226.54
7/01/2014	\$998.35	\$665.57	\$221.86
7/01/2013	\$991.19	\$660.79	\$220.26
7/02/2012	\$967.52	\$645.01	\$215.00
6/13/2011	\$933.08	\$622.05	\$207.35
6/22/2010	\$914.73	\$609.82	\$203.27
6/16/2009	\$916.00	\$610.67	\$203.55

Medical Benefits paid per the fee schedule effective 7/01/2018

**PERMANENT PARTIAL DISABILITY**

Rating (%) x maximum weeks = benefit weeks  
CR = TTD rate or Max/Min rate at MMI

Arm/leg/hip	250 wks
Hand	220 wks
Foot	160 wks
Eye	200 wks
Hearing	175 wks
Thumb, hearing one ear	75 wks
Index finger	50 wks
Second finger, great toe	40 wks
Third finger	30 wks
Little finger	20 wks
Other toes	15 wks
Other cases (i.e.; spine)	300 wks
Disfigurement (0-150 or PPD+20%)	150 wks

Copyright © 1/2020 Franklin & Prokopik, P.C. This Franklin & Prokopik document contains information of general interest to the public and does not constitute legal advice. No claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained in this document are made. The receipt of this information does not create an attorney-client relationship. As legal advice must be tailored to the specific circumstances of each case, and laws are constantly changing, nothing provided herein should be used as a substitute for the advice of competent counsel.