

Quick Guide

KENTUCKY

WORKERS' COMPENSATION

January 2023

COMPENSATION RATE ISSUES

Average Weekly Wage: To determine "AWW" for employees paid the same amount each pay period (fixed wage), divide monthly or annual wages to determine a week's worth. Wages used are those at time of accident or last injurious exposure. Source: Ky. Rev. Stat. Ann. § 342.140 (1).

If the employee is paid by the hour, or in some other variable manner, divide the total wages (excluding overtime or premium pay) earned in a consecutive 13 weeks in the year immediately preceding the injury by 13, so long as the employee has been employed for greater than 13 weeks. Source: Ky. Rev. Stat. Ann. § 342.140 (1)(d)

Compensation Rate: The "CR" is sixty-six and two thirds percent (66.67%) of the AWW. For TTD and PTD, this may not exceed 100% of the State's AWW, but also may not be less than 20% of the State's AWW (found in table below). For PPD, 66.67% of the employee's AWW is the CR (but not exceeding 75% of the State's AWW).

Source: Ky. Rev. Stat. Ann. § 342.730

While the employee is participating in a vocational or physical rehabilitation program, pursuant to ALJ Order, the CR is 80% of the employee's AWW, but not to exceed 100% of the State's AWW, multiplied by the permanent disability rating. Source: Ky. Rev. Stat. Ann. § 342.715

Maximum and Minimum Compensation Rates:

Date/ Accident	Max. TD & State's AWW	Max. PPD	Max. Retraining Incentive Benefits	Min. TD
1-1-07 - 12-31-07	\$646.47	\$484.85	\$484.85	\$129.29
1-1-08 - 12-31-08	\$670.02	\$502.51	\$502.51	\$134.00
1-1-09 - 12-31-09	\$694.30	\$520.72	\$520.72	\$138.86
1-1-10 - 12-31-10	\$711.79	\$533.84	\$533.84	\$142.36
1-1-11 - 12-31-11	\$721.97	\$541.47	\$541.47	\$144.40
1-1-12 - 12-31-12	\$736.19	\$552.13	\$552.13	\$147.24
1-1-13 - 12-31-13	\$752.69	\$564.52	\$564.52	\$150.54
1-1-14 - 12-31-14	\$769.06	\$576.80	\$576.80	\$153.81
1-1-15 - 12-31-15	\$773.61	\$580.21	\$580.21	\$154.72
1-1-16 - 12-31-16	\$798.63	\$598.98	\$598.98	\$159.72
1-1-17 - 12-31-17	\$835.04	\$626.29	\$626.29	\$167.00
1-1-18 - 12-31-18	\$848.41	\$636.32	\$636.32	\$169.67
1-1-19 - 12-31-19	\$868.47	\$651.35	\$651.35	\$173.69
1-1-20 - 12-31-20	\$979.00	\$667.50	\$667.50	\$178.00
1-1-21 - 12-31-21	\$1,009.56	\$688.34	\$688.34	\$183.56
1-1-22 - 12-31-22	\$1,074.12	\$732.35	\$732.35	\$195.29
1-1-23 - 12-31-23	\$1,118.43	\$762.56	\$762.56	\$203.35

LENGTH OF INCOME BENEFITS

PPD: Impairment rating of **50% or less:** benefits available for 425 weeks

PPD: Impairment rating **over 50%:** 520 weeks from the date that impairment or disability exceeding 50% arises

Permanent Total Disability: Income benefits terminate when the employee reaches the age of 70 or four years after the injury or last exposure. KRS 342.730(4)

CIVIL PENALTIES

The following violations carry penalties of **\$100-\$1,000** per offense:

- ~ Failure to pay for medical benefits or TTD
- ~ Failure to comply with administrative data reporting regulations
- ~ Failure to file forms IA-1 and IA-2 by deadline:
Source: Ky. Rev. Stat. Ann. § 342.990
- ~ Unfair claims settlement practices have penalties of \$1,000-\$5,000 for each offense Source: Ky. Rev. Stat. Ann. § 342.267

SCHEDULE OF COMPENSATION

Temporary Total Disability Benefits: "TTD" benefits are due for lost time following the seventh day after the injury. If less than 14 days have passed before the employee's return to work, TTD is paid only from the eighth day forward. If 14 or more days have passed, TTD benefits must be paid from the first date of disability. Source: Ky. Rev. Stat. Ann. § 342.040

Temporary Partial Disability: Income benefits otherwise payable pursuant to this chapter for temporary total disability during

AMA Impairment Rating	Factor
0-5%	0.65
6-10%	0.85
11-20%	1.00
21-25%	1.15
26-30%	1.35
31-35%	1.50
36% and above	1.70

the period the employee has returned to a light-duty or other alternative job position shall be offset by an amount equal to the employee's gross income minus applicable taxes during the period of light-duty work or work in an alternative job position. KRS 342.730

Permanent Partial Disability:

The CR is multiplied by the impairment rating determined by the AMA Guides to the Evaluation of Permanent Impairment. This number is then multiplied by one of the following factors, depending on the impairment rating, to arrive at the benefit amount. Source: Ky. Rev. Stat. Ann. § 342.730(1)(b)

Return to Work: If employee does not retain the physical capacity to return to the same type of work performed at time of injury, the multiplier factor is three (3). If the employee returns to work at a wage equal to/greater than the AWW at time of injury & there is any cessation of that employment for any reason, the payment of weekly benefits for PPD during the period of cessation is two times (2x) the amount otherwise payable above. Source: Ky. Rev. Stat. Ann. § 342.730 (1)(c)(1),(2)

Limited Education: Employees with less than 8 years of formal education who lack the physical capacity to return to the same type of work: add 0.4 to the multiplier factor. For employees with less than 12 years of education or those that lack a GED, the multiplier is increased by 0.2. Source: Ky. Rev. Stat. Ann. § 342.730 (1)(c)(3).

Education & Age Factor: Recognizing that limited education and advancing age impact an employee's post-injury earning capacity, an education and age factor, when applicable, shall be added to the income benefit multiplier set forth by statute.

Source: Ky. Rev. Stat. Ann. § 342.730(1)(c)(3).

Maximum Benefit: The maximum benefit payable for TTD or PTD shall be 66.67% of the employee's average weekly wage but not more than 100% of the state average weekly wage; the maximum benefit for PPD shall be 66.67% of the employee's average weekly wage but not more than 75% of the state average weekly wage. Source: Ky. Rev. Stat. Ann. § 342.730(1)(a)-(b).

STATUTE OF LIMITATIONS

For injuries: Two years from the date of injury or death, or within two years after the cessation of voluntary payments, if any have been made. Source: Ky. Rev. Stat. Ann. § 342.270(1)

For occupational disease: Three years from last exposure to hazard, or within three (3) years of onset of symptoms, whichever occurs last. Absolute maximum time is five (5) years from last injurious exposure to occupational hazard, or for asbestos or radiation-related disease, twenty (20) years from last injurious exposure. Source: Ky. Rev. Stat. Ann. § 342.316(4)(a).

COMMONLY NEEDED FORMS

IA-1: First Report of Injury	108: Medical Report Occupational Disease
IA-2: Subsequent Report	110: Agreement as to Compensation and Order Approving Settlement
101, 102, 103: Application for Resolution of Claim	111: Notice of Claim Denial or Acceptance
104: Employment History	113: Notice of Designated Physician
105: Chronological Medical History	150: Statistical Report
107: Medical Report- Injury/ Hearing Loss/ Psychological Condition	AWW-1: Average Weekly Wage Certification



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SETTLEMENTS: Settlements are encouraged. They must be approved by an Administrative Law Judge. They cannot be approved unless all parties agree, or non-agreeing parties get a copy of the settlement agreement at least 10 days before it is submitted. Source: Ky. Rev. Stat. Ann. § 342.265

LUMP SUM PAYMENTS: Lump sum payments are permitted, but must not be approved where the weekly benefit amount exceeds \$100 unless there is reasonable assurance that the worker will have an adequate source of income during disability. Source: Ky. Rev. Stat. Ann. § 342.265. For the calendar year 2023, the discount rate for lump-sum settlements of future periodic payments in weekly amounts that are forty dollars (\$40.00) or less, is fixed at two and three fourths percent (2.75%). The discount rate for lump-sum settlements of future periodic payments in weekly amounts greater than forty dollars (\$40.00) is fixed at two and one fourth percent (2.25%).

EXTRATERRITORIAL APPLICATION: A KY employee working outside of KY is covered by the Act when the employment is principally localized in KY, the employee is working under a contract of hire made in KY in employment not principally located in KY, the employer is working under a contract of hire made in KY and the employment is principally located in another state whose workers' compensation law is not applicable to his employer, or he is working under a contract of hire made in KY for employment outside the U.S. and Canada. Source: Ky. Rev. Stat. Ann. § 342.670

INJURIES NOT COVERED: Injuries which are the result of the natural aging process and not a result of trauma are not covered. Communicable diseases are not injuries unless the risk of contracting the disease was increased by the nature of the employment. Injuries caused primarily by employee's intoxication are also excluded. However, if the employee dies, there is a presumption that the death was not caused by intoxication. Injuries resulting from the willful intent by an employee to injure/kill himself or another are not covered. Additionally, purely mental injuries with no physical injury are not compensable. Source: Ky. Rev. Stat. Ann. §§ 342.0011(1), § 342.610(3), 342.680 *McCowan v. Matsushita Appliance Co.*, 95 S.W.3d 30 (Ky. 2002).

SUBROGATION CLAIMS: Employers have a statutory right of subrogation if the employee pursues a claim against a third party. The employee must notify employer and the special fund if he plans to seek third party action. For cases in which the employee has some level of comparative fault, the employer is limited in recovery by the percentage of fault attributed to the third party. The employer can only recoup the portion of benefits paid to the employee that are proportional to the third party's fault (i.e. third party is 44% at fault, so employer recovers 44% of benefits paid to employee). Source: Ky. Rev. Stat. Ann. § 342.700, *U.S. Fidelity & Guar. Co. v. Fox*, 872 S.W.2d 91 (Ky. Ct. App. 1993).

ALJ FUNCTIONS: The Administrative Law Judge conducts a benefit review conference to narrow the issues, discuss settlement, and consider other relevant matters. If the claim is not settled, the ALJ will schedule a hearing, which operates much like a trial. The ALJ makes a decision within 60 days regarding income or medical benefits. A party who disagrees with the ALJ's decision can then appeal to the Workers Compensation Board. Source: 803 Ky. Admin. Regs. 25:010

ATTORNEYS FEES: The employee's attorney may collect from the employee, as a maximum, 20% of the first \$25,000 of benefits, 15% of the next \$10,000 of benefits, and 5% of the remaining benefits. Additionally, no fee should exceed \$18,000. All fees must be approved by the administrative law judge. Source: Ky. Rev. Stat. Ann. § 342.320

RETRAINING/ REHABILITATION: The employee is entitled to job training and placement as necessary. If job rehabilitation requires the employee to reside away from home, the reasonable cost of "board, lodging or travel" is paid by employer. If the employee refuses rehabilitation, then benefits are reduced by 50% for each week of refusal. The Administrative Law Judge decides whether to order treatment. Job training normally can not exceed 52 weeks. Source: Ky. Rev. Stat. Ann. § 342.710

BLACK LUNG: For a worker with pneumoconiosis from coal dust, proven to be at least Category 1, the employee is entitled to a retraining incentive benefit (RIB). The benefit is paid for 104 weeks while the employee is a full-time student in a qualifying program. Workers enrolled part-time are also eligible for lesser benefits paid for up to 208 weeks. The employer must also pay up to \$5,000 to the educational institution for the costs of tuition and associated expenses. Benefits are not payable if the employee remains in the coal mining industry. If the employee successfully completes an approved training program lasting at least 12 months, the employer shall pay the employee a sum of either \$5,000 or \$10,000 depending on the length of the program. This amount is in addition to all other benefits. The KY coal workers' pneumoconiosis fund pays half of the income benefits and half of the retraining benefits. Benefits are also available for an employee enrolled in a GED program. Source: Ky. Rev. Stat. Ann. § 342.732, §342.1242(1)

PERMANENT TOTAL DISABILITY: An employee who is permanently and totally disabled has a complete and permanent inability to perform any type of work as a result of an injury. Total disability shall be irrebuttably presumed to exist for an injury that results in:

1. Total and permanent loss of sight in both eyes
2. Loss of both feet at or above the ankle
3. Loss of both hands at or above the wrist
4. Loss of one foot at or above the ankle and loss of one hand at or above the wrist
5. Permanent and complete paralysis of both arms, both legs, or one arm and one leg
6. Incurable insanity or imbecility, or
7. Total loss of hearing. Source: Ky. Rev. Stat. Ann. § 342.0011(11)

HEARING LOSS: Income benefits for occupational hearing loss should be paid as described in Ky. Rev. Stat. Ann. § 342.730, except that no income benefits are payable if the binaural hearing impairment, when converted to impairment of the whole person, results in an impairment of less than eight percent (8%). No impairment rating for tinnitus shall be considered in determining impairment to the whole person. Source: Ky. Rev. Stat. Ann. § 342.7305

OFFSETS: There is an offset for exclusively employer-funded sickness or accident plans that paid previous benefits to the employee for the same disability now covered by workers' comp, except where the employer funded plan contains an internal offset provision for workers' comp benefits which is inconsistent with this provision. Source: Ky. Rev. Stat. Ann. § 342.730(6)

DEATH BENEFITS: If the employee's work-related injury causes death at some time, the decedent's estate is entitled to compensation, the amount of which is determined by formulas found in Ky. Stat. Ann. sec. 342.750. If the employee's death occurs within four years of date of injury as a direct result of the work-related injury, the decedent's estate is additionally entitled to a lump sum benefit. The amount of the benefit is determined by the date of injury, not the date of death. The benefits, by year, are \$56,128.45 for 2003; \$57,799.31 for 2004; \$59,645.97 for 2005; \$62,002.42 for 2006; \$63,500.37 for 2007; \$65,813.60 for 2008; \$68,198.54 for 2009; \$69,916.52 for 2010; \$70,916.46 for 2011; \$72,313.24 for 2012, \$73,933.98 for 2013, \$75,541.95 for 2014, \$75,988.80 for 2015 and \$78,446.51 for 2016. Source: Ky. Rev. Stat. Ann. § 342.750(6)

OCCUPATIONAL DISEASE: The compensation amount is determined as of the last injurious exposure or the date of actual disability, whichever is later. Payments are to begin at that time also. Dependents are entitled to death benefits if the employee was awarded compensation or made an application for compensation, and suffered disability to the date of death within the last 20 years. The employer at which the employee suffered the last injurious exposure is solely liable for compensation. Source: Ky. Rev. Stat. Ann. § 342.316 * Statute declared unconstitutional on other grounds in *Vision Mining Inc. v. Gardner*, 2010-SC-000311-WC, 2011 WL 6543000 (Ky. Dec. 22, 2011).

MEDICAL BENEFITS: The employee chooses the treating physician, unless the employer has a managed health care system. In that case, the employee must choose a doctor from within the plan. However, even with a managed health care system, the employee may still elect to continue treatment with a doctor who provided emergency medical care and may not be within the network. There is a fee schedule to be followed by providers, unless a lower fee is provided for in managed care system. Employers must also pay for the employee's mileage for doctor visits. The State mileage rate is utilized. Mileage rates change quarterly. Source: Ky. Rev. Stat. Ann. §§ 342.020, 342.035(1), 342.205, 803 Ky. Admin. Regs. 25:089, 200 KAR 2:006.

DEFENSE CHECKLIST

We recommend that you keep in mind the following defenses when evaluating a claim:

- Notice (as soon as practicable) § 342.200
- Statute of Limitations for Injuries § 342.270
- Statute of Limitations for Occupational Exposure § 342.316
- Misrepresentation on employment application: § 342.165(2)
- Exempt employees: § 342.650
- Illegal drug/alcohol use: § 342.610(3)
- Medical causation issues: § 342.0011(33)
- Course/Scope issues: § 342.0011(1)
- Last injurious exposure rule: § 342.316(1)(a)

BLACK LUNG BENEFIT CHART

ILO Category (x-ray)	Pulmonary Function FVC/ FEV 1	Percentage of Disability	Duration of Benefits
1	80-100%	None, only receive RIB	104 weeks
1	55-79%	25%	425
1	<55%	50%	425
2	80-100%	25%	425
2	55-79%	50%	425
2	<55%	75%	425
3	80-100%	50%	425
3	55-79%	75%	520
3	<55%	100%	Lifetime*
Complicated Pneumoconiosis		100%	Lifetime*

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RIB: (1) must be enrolled in approved training program; (2) election: may defer benefits up to 365 days; (3) Option: age 57+ may accept RIB or 25% award for up to 425 weeks or age 65, whichever occurs first.

LIFETIME: benefits terminate when eligible for Soc. Security benefits.