



QUICK GUIDE TO THE NEBRASKA WORKERS' COMPENSATION ACT*

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COMPENSATION RATE ISSUES

Average Weekly Wage: The computation of an employee's average weekly wage is a function of the contract of hire, the nature of the employment, and the number of hours worked. Source: Neb. Rev. Stat. §48-126.

"AWW" for Continuous Employment: Determined by calculating the employee's average gross wages per week for 26 weeks prior to the alleged accident date or as much time preceding the date of the accident which the claimant was employed by the insured. Source: Neb. Rev. Stat. §48-126.

Overtime: Overtime hours are used in average weekly wage computation, but at the straight-time rate of pay, unless the insurer has collected a premium on overtime value of pay. Source: Neb. Rev. Stat. §48-126.

Ordinary Work Week: Only weeks with hours ordinarily worked constitute the claimant's work week. For example, if a claimant normally averages 40 hours per week, one week with only 8 hours will not be considered.

Source: *Canas v. Maryland Cas.*, 236 Neb. 164, 459 N.W.2d 533 (1990).

Maximum and Minimum Compensation Rates [Neb. Rev. Stat. §48-121.01]:

Date of Accident	Max.Rate	Min.Rate
01/01/96 - 12/31/96	409.00	49.00
01/01/97 - 12/31/97	427.00	49.00
01/01/98 - 12/31/98	444.00	49.00
01/01/99 - 12/31/99	468.00	49.00
01/01/00 - 12/31/00	487.00	49.00
01/01/01 - 12/31/01	508.00	49.00
01/01/02 - 12/31/02	528.00	49.00
01/01/03 - 12/31/03	542.00	49.00
01/01/04 - 12/31/04	562.00	49.00
01/01/05 - 12/31/05	579.00	49.00
01/01/06 - 12/31/06	600.00	49.00
01/01/07 - 12/31/07	617.00	49.00
01/01/08 - 12/31/08	644.00	49.00
01/01/09 - 12/31/09	671.00	49.00
01/01/10 - 12/31/10	691.00	49.00
01/01/11 - 12/31/11	698.00	49.00
01/01/12 - 12/31/12	710.00	49.00
01/01/13 - 12/31/13	728.00	49.00
01/01/14 - 12/31/14	747.00	49.00
01/01/15 - 12/31/15	761.00	49.00
01/01/16 - 12/31/16	785.00	49.00
01/01/17 - 12/31/17	817.00	49.00
01/01/18 - 12/31/18	831.00	49.00
01/01/19 - 12/31/19	855.00	49.00
01/01/20 - 12/31/20	882.00	49.00
01/01/21 - 12/31/21	914.00	49.00
01/01/22 - 12/31/22	983.00	49.00
01/01/23 - 12/31/23	1029.00	49.00

If Employee's Death Was Caused by Work Accident: Effective July 19, 2012, maximum burial benefit raised to \$10,000. Source: Neb. Rev. Stat. §48-122.

SCHEDULE OF COMPENSATION

Temporary Total Disability Benefits: "TTD" benefits are paid while employee is treating or convalescing and has not reached maximum medical recovery or returned to work. "TTD" = 66 2/3 % X claimant's "AWW." Source: Neb. Rev. Stat. §48-121 (1).

Temporary Partial Disability Benefits: "TPD" = 66 2/3 % X ("AWW" - employee's actual earnings after the accident). Source: Neb. Rev. Stat. §48-121 (2).

Permanent Partial Disability: Permanent disability benefits are based upon a minimum 40 hour work week. Source: Neb. Rev. Stat. §48-121 (4).

"PPD" for Injuries to the Body as a Whole: "PPD" = (300 weeks - # weeks paid temporary benefits) X "AWW" X 66 2/3 % X % of the disability. Source: Neb. Rev. Stat. §48-121 (2).

"PPD" for Injuries to a Scheduled Member: "PPD" = number of weeks for complete member loss X % of the disability X "AWW" X 66 2/3 %. Number of weeks for complete member loss is:

Member	Up to	Member	Up to
Thumb	60 weeks	Arm, Elbow and Above	225 weeks
Index Finger	35 weeks	Leg Below Knee	150 weeks
Middle Finger	30 weeks	Leg, Knee and Above	215 weeks
Ring Finger	20 weeks	Eye	125 weeks
Little Finger	15 weeks	Ear	25 weeks
Big Toe	30 weeks	Hearing One Ear	50 weeks
Any Other Toe	10 weeks	Hearing Both Ears	100 weeks
Hand Below Elbow	175 weeks	Nose	50 weeks

- Loss of first phalange of thumb, any finger or any toe is equal to 1/2 loss of such thumb, finger or toe; loss of more than one phalange is equal to loss of the entire digit.
- In case there is a loss of more than one member the benefits shall be paid for each such member with the benefits to run consecutively. In such cases, if the injuries result in a loss of earning capacity of 30% or more, the employee's compensation for permanent disability may be based upon the earning capacity loss, rather than the schedule of benefits.
- The total loss or permanent total loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, in one accident, shall equal total and permanent disability. Source: Neb. Rev. Stat. §48-121 (3).

Permanent Total Disability Benefits: Employees who are permanently and totally disabled (unable to engage in any suitable work activity) are entitled to weekly benefits at the employee's compensation rate, even beyond 300 weeks. Nebraska has no age limit when permanent total disability benefits cease. Source: Neb. Rev. Stat. §48-121.

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PENALTIES & COSTS FOR FAILURE TO PAY

Indemnity Benefits (Permanent or Temporary Disability Payments):

- Late payment of indemnity benefits can result in substantial penalties.
- An employee is entitled to 50% waiting time penalties on all indemnity benefits not paid after 30 days' notice, if no reasonable medical or legal controversy existed.
Source: Neb. Rev. Stat. §48-125 (1).
- The mere fact that settlement negotiations between the employer and the employee were ongoing, or that the employee would not respond to the employer concerning method of payment, does not create a reasonable controversy.
Source: *Grammar v. Endicott Clay*, 252 Neb. 315 (1997).

Attorney's Fees, Interest and Costs:

- An employee is entitled to attorney's fees, interest and costs on all: Nonpayment of benefits after 30 days of injury, or Nonpayment of medical bills for 30 days after notice, if followed by an award ordering payment of benefits or medical bills.
Source: Neb. Rev. Stat. §48-125 (1).

DEFENSE CHECKLIST

Keep in mind the following defenses when evaluating a claim:

- Did not "arise out of employment." Source: *Coffey v. Waldinger Corp.*, 11 Neb. App. 293, 649 N.W.2d 197 (2002).
- Was not in the "course of employment." Source: *Misek v. CNG Financial*, 265 Neb. 837, 660 N.W.2d 495 (2003).
- Causation Issues: The work-related accident did not cause the injuries. Source: *Caradori v. Frontier Airlines*, 213 Neb. 513, 329 N.W.2d 865 (1983).
- Notice. Source: Neb. Rev. Stat. §48-133.
- Statute of Limitations. Source: Neb. Rev. Stat. §48-137.
- Misrepresentation of physical condition at the time of hire if done in writing and there was reliance by the employer and a causal connection to the injury. Source: §48-148.01
- Casual v. Regular Employee. Source: Neb. Rev. Stat. §48-115.
- Independent contractor. Source: *Larson v. Hometown Comm.*, 248 Neb. 942 (1995).
- Willful misconduct. Source: Neb. Rev. Stat. §48-127.
- Illegal drug/alcohol use. Source: Neb. Rev. Stat. §48-127.

POSSIBLE FRAUD CLAIMS

- The Nebraska Department of Insurance has jurisdiction over civil and criminal proceedings for workers' compensation fraud against insured employers. If you believe that you have evidence of a possible fraudulent workers' compensation claim, please call the Department of Insurance at (402) 471-2201.
- Self-insured employers can investigate possible fraud themselves or can file a claim with the County Attorney of the county in which the business is located.

EXCLUDED EMPLOYMENT

Railroad companies engaged in interstate or foreign commerce, employers of household domestic workers and employers of farm and ranch laborers (if written notice was given and signed by the employee) are excluded from coverage under the Nebraska Workers' Compensation Act. Source: Neb. Rev. Stat. §48-106.

- "Employee" generally does not include persons who work as independent contractors. The following factors are considered in distinguishing the two:
 1. The right to control the conduct of the work.
 2. Whether the one employed is engaged in a distinct occupation.
 3. The kind of occupation. (Is work done with or without supervision?)
 4. The furnishing of tools and equipment.
 5. Length of employment.
 6. Method of payment. (By the time or by the job.)
 7. Whether the work is part of the regular business of the employer.
 8. Whether the parties believe they are creating an agency relationship.
 9. The freedom to select and hire helpers.
 10. How earnings are taxed on income tax filings.

Source: Neb. Rev. Stat. §48-115 and *Larson v. Hometown Communications, Inc.*, 248 Neb. 942 (1995). However, pursuant to §48-115, an independent contractor can elect workers' compensation coverage.

EXTRATERRITORIAL APPLICATION

- If an employee is injured outside the State of Nebraska in an accident which would be considered compensable under Nebraska law, he or she may be entitled to Nebraska workers' compensation benefits if: (1) The employment was principally localized within the state; or (2) the employer was performing work within the state; or (3) the contract of hire was made within the state. Source: Neb. Rev. Stat. §48-115 (2).

SUBROGATION CLAIMS

- An employer has a statutory right to be subrogated to any recovery by the employee against a third-party tortfeasor for his or her work-related injuries. For accidents occurring after July 16, 1994, the employer is entitled only to a "fair and equitable distribution" of any judgment or settlement from the tortfeasor, which may or may not be the full amount of the subrogated interest.
- The employer / insurer must be made a party to any lawsuit by the plaintiff against a third-party tortfeasor.
- The employer / insurer must agree to any settlement between the employee and the third-party tortfeasor.
- The employee must provide the employer / insurer with notice at least 30 days before filing suit against a third-party tortfeasor. Source: Neb. Rev. Stat. §48-118 and *Jackson v. Branick Industries*, 254 Neb. 950, 581 N.W.2d 53 (1998).

MEDICAL BENEFITS

- The employer is liable for all reasonable medical, surgical and hospital services which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment. Includes plastic or reconstructive but not cosmetic surgery, appliances, supplies, prosthetic devices and medicines as needed. The employer is liable for an employee's reasonable travel expenses incurred in receiving medical treatment, including attending local medical appointments. **As of January 1, 2023, the current mileage rate is 65.5 cents per mile.** Source: Neb. Rev. Stat. §48-120.

CHOICE OF PHYSICIAN

- An injured employee is limited to a physician who has previously treated the employee or an immediate family member, and has records of such treatment.
- Following injury the employer must give notice to the employee of the right to select a physician. Employer needs to give a Form 50 to the injured employee.
- If the employee does not fill out a Form 50 (choice of physician form), the employee may be free to treat with any and as many physicians as desired.
- Employer can select the physician if Form 50 is executed and the employee fails to select a physician or no physician meets the previous treatment requirements.
- A change in physician can only occur if both the employee and employer agree, or if the change is ordered by the compensation court. The employer is responsible for payment of medical bills due to the treating physician giving the employee a referral to another physician. Source: Neb. Rev. Stat. §48-120.

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