

## Covered Injuries

<b>Injury</b>	Injuries sustained “in the course of” and “resulting from” covered employment are compensable.
<b>Disease</b>	Diseases sustained “in the course of” and “resulting from” covered employment are compensable. <i>W. Va. Code</i> § 23-4-1(f) sets forth six specific criteria that must be met for an occupational disease, excluding occupational pneumoconiosis, to be compensable.
<b>Occupational Pneumoconiosis</b>	<p>The claim must satisfy the following nonmedical criteria to be compensable:</p> <ol style="list-style-type: none"> <li>exposure to minute particles of dust in abnormal quantities for at least 60 continuous days with the employer;</li> <li>the claim must be filed within the statute of limitations; and</li> <li>exposure in WV for a continuous period of at least 2 years during the 10 years immediately preceding the DLE, or for any 5 of the 15 years immediately preceding the DLE. If the claimant has been exposed to the hazards of OP for at least 10 years during the 15 years preceding the DLE and has a chronic respiratory disability, the claimant is entitled to a rebuttable presumption of OP.</li> </ol>

## Excluded Injuries

- Mental-Mental Claims.
- Self-Inflicted/Intentional Injuries.
- Horseplay.
- Injuries due to the employee’s intoxication.

## Claim Reporting Deadlines

<b>The Claimant</b>	Immediately, or as soon thereafter as is practicable.
<b>The Employer</b>	5 days of receipt of notice that a claim has been filed.

## Statutes of Limitation

<b>Injury</b>	6 months from injury.
<b>Traumatic Death</b>	6 months from death. There is a very limited exception to this deadline, which applies under unique circumstances. <i>Syl. Pt. 5, Sheena H. v. Amfire, LLC, 772 S.E.2d 317 (W. Va. 2015).</i>
<b>Occupational Disease</b>	The later of: (a) 3 years from the DLE; or (b) the date the OD was made known to the claimant by a physician, or the date the employee reasonably should have known of the OD, whichever occurs earlier
<b>OD Death</b>	1 year from death.
<b>OP</b>	3 years from the DLE or the date a diagnosed impairment was made known to the employee by a physician.
<b>OP Death</b>	2 years from death.

## Time Standards for Certain Claim Actions

<b>Decision on Injury/Disease Claim</b>	15 working days.
<b>OP Nonmedical Claim Decision</b>	90 days.
<b>Decision on Reopening Application</b>	30 days.
<b>Treatment Requests</b>	“Act upon” treatment request within 15 working days of receipt.
<b>Request for PPD IME</b>	Schedule PPD IME within 30 working days of receipt of claimant’s request.
<b>Payment of PPD Award</b>	Must commence within 15 working days of decision granting the award.

*Note: “Acted upon” encompasses a wide array of administrative actions.*

## Notice of Claim Decisions

The claims administrator must send the parties written notice of every claim decision, setting forth the basis of the decision and informing the claimant of the right to protest the decision.

## Benefits/Benefit Rates

### TTD

**Maximum Weekly Rate:** 66⅔% of the claimant's AWW, not to exceed the state AWW.

**Minimum Weekly Rate:** 33⅓% of the state AWW.

**Maximum Period of TTD:** 104 weeks.

**Waiting Period:** The claimant must be unable to work due to the compensable injury for 3 consecutive days to be eligible for TTD, and for more than 7 consecutive days to recover benefits for the first 3 days.

### PPD

**Maximum Weekly Rate:** 66⅔% of the claimant's AWW at the date of the injury, not to exceed 70% of the state AWW.

**Minimum Weekly Rate:** 33⅓% of the state AWW.

### PTD

**Maximum Weekly Rate:** 66⅔% of the claimant's AWW, not to exceed the state AWW.

**Minimum Weekly Rate:** Generally 33⅓% of the state AWW.

**Duration of Benefits:** For PTD awards granted on or after July 1, 2003, benefits are payable until age 70.

### Medical Benefits

**Covered Treatment:** Any treatment "reasonably required" as a result of the compensable injury is covered. *W. Va. Code St. R. § 85-20-1 et seq.* (Workers' Compensation Rule 20) sets forth specific treatment guidelines for a wide range of injuries and diseases.

**Limitation:** Except for OP claims, further medical treatment or rehabilitation services may not be authorized in any claim in which "significant treatment" has not been rendered for five years. "Significant treatment" is not defined by statute, regulation or court decision. OP claims never close for medical benefits. The limitation does not apply to the replacement of artificial limbs, crutches, etc.

**Fee Schedule:** The fee schedule is established by the Insurance Commissioner, and is available on the Insurance Commissioner's website ([www.wvinsurance.gov](http://www.wvinsurance.gov)). The fee schedule does not apply to managed care programs.

**Managed Care:** Employers may participate in a managed health care plan, including but not limited to, a preferred provider organization or program, health maintenance organization, or managed care organization.

**Choice of Physician:** The claimant chooses the treating physician, although the claimant may be required to choose a physician within a PPO or HMO. The claims administrator has the right to choose the IME physician.

### Vocational Rehabilitation

**Standard:** Injuries resulting in permanent disability or likely to result in TTD are eligible for vocational rehabilitation.

- Rehabilitation TTD benefits are paid where vocational rehabilitation or rehabilitative treatment renders the claimant temporarily totally disabled;
- TPR benefits are payable where the claimant returns to gainful employment as a part of a rehabilitation plan, but the average weekly wage earnings are less than those earned at the time of the injury.

**Rehabilitation TTD Benefit Rate:** Same as TTD rates.

**TPR Benefit Rate:** 70% of the difference between the claimant's AWW at the time of the injury and the AWW, not to exceed the claimant's TTD rate. There is no minimum TPR benefit rate.

**Maximum Benefit Amount:** \$20,000.00 for any single injury.

**Maximum Duration of Benefits:** The maximum period for rehabilitation TTD or TPR benefits is 52 weeks; rehabilitation TTD benefits may extend to 104 weeks if paid in connection with vocational rehabilitation plan.

## Settlement

The parties to a claim may negotiate a full and final settlement of any and all issues in a claim, including medical benefits. The claimant must be represented by counsel to settle medical benefits in a "nonorthopedic" occupational disease (OD) claim. A "nonorthopedic" OD claim is any OD claim other than an "orthopedic" OD claim. "Orthopedic" OD claims are claims that involve the musculoskeletal system as it functions for purposes of mobility, and hearing loss claims. Settlements are not approved by any administrative or adjudicatory body.

## Subrogation

Subrogation is allowed with regard to all medical and indemnity benefits paid as of the date of the recovery. Reasonable attorneys' fees and costs are deducted from the subrogation amount.

## Average Weekly Wage

The AWW is the daily rate of pay at the time of the injury or the weekly average of the employee's best quarter of wages out of the preceding four quarters of wages, whichever is greater.

## Closing/Terminating TTD Benefits

TTD benefits are suspended when:

- The IME physician finds the claimant has reached MMI;
- The treating physician finds the claimant has reached MMI or is ready for a disability evaluation;
- Other evidence justifies a finding of MMI; or
- Evidence justifies a finding of abuse by the claimant.

Before closing the claim for TTD, the claimant must be given a reasonable period of time (usually 30 days) to submit evidence justifying continued benefits. The claim is then closed if no evidence is submitted, or the evidence that is submitted is insufficient.

TTD benefits are terminated immediately when: the claimant returns to work; or the treating physician finds the claimant is at MMI and recommends a PPD award of 15% or less.

## Claim Reopening

**Standard:** Aggravation or progression of the compensable injury/disease, or the existence of a previously unconsidered material fact.

**Deadlines for Filing Reopening Request:**

- (1) Claims closed without PPD award: 5 years of the date of closure.
- (2) Injury claims closed with PPD award: 5 years of the date of the initial PPD award.
- (3) OD/OP claims closed with PPD award : 5 years of the date of the initial PPD award, or 5 years from the date of a subsequent PPD award.
- (4) Fatal claims: Any further award must be made within two years after death.

**Limits on Number of Requests:**

Permanent Benefits – Two requests to reopen in the applicable 5 year period.  
TTD Benefits – No limit.

## Impairment Determination

The *AMA Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> Edition must be used to determine impairment for all injuries/diseases except for OP claims, hearing loss, psychiatric conditions, and scheduled losses under *W. Va. Code § 23-4-6(f)* or *W. Va. Code § 23-4-6(m)*. Generally, each percent of disability equals four weeks of benefits. Impairment ratings for lumbar, thoracic, and cervical spine injuries are subject to the PPD ranges contained in Workers' Compensation Rule 20. PPD awards for carpal tunnel syndrome are capped at six percent per injured hand.