

Compensation Rate Issues

Average Weekly Wage: AWW is determined by calculating the employee's average gross wages per week for the 52 week period prior to the alleged accident date. Compensation shall be computed on the AWW earned by the employee (EE) under the contract of hire in force at the time of the accident and shall be computed on a full-time work week for the employment of injury. Ark. Code Ann. § 11-9-518.

Compensation Rate: CR for total disability (TD) is computed as a weekly amount representing 66⅔% of the AWW of the injured worker at the time of injury, subject to applicable minimum and maximum limits. Seasons and other exceptions can apply. CR for permanent disability for scheduled injuries is determined by the chart at § 11-9-521 (see below).

If unscheduled TTD rate is \$205.35 or greater, then PPD rate is 75% of the TTD rate rounded to the nearest whole dollar, subject to the min. and max. as provided by AWCC Advisory 2000-1, revised. If unscheduled TTD rate is less than \$205.35, then PPD rate is 66⅔% of AWW, up to \$154.00.

Maximum PPD and TTD Compensation Rates and PTD Limits:

Eff. Date	Wk. Max PPD	Wk. Max TTD	PTD Limits*
01/01/05	\$350.00	\$466.00	\$75,000
01/01/06	\$366.00	\$488.00	\$75,000
01/01/07	\$378.00	\$504.00	\$75,000
01/01/08	\$392.00	\$522.00	\$169,650
01/01/09	\$413.00	\$550.00	\$178,750
01/01/10	\$422.00	\$562.00	\$182,650
01/01/11	\$431.00	\$575.00	\$186,875
01/01/12	\$438.00	\$584.00	\$189,800
01/01/13	\$452.00	\$602.00	\$195,650
01/01/14	\$463.00	\$617.00	\$200,525
01/01/15	\$472.00	\$629.00	\$204,425
01/01/16	\$485.00	\$646.00	\$209,950
01/01/17	\$496.00	\$661.00	\$214,825
01/01/18	\$505.00	\$673.00	\$218,725
01/01/19	\$521.00	\$695.00	\$225,875
01/01/20	\$533.00	\$711.00	n/a
01/01/21	\$552.00	\$736.00	n/a
01/01/22	\$593.00	\$790.00	n/a

*PTD Limits indicate the amount of PTD benefits payable by the employer/carrier before the Death & Permanent Total Disability Trust Fund will take over payments.

Permanent Impairment & Disability Benefits

If at the end of the healing period, the EE is experiencing a total or partial loss of wage earning capacity, permanent disability benefits must be paid. Permanent benefits should be paid upon the attainment of maximum medical improvement (MMI). The Arkansas Workers' Compensation Act defines disability as the "incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury." Ark. Code Ann. § 11-9-102(8). EE is entitled to compensation for a permanent disability if EE establishes permanent impairment pursuant to the AMA Guides, 4th Edition, within a reasonable degree of medical certainty.

Full Body Impairment Payments: If the disability involves the body as a whole (i.e., unscheduled), calculate the number of weeks of compensation due by multiplying the rating by 450 weeks (the value of the body as a whole); then calculate the total monetary value of the rating by multiplying the number of weeks due by EE's PPD rate.

Scheduled Member Impairment Payments: If the disability involves a scheduled member, the number of weeks each member is worth is set forth in A.C.A. 11-9-521 (see below). Calculate the number of weeks of compensation due by multiplying the rating by the number of weeks assigned to that member; then calculate the total monetary value of the rating by multiplying the number of weeks due by EE's PPD rate.

Arm, elbow to shoulder	244	Foot, amputated	131
Arm, wrist to elbow	183	Great toe, amputated	32
Leg, knee to hip	184	Toe, other than great toe	11
Leg, ankle to knee	131	Eye	105
Hand, amputated	183	Loss of hearing	42
Thumb, amputated	73	Loss of hearing, both ears	158
First finger, amputated	43	Loss of testicle	53
Second finger, amputated	37	Loss of testicle, both	158
Third finger, amputated	24	Amputation of 1st phalange*	
Fourth finger, amputated	19	Amputation of more than one phalange of same digit**	

*1/2 value of entire digit **same value as amputation of entire digit

Disability Benefits

Temporary Total Disability Benefits: Compensation to the injured EE shall not be allowed for the first seven (7) days' disability resulting from injury, excluding the day of the injury. However, if the disability extends beyond that period, compensation shall begin with the 9th day of disability. If disability extends for a period of two weeks, compensation shall be allowed beginning the first day of disability, excluding the day of the injury. Ark. Code Ann. § 11-9-501.

Temporary Partial Disability Benefits: In case of temporary partial disability resulting in the decrease of the injured EE's AWW, the EE is entitled to 66⅔% of the difference between the EE's AWW prior to the accident, and his or her wage-earning capacity after the injury. Ark. Code Ann. § 11-9-520.

Permanent Partial Disability: PPD benefits compensate injured EE for the impairment rating assessed by either a physician or the Commission. PPD benefits are fixed and payable when EE is placed at MMI.

Wage Loss: Wage loss benefits are those permanent disability benefits in excess of the physical impairment rating. Only employees suffering unscheduled injuries are eligible. Factors considered include the impairment rating, EE's age, education, work experience, motivation to return to work, post-injury income, transferrable job skills and credibility.

Permanent Total Disability: If an injured EE is unable, because of compensable injury or occupational disease, to earn any meaningful wages in any employment, EE is entitled to P&T benefits. P&T benefits are 66⅔% of AWW, subject to max. and min. limitations as to weekly benefits. Carrier is liable for benefits equaling 325 times the max. TTD rate established for the date of injury; thereafter, the rates are payable from the Death & Permanent Total Disability Trust Fund. After July 2019, the Death & Permanent Total Disability Trust Fund will close to new claims and Carrier will be liable for all Death and P&T benefits.

Compensation for Death: If injury causes death, death benefit payments are distributed based upon dependency status of survivors at time of death. Reasonable funeral expenses shall be paid, not exceeding the sum of \$6,000. Benefits shall be paid to those persons who were wholly and actually dependent upon the deceased EE in the following percentage of the AWW and in the following order of preference:

To the widow, if there is no child,	35%; paid until her death or re-marriage.
To the widow or widower, if there is a child,	35%, plus an additional 15% on account of each child.
If there is no widow or widower, and only 1 child,	50%
If there is no widow or widower,	15% for each child, and 35% to the children as a class, to be divided equally
Parents,	25% each
Brothers, sisters, grandchildren, and grandparents,	15% each

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The information provided is not a substitute for legal advice and should be considered for general guidance only. Please contact one of our attorneys for specific legal advice regarding this matter.

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Possible Fraud Claims: Any person who willfully and knowingly makes any material false statement or representation for the purpose of obtaining any benefit or payment shall be guilty of a Class D felony.

Other Pertinent Definitions: The Code sets forth at § 11-9-102 several specific definitions that are to be utilized in interpreting the WC Act, including definitions for "injury" and "employee." A "compensable injury" is defined at § 11-9-102(4)(A). "Employee" is defined at § 11-9-102(9). "Disability" is defined as "incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury." § 11-9-102(8). The factors to determine an "independent contractor" relationship include the terms and method of compensation and whether the principal: has the power to terminate a contract at will; has the power to set payment; furnishes the means and tools of the trade; has a right to control; has the right to correct the details of the work; has the right to supervise and inspect the work during employment; has the right to direct the details of the manner in which the work is to be done; and has the right to employ and discharge sub employees. The most important factor is the right to control the work.

Medical Benefits: Medical benefit provisions are covered in part under § 11-9-508, which provides that the employer shall promptly provide for an injured EE such medical services as may be reasonably necessary in connection with the injury received by the EE. If the employer fails to provide the medical services within a reasonable time after knowledge of the injury, the Commission may direct the injured EE to obtain the medical service at the expense of the employer, and any emergency treatment afforded the injured EE shall be the expense of the employer. Further, § 11-9-509 provides that the amounts payable or time periods allowable for authorized medical, unless waived by the employer-Respondent or approved by the Commission, are: (1) 6 months if the Claimant lost no compensable time from work as a result of the injury; (2) 6 months following the return to work by an injured EE who had been receiving authorized medical or hospital or other services or treatment; or (3) \$10,000 aggregate for all authorized medical, hospital, and other services and treatment.

Statute of Limitations: Claim for compensation on account of an injury other than an occupational disease and occupational infection shall be barred unless filed with the Commission within 2 years of the date of the injury. If, during the two-year period following the filing of the claim, the Claimant receives no weekly benefit and receives no medical treatment, the claim shall be barred. Further, if within 6 months after the filing of a claim for compensation, no bona fide request for a hearing has been made, the claim may, upon Motion and after hearing, be dismissed without prejudice to be re-filed within the limitation specified. In cases where any compensation, including disability or medical, has been paid on account of an injury, the claim for additional compensation shall be barred unless filed with the Commission within 1 year from the date of last payment of indemnity on date of service for paid treatment or 2 years from the date of the injury, whichever is greater. However, those time limitations are not tolled by the replacement of medicine, crutches, and other apparatus permanently or indefinitely required as a result of a compensable injury.

Change of Physician: An employee is entitled to a one-time change of physician. The employer must pay the initial visit to the new physician. The EE may, under certain circumstances, select his regular treating physician. § 11-9-514. The employer/carrier must require the claimant's request for a change of physician be approved by order of the Commission. Otherwise, the change will not count as the claimant's one-time change.

Independent Medical Examination: The employer/carrier may require the EE to submit to an IME at the employer/carrier's expense. There are no set number of IMEs allowed and it is sometimes beneficial to have a claimant return to the same IME doctor for follow-up visits. An IME can be useful when an employer/carrier believes that there are questions about treatment or impairment. An IME allows the claimant to try additional or different treatment options not typically recommended by the claimant's treating physician. When considering an IME, the Commission is familiar with physicians across the state and some opinions will be given more credence than others. Of course, if the injury is one that requires care by a specialist, the doctor hired to perform the IME should practice in the particular specialty.

Mileage Rates

03/01/1996 — 09/19/2001	28¢ per mile
09/20/2001 — 09/20/2003	29¢ per mile
10/01/2003 — 08/31/2005	31¢ per mile
09/01/2005 — 08/31/2006	34¢ per mile
09/01/2006 — 04/30/2008	39¢ per mile
05/01/2008 — present	43¢ per mile

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Special Injuries

Special Injuries: To be compensable, there must be an accidental injury arising out of and in the course of employment, a gradual onset injury, or an occupational disease. The following injuries and illnesses are a few that have received special attention in Arkansas:

(1) Gradual Onset Injuries - § 11-9-102(4)(A)(ii)

A gradual onset injury is an injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence. It is compensable if the injury is: (a) caused by rapid repetitive motion (carpal tunnel syndrome is specifically categorized as a compensable injury); (b) a back or neck injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence; or (c) hearing loss which is not caused by a specific incident or which is not identifiable by time and place of occurrence. When an EE makes a claim for a gradual onset injury, the EE must prove the alleged compensable injury is the "major cause of the disability or need for treatment." Ark. Code Ann. § 11-9-102(4)(E).

(2) Mental Injury or Illness - § 11-9-113

Mental injury or illness is not a compensable injury unless it is caused by physical injury to the EE's body, and shall not be considered an injury arising out of or in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence. The physical injury limitation, however, shall not apply to any victim of a violent crime. A mental injury under this section must be diagnosed by a licensed psychiatrist or psychologist and the diagnosis of the condition must meet the criteria established by the most current issue of the Diagnostic and Statistical Manual of Mental Disorders (currently DSM IV-TR). Max. of 26 weeks of disability benefits for any claim of mental injury or illness.

(3) Heart or Lung or Illness - § 11-9-114

These injuries are only compensable if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm. Further, an injury or disease included in this definition shall not be compensable unless it is shown the exertion of work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the EE's usual work, or that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm. Stress, physical or mental, shall not be considered.

(4) Hernia - § 11-9-523

The employee must show the following by a preponderance or the evidence: (1) the occurrence of the hernia immediately followed as a result of sudden effort, sudden strain, or the application of force directly to the abdominal wall; (2) there was severe pain in the hernial region; (3) the pain caused the EE to cease work immediately; (4) notice of the occurrence was given to the employer within 48 hours; and (5) the physical distress following the occurrence was such as to require the attendance of a licensed physician within 72 hours after the occurrence.

(5) Disfigurement - § 11-9-524

Limited to \$3,500. Must be permanent head or facial scarring.

Defense Considerations

1. Notice - Respondents are not liable for any benefits prior to the receipt of notice.
2. Independent contractor.
3. The claim did not arise out of the employment.
4. The EE was not in the course of his employment at the time of the injury.
5. Intoxication defense.
6. Causation issues.
7. Intervening cause.
8. Pre-existing conditions.
9. Statute of limitations.
10. Credibility of claimant.

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