



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Workers' Compensation Benefits

The Ohio Workers' Compensation Law creates a system to compensate employees and their dependents for work-related death, injuries, and occupational diseases. Entitlement to compensation is based not on whether misconduct occurred but on whether a death, injury, or occupational disease occurred in the course of and arose out of the employee's employment.

The three major types of compensation for earning potential lost due to a work-related injury or occupational disease are temporary total disability, permanent partial disability, and permanent total disability. Medical benefits, death benefits, and certain other benefits also are available.

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### Overview

The Ohio Workers' Compensation Law<sup>1</sup> stems from an Ohio constitutional provision that allows the General Assembly to enact legislation establishing a state workers' compensation system.<sup>2</sup> The workers' compensation system is a compromise in which both employers and employees give up something to which they are entitled. In exchange, both gain certain statutory rights.

<sup>1</sup> R.C. Chapters 4121, 4123, 4127, and 4131.

<sup>2</sup> Ohio Constitution, Article II, Section 35.

Employers either pay mandatory premiums to the State Insurance Fund (a state fund employer) or are authorized to pay compensation and benefits directly to an employee or the employee's dependents (a self-insuring employer). In exchange, employers gain immunity from liability for damages for an employee's work-related death, injury, or occupational disease.<sup>3</sup>

The system entails a compromise for employees as well. An employee or the employee's dependents relinquish the right to seek *full* reimbursement for work-related death, injuries, and occupational diseases through suing an employer in a lengthy, expensive, and uncertain court process. In exchange, the employee or dependents gain the right to receive *partial* reimbursement in a comparably quick, inexpensive, and certain administrative process.<sup>4</sup>

The workers' compensation system is, by and large, a no-fault system that provides compensation (lost wages, generally) and benefits (medical expenses and death benefits, generally) to an employee or an employee's dependents for a work-related death, injury, or occupational disease. Entitlement to compensation and benefits is based on whether the harm occurred in the course of and arose out of the employee's employment, rather than on whether the employer or employee committed a wrongful act or omission.<sup>5</sup>

## Compensation

Compensation generally refers to the periodic monetary payments an employee may be entitled to for earnings potential lost due to a workplace injury or occupational disease.<sup>6</sup> The three major types of compensation are temporary total disability (TTD), permanent partial disability (PPD), and permanent total disability (PTD).

Many of the payment calculations are based on the employee's average weekly wage (AWW) and the statewide average weekly wage (SAWW). The employee's AWW is calculated based on the employee's earnings for the 52 weeks preceding the date of injury.<sup>7</sup> The SAWW is calculated annually by averaging the weekly earnings during the previous year of all workers in Ohio employment that is subject to the Unemployment Compensation Law.<sup>8</sup>

All forms of compensation are paid on a weekly basis.<sup>9</sup> However, an employee may be able to obtain a lump sum advancement, which is a prepayment of future compensation payable to an employee receiving PPD or PTD or to a surviving spouse receiving death benefits.<sup>10</sup>

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<sup>3</sup> Ohio Const., art. II, sec. 35, R.C. 4123.35 and 4123.74, and *State ex rel. Turner v. U.S. Fidelity & Guaranty Co.*, 96 Ohio St. 250 (1917).

<sup>4</sup> Fulton, Philip J., *Ohio Workers' Compensation Law*, §1.2 (5<sup>th</sup> edition 2018).

<sup>5</sup> *Fisher v. Mayfield*, 49 Ohio St.3d 275 (1990).

<sup>6</sup> "Compensation" and "benefits" are used interchangeably in the Ohio Workers' Compensation Law, but are used more specifically in this brief for ease of understanding.

<sup>7</sup> R.C. 4123.61; Fulton, Philip J., *Ohio Workers' Compensation Law*, §9.2 (5<sup>th</sup> edition 2018).

<sup>8</sup> R.C. 4123.62(C).

<sup>9</sup> R.C. 4123.56, 4123.57, and 4123.58.

<sup>10</sup> R.C. 4123.64 and Ohio Administrative Code (O.A.C.) 4123-3-37.

Additionally, an employee may obtain a lump sum settlement, in which the parties agree to a full or partial settlement of a claim.<sup>11</sup>

## Temporary total disability

### Time frame for TTD

TTD usually is the initial form of compensation that an employee receives after sustaining a work-related injury or contracting an occupational disease. It becomes available after an employee misses at least eight days of work because of total disability, except that compensation for the first week of missed work is payable only after the employee has been totally disabled for two weeks.

An employee may qualify for TTD if either of the following applies:

- A doctor restricts the employee from performing *any* kind of work; or
- A doctor releases the employee only to return to work with modified duties, and the employer does not have such modified work available.

TTD remains available for a maximum of 200 weeks, at which time an evaluation is conducted to determine whether the total disability has become permanent. TTD can be terminated before 200 weeks for reasons such as the employee's return to work or attainment of maximum medical improvement.<sup>12</sup>

### Amount of TTD compensation

During the first 12 weeks of TTD, an employee receives 72% of the employee's full weekly wage up to a maximum of the SAWW or 100% of the employee's average after-tax pay over the first four of the last five calendar quarters, whichever is less.<sup>13</sup>

After the first 12 weeks of TTD, an employee generally receives 66.67% of the employee's AWW, but not more than 100% or less than 33.3% of the SAWW. However, if the employee's AWW is less than 33.3% of the SAWW, the employee receives 100% of the employee's full wages.<sup>14</sup>

The amount of TTD compensation that a Social Security retirement benefits recipient may receive is capped at 66.67% of the SAWW, regardless of the number of weeks the employee has been receiving TTD.<sup>15</sup>

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<sup>11</sup> R.C. 4123.65.

<sup>12</sup> R.C. 4123.55 and 4123.56(A). See also [Temporary total compensation benefit](#), which may be accessed by conducting a keyword "temporary total" search on the Bureau of Workers' Compensation website: [bwc.ohio.gov](http://bwc.ohio.gov).

<sup>13</sup> R.C. 4123.56(A).

<sup>14</sup> R.C. 4123.56(A).

<sup>15</sup> R.C. 4123.56(D).

## **Permanent partial disability**

PPD compensates employees for partial disability, such as loss of use of a limb or body function, that is permanent and is caused by a work-related injury or occupational disease. Unlike TTD or PTD, which stand as a replacement for lost wages due to the employee not being able to work, PPD is more akin to damages.<sup>16</sup> PPD comes in two forms: scheduled loss and nonscheduled loss. A scheduled loss involves the amputation or loss of use (including ankyloses) of specified body parts, the total loss of hearing, or the loss of vision. The amount of PPD compensation, and the duration, depends on whether the PPD is based on a scheduled loss.<sup>17</sup>

### **Amount of PPD compensation – scheduled loss**

An employee who loses a limb or a body function receives 100% of the SAWW for a period determined by a statutory schedule ranging from 15 weeks for the loss or loss of use of a little finger to 225 weeks for the loss or loss of use of an arm.<sup>18</sup>

### **Amount of PPD compensation – nonscheduled loss**

With respect to nonscheduled losses, PPD is available beginning 26 weeks after one of the following dates:

- The date of the last TTD payment (or wages paid in lieu of it); or
- If no TTD payments (or in-lieu wages) were paid, the date the injury occurred or the occupational disease was contracted.

An employee who sustains a permanent partial disability that does not involve the loss of a limb or body function receives 66.67% of the employee's AWW, up to a maximum benefit of 33.3% of the SAWW, for a percentage of 200 weeks that equals the percentage of the employee's disability, as determined by the Administrator of Workers' Compensation. For example, if the employee is 50% disabled, the employee receives PPD compensation for 100 weeks.<sup>19</sup>

## **Permanent total disability**

### **Time frame for PTD**

PTD is available for a total disability that continues for an indefinite time without indication of recovery, and it potentially involves payments for the employee's remaining life. An employee is eligible for PTD only if one (or both) of the following applies:

- The employee lost, or lost the use of, both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof; or

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<sup>16</sup> *State ex rel. Latino v. Industrial Commission*, 13 Ohio St.2d 103, 106-107 (1968).

<sup>17</sup> R.C. 4123.57.

<sup>18</sup> R.C. 4123.57(B).

<sup>19</sup> R.C. 4123.57(A).

- The impairment resulting from the injury or occupational disease prevents the employee from engaging in sustained remunerative employment using employment skills that the employee has or may reasonably be expected to develop.<sup>20</sup>

### **Amount of PTD compensation**

An employee generally receives PTD equal to 66.67% of the employee's AWW, but not more than 66.67% of the SAWW and not less than 50% of the SAWW in effect on the date the injury was sustained or the disease was contracted.<sup>21</sup>

An employee whose AWW is less than 50% of the SAWW on the date of the injury receives PTD compensation equal to 100% of the employee's AWW.<sup>22</sup>

### **Other compensation**

An employee also may receive the following types of compensation:

- Working wage loss compensation, which is paid if the employee returns to employment other than the employee's former position due to medical restrictions and receives less pay.<sup>23</sup>
- Nonworking wage loss compensation, which is paid if the employee is unable to find work consistent with the employee's disability and suffers a wage loss.<sup>24</sup>
- Living maintenance benefits, which are paid if the employee participates in a vocational rehabilitation program.<sup>25</sup>
- Living maintenance wage loss compensation, which is paid if the employee successfully completes an approved rehabilitation program, returns to work, and suffers a wage loss compared to what the employee was paid at the time of the injury.<sup>26</sup>

## **Benefits**

### **Medical benefits**

An employee who qualifies for benefits under the Ohio's Workers' Compensation Law is entitled to receive medical, nurse, and hospital services and medicines as are necessary for treating an injury or occupational disease.<sup>27</sup> The law allows the Administrator to pay, from the

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<sup>20</sup> R.C. 4123.58 and O.A.C. 4121-3-34(B).

<sup>21</sup> R.C. 4123.58(A).

<sup>22</sup> R.C. 4123.58(A).

<sup>23</sup> R.C. 4123.56(B)(1).

<sup>24</sup> R.C. 4123(B)(2).

<sup>25</sup> R.C. 4121.63 and O.A.C. 4123-18-04.

<sup>26</sup> R.C. 4121.67 and O.A.C. 4123-18-21.

<sup>27</sup> R.C. 4123.54.

State Insurance Fund, any amounts for medical, nurse, and hospital services and medicine that the Administrator considers proper.<sup>28</sup>

### **Death benefits**

Dependents of a deceased employee may receive death benefits based on the degree of dependency, according to statutory qualifications. A spouse receives these death benefits until the spouse dies or remarries. If a spouse remarries, the spouse is eligible for a final lump sum payment equal to two years of dependent spouse benefits. An individual who is wholly dependent on an employee at the time of the employee's death and who is not the deceased employee's spouse receives death benefits until that individual either turns 18, turns 25 if attending school, or, if mentally or physically incapacitated, ceases being mentally or physically incapacitated.<sup>29</sup>

Death benefits for spouses and wholly dependent individuals generally equal 66.67% of the employee's AWW. However, the aggregate amount of weekly compensation cannot exceed 100% nor be less than 50% of the SAWW.<sup>30</sup> This benefit amount is apportioned among eligible dependents by the Administrator.<sup>31</sup> An additional benefit of up to \$7,500 is available to whoever pays for funeral expenses of a deceased employee.<sup>32</sup>

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<sup>28</sup> R.C. 4123.66(A).

<sup>29</sup> R.C. 4123.59(B).

<sup>30</sup> The cap of 100% of the SAWW applies to deaths due to an injury received or occupational disease first diagnosed after January 1, 1976. For deaths due to injury received or occupational disease first diagnosed before that date, the cap is 66.67% of the SAWW. (R.C. 4123.59(B).)

<sup>31</sup> R.C. 4123.59(B).

<sup>32</sup> R.C. 4123.66(A).