



Brief Facts

WEST VIRGINIA WORKERS' COMPENSATION



TEMPORARY TOTAL DISABILITY BENEFITS

I. Rate (W.Va. Code § 23-4-6 (b) (2005))

- a. 66 2/3% of claimant's daily rate of pay on date of injury or average weekly wage derived from best quarter of the four calendar quarters preceding the compensable injury, wherever earned, whichever is greater, not to exceed 100% of the statewide average weekly wage. See wvinsurance.gov/Resources-Informational-Letters, #162A, for assistance in calculating TTD benefits. See also wvinsurance.gov/Workers-Compensation, TTD Wage Calculator.

II. Maximum period (W.Va. Code § 23-4-6 (c) (2005))

- a. 104 weeks, cumulative

III. Waiting period (W.Va. C.S.R. § 85-1-5.1 (2009))

- a. Claimant must be disabled more than three (3) consecutive calendar days following the injury before benefits become payable. To receive TTD benefits for the first three days of disability, claimant must be unable to work as a result of the compensable injury more than seven consecutive calendar days following the date of injury.

IV. Prospective period of TTD benefits (W.Va. Code § 23-4-1c (c) (2005))

- a. Not to exceed 90 days
- b. Must issue notice of continuation of benefits or suspension of benefits at least every 90 days

V. Allowed reasons to stop payment of TTD (W.Va. Code § 23-4-7a (e) (2005))

- a. Claimant reaches maximum medical improvement or is ready for a permanent disability evaluation, per opinion of treating physician or IME physician
- b. "Other evidence" indicates that claimant has reached maximum medical improvement
- c. "Other evidence" indicates that claimant is engaged in "abuse," including but not limited to "physical activities inconsistent with his or her compensable workers' compensation injury"
 - (i) Claimant abuse (W.Va. C.S.R. § 85-1-14.1 – 14.4 (2009))
 - (1) This includes failure to undergo necessary treatment
 - (2) Abuse may also include working at an unreported job while drawing temporary total disability benefits, making false or misleading statements to the responsible party or a health care provider for the purpose of securing any benefit, and altering, falsifying, destroying, or concealing workers' compensation related records.
 - (3) If employer or carrier offers managed health care plan, claimant's failure to select treating physician from the managed health care plan within 60 days of notification to do so will also result in suspension of medical and TTD benefits
- d. Claimant is released to return to work
- e. Claimant actually returns to work, with or without release
- f. Claimant reaches 104 weeks of TTD benefits

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TEMPORARY TOTAL DISABILITY BENEFITS (CONTINUED)

VI. Procedure for cessation of TTD benefits (W.Va. Code § 23-4-7a (e) (2005))

- a. Step 1 is to issue a non-protestable letter notifying claimant that TTD benefits are "suspended" and giving claimant a reasonable time, generally 30 days, to submit evidence that benefits should be continued
- b. Step 2 is to issue a protestable letter notifying claimant that the claim is closed for TTD benefits. This letter should also inform claimant that he or she has a right to request a permanent partial disability evaluation
 - (i) A "protestable" letter must contain this clause: "The claimant may protest to this decision within 60 days from the date of receipt of this decision or notice. The claimant must send a written protest, along with a copy of this decision, to the Workers' Compensation Board of Review, P.O. Box 2628, Charleston, WV 25329-2628, and must serve a copy of the protest upon all parties to a claim."
- c. This procedure must be followed for any and all of the reasons TTD benefits are being stopped described in Section V above

VII. Reopening (W.Va. Code §§ 23-4-16 (a) (2005); 23-5-3a (2022))

- a. Claimants have five years to request that their claim be reopened for additional TTD benefits. The five years runs from the date of the letter closing the claim, as described in Section VI (b) above. Claimant must show that the compensable injury has progressed or has been aggravated or that there is some new fact not previously considered regarding the compensable injury which renders claimant temporarily and totally disabled
- b. Anytime a reopening request is received, an objectionable letter must be issued addressing the request. Effective July 1, 2022, the objection letter must be addressed to the Board of Review.

VIII. Special Rules (W.Va. C.S.R. §§ 85-1-5.2 & 5.3 (2005))

- a. Retirement
 - (i) If claimant retires, as long as he or she remains retired, claimant is disqualified from TTD benefits as a result of an injury received from the place of employment from which he or she retired, unless the application for benefits was received prior to his or her retirement. An individual who has retired is also barred from reopening for TTD benefits an earlier claim filed in connection with an injury received at the place of employment from which he or she retired. This section does not preclude payments of benefits otherwise due a claimant if the retiree has returned to employment and suffers a compensable injury or payment of benefits if the compensable injury causes the individual to retire.
- b. Periods when claimant would not be working anyway (*example: school board employees during summer break*)
 - (i) If a period of TTD includes a reasonably ascertainable period during which claimant would not have been performing work for any employer, then TTD benefits shall not be paid during that period. This section does not apply to periods of time caused by a reduction in force, lay-off, or time-off provided in connection with an employee benefit.



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