

Quick-Reference Guide to Louisiana Workers' Compensation

Intelligence at Work.



Overview - La. R.S. 23:1020.1, et seq.

- LA is a “wage-loss” system authorized under Title 23 of the Revised Statutes
- Administered by the Office of Workers' Compensation Administration (OWCA)
- OWCA includes Hearings, Medical Services, OSHA Consultation/Safety, Second Injury Fund, Fiscal/Audit, and Fraud sections <www.laworks.net>

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Adjudication Process

- Disputed claims adjudicated by judges (WCJ's) in OWCA Hearings Section
- 10 district offices; venue determined by employee domicile, employer location, accident location
- WCJ decisions appealed directly to the state appellate courts
- Necessity of medical treatment initially reviewed by the OWCA medical director for compliance with medical treatment guidelines (MTG); MTG decisions may be appealed to the WCJ's

Accident - R.S. 23:1021(1)

Unexpected or unforeseen actual, identifiable, precipitous event, happening suddenly or violently, with or without human fault, directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration.

Extraordinary physical strain/stress not required; courts have awarded benefits where the employee reported only a “pull or tug” while engaged in their usual work activity. E.g. Hofer vs. J.P. Morgan Chase Bank, 57 So.3d 1128 (La. App. 2 Cir. 1/26/11)

Occupational Disease - R.S. 23:1031.1

“Means only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment...”

Includes carpal tunnel syndrome and chronic hearing loss, but not degenerative disc disease, spinal stenosis, arthritis, mental illness, and heart-related or perivascular disease.

Employment

Presumption of Employment – R.S. 23:1044

Person rendering service for another in any trade/businesses/occupation is presumed to be an employee (subject to specified exclusions, e.g. certain domestic or farm workers, real estate agents, etc.)

Borrowed Servant

If general employer gives up control of employee to another employer (e.g. temp agencies), both are responsible for compensation benefits.

Independent Contractors – R.S. 23:1021(7)

Generally excluded from compensation unless a substantial part of their time is spent in “manual labor” (truck driving excluded from manual labor by law).

Statutory Employment – La. R.S. 23:1061

“Two-Contract Theory” – R.S. 23:1061(A)(2)

Services or work provided by the immediate employer is included in a contract between the principal and any person or entity other than the employee's immediate employer.

“Trade, Business, Occupation” – R.S. 23:1061(A)(3)

Principal undertakes work which is “integral” or “essential” to its ability to generate goods, products, or services, and contracts with a contractor to perform all or part of the work; written contract required.

Course of/Arising out of Employment- R.S. 23:1031(A)

Course Of

Employee injured while actively engaged in the performance of his duties during work hours; principle criteria are time, place, and employment activity.

Arising Out Of

Risk increased due to employment activity; relates to the character or origin of the injury and whether it was incidental to employment.

Going and Coming Rule

Injuries while employee is traveling to/from work generally not compensable. Exceptions include –

- Accident occurred on employer's premises
- Employee was on a specific mission for the employer
- Employer provides or reimburses for transportation
- Employee was doing work where employer's consent could be fairly implied
- Employee injured while traveling from one work site to another
- Employee injured in an area immediately adjacent to his place of employment which contained a distinct travel risk (“the threshold doctrine”)
- Operation of a motor vehicle was one of the employee's job duties

Calculating Average Weekly Wage - R.S. 23:1021(13)

HOURLY

Full Time – Hourly rate times average of actual hours worked in four full weeks preceding accident, or 40, whichever is greater. If the employee is offered 40+ hours but “regularly and at his own discretion” works less than 40 hours, average of total earnings in four full weeks preceding accident.

Part Time – Hourly rate times average actual hours worked in four full weeks preceding accident. For “moonlighting” employees who work part time for two or more employers (and lose wages from both), hourly rate at job-of-injury times average total hours worked for all employers up to 40.

Note – AWW may combine methods, e.g. hourly employees who also receive bonuses

Monthly – Monthly salary times 12, divided by 52

Annual – Annual salary divided by 52

Seasonal – Annual income divided by 52

Other (e.g. bonuses, premium pay, commission, unit) – Average of twenty-six weeks preceding accident

Benefits – “Fringe” benefits which are not taxable are generally not included in AWW calculation; however, some benefits elected by the employee in lieu of taxable earnings “shall be included.”

Common OWC Forms

LWC-WC IA-1 Workers Compensation – First Report of Injury or Illness, must be filed electronically (*formerly LWC-WC-1007*)

LWC-WC-1002 – Notice of Payment, Modification, Suspension, Termination or Controversion of Compensation or Medical Benefits

LWC-WC-1008 Disputed Claim for Compensation – Petition filed in OWC district offices/courts

LWC-WC-1009 Disputed Claim for Medical Treatment – request for OWC medical director to review denial of treatment

LWC-WC-1121 Choice of Physician form

LWC-WC-1010 Request of Authorization/Carrier or Self Insured Employer Response – request to payor for approval of treatment

LWC-WC-1011 Request for Compromise of Lump Sum Settlement – petition for approval of settlements by WCJ

LWC-WC-1015 Request for Independent Medical Examination – request for IME through OWCA Medical Services section

LWC-WC-1020 Employee's Monthly Report of Earnings

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Medical Benefits - R.S. 23:1203, 1203.1

General – R.S. 23:1203 – Employer “shall furnish all necessary drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal.”

Treatment Guidelines – R.S. 23:1203.1 – Necessary means in accordance with the medical treatment schedule. Variances allowed based on “preponderance of the scientific medical evidence.” Treatment not in the MTG may be approved under other guidelines meeting criteria in R.S. 23:1203.1(D).

Fee Schedule – R.S. 23:1034.2 – Based on “the mean of the usual and customary charges.” See LAC Title 40 for fee schedule.

Choice of Provider – R.S. 23:1121 – Employee may choose one treating physician in any field or specialty. Employer consent is required to change choice of physician in the same field or specialty, but not in a different field or specialty. R.S. 23:1121. Employer generally has right to direct care by non-physician healthcare providers.

Second Medical Opinions – R.S. 23:1121, 1124 – Employer may require employee to submit to periodic examinations by its choice of physician, may suspend benefits for failure to attend SMOs.

Independent Medical Examinations – May be obtained through OWCA Medical Services, or appointed by WCJ.

1002 Preliminary Determination Process - R.S. 23:1201.1

Upon First Payment of Compensation

1. Prepare a 1002 form
2. Send 1002 to the employee on the same day as first comp payment
3. Fax copy of the 1002 to the OWCA within 10 days from the date notice was sent to the employee

Upon any Modification, Suspension, Termination, or Controversion

1. Prepare a 1002 form
2. Send the 1002 to the employee by certified mail (to address where benefits are being sent) on or before the date of the change.
3. If the employee is represented, concurrently send the 1002 to the attorney by facsimile
4. Send the 1002 to OWCA on the same day it is sent to the employee and/or his representative

Prescription/Statute of Limitations - R.S. 23:1209

Indemnity Benefits

- One year from date of accident or death, absent payment or filing of formal claim
- If payment is made, one year from the last payment, except that claims for SEB may be brought up to three years after the last payment of indemnity
- “Developing Injury Rule” – where the injury does not develop immediately post-accident, claims for indemnity prescribe one year from the development of disability, but no more than three years after the accident date

Medical Benefits

- One year from the date of accident or death, absent payment or filing of formal claim
- If medicals benefits are paid, three years from the last payment

Indemnity Benefits - R.S. 23:1221

7 day waiting period, but “compensation for the first week shall be paid after the first two weeks have elapsed.” R.S. 23:1224

Temporary Total (TTD) – R.S. 23:1221(1)

Two-thirds AWW, “clear and convincing” proof that the employee is physically unable to engage in any employment or self-employment; TTD terminates when physical condition “has resolved itself to the point that a reasonable reliable determination of the extent of disability ... may be made and the employee’s physical condition has improved to the point that continued, regular treatment by a physician is not required.”

Permanent Total (PTD) – R.S. 23:1221(2)

Same rate and burden of proof as TTD; before adjudicating PTD status, WCJ must determine whether employee is candidate for vocational rehabilitation. R.S. 23:1226

Supplemental Earnings Benefits (SEB) – R.S. 23:1221(3)

Two-thirds of difference between “Average Monthly Wages” (52 times AWW, divided by 12), and monthly wages employee earns or is able to earn in any suitable employment or self-employment. Max of 520 weeks.

Permanent Partial (PPD) – See scheduled losses set forth in R.S. 23:1221(4)

Death Benefits - R.S. 23:1231

Schedule for “dependents”

(Subject to modification based on percentage of dependency)

- Spouse – 32.5% AWW
- Spouse and one child – 46.25% AWW
- Spouse and two or more children – 65% AWW
- One child – 32.5% AWW
- Two children – 46.25% AWW
- Three or more children – 65% AWW
- If no spouse or children – 32.5% each to surviving parent
- If no spouse, children, or parents – 32.5% to sibling, plus additional 11% to each additional sibling
- If other dependents – 32.5% to one, plus 11% for additional up to max of 65%

If no dependents, then one lump sum of 75K payable to surviving children; if no surviving children, then 75K to each surviving parent. In addition, the employer shall pay reasonable burial expenses up to \$8,500. If expenses are less than \$7,500, difference is paid to heirs. R.S. 23:1210

Termination

- Spouse – death or remarriage (two year lump sum due on remarriage)
- Physically or mentally incapacitated child – continue as long as incapacity exists
- Minor child – death, marriage, age of majority, or age 23 if in school
- Other – death or termination of dependency

Delays for Payments - R.S. 23:1201

TTD, PTD, Death benefits – R.S. 23:1201(B) – “Shall become due on the fourteenth day after the employer or insurer has knowledge of the injury or death, on which date all such compensation then due shall be paid.”

SEB – R.S. 23:1201(C) – “Shall become due on the fourteenth day after the employer or insurer has knowledge of the compensable supplemental earnings benefits on which date all such compensation shall be paid.”

PPD – R.S. 23:1201(D) – “Shall become due on the thirtieth day after the employer or insurer receives a medical report giving notice of the permanent partial disability on which date all such compensation then due shall be paid.”

Medical – R.S. 23:1201(E) – “Shall be paid within sixty days after the employer or insurer receives written notice thereof.” (30 days if billed electronically per R.S. 23:1203.2)

Penalties/Attorney Fees - R.S. 23:1201

1201(F) – Unreasonable failure to pay benefits/ approve choice of physician, greater of 12% of amount due, or \$50 per day up to max of \$2,000, plus reasonable attorney fee.

1201(G) – Failure to pay final, non-appealable judgment within thirty days, greater of 24%, or \$100 per day up to max of \$3,000, plus reasonable attorney fee.

1201(I) – Arbitrary or capricious discontinuance of benefits, up to \$8,000 plus reasonable attorney fee.

