



**The Commonwealth of Massachusetts
Department of Industrial Accidents**

Massachusetts Workers' Compensation Guide For Injured Workers

Esta guía está disponible en español en nuestro sitio de Internet:
www.mass.gov/dia

Este Guia está disponível em português no nosso site:
www.mass.gov/dia

Es manual sta skritu na Kriolu di Kabu Verdi prontu pa bu uzu na *website* (pagina na interneti):
www.mass.gov/dia

本指南的中文版本位於我們的網址:
www.mass.gov/dia

Có Hướng Dẫn này bằng tiếng Việt Nam tại mạng lưới của chúng tôi:
www.mass.gov/dia

W ap jwenn gid sa a ekri nan lang kreyòl sou sit entènèt nou an :
www.mass.gov/dia



WHAT IS WORKERS' COMPENSATION?

The Massachusetts Workers' Compensation system is in place to make sure that workers are protected by insurance if they are injured on the job or contract a work-related illness.

Under this system, employers are required by Massachusetts General Laws Ch. 152, §25A to provide workers' compensation (WC) insurance coverage to all their employees. This insurance pays for any necessary medical treatment related to the injury or illness and also pays compensation for lost wages after the first five calendar days of full or partial disability.

The Department of Industrial Accidents (DIA) is the agency responsible for administering the workers' compensation law in Massachusetts.

What We Do

The DIA is primarily a court system tasked with resolving disputed workers' compensation claims. Our Public Information staff can answer your questions about workers' compensation benefits and let you know the correct procedures to follow to receive these benefits. If your claim is denied by the insurer or if you do not receive all the benefits you are entitled to, we can help you through our claim process.

It is important that you keep any documents your employer or its insurer sends you, as well as copies of any forms they have you fill out for them. If you call our Public Information Office, please have these forms available along with a pen or pencil and some notepaper. It would also be helpful to write out your questions in advance so you don't forget to ask any questions you might have.

Included within these pages is a general overview of the process to follow if you have a work-related injury or illness. This guide provides information about your responsibilities and those of your employer and the insurance company, the workers' compensation dispute process, and workers' compensation benefits. Information regarding Lump Sum Settlements and Vocational Rehabilitation Services are also highlighted. A listing of some frequently asked questions with answers is also included.

Please be advised that the information contained in this brochure is general in nature and is not intended as a substitute for legal advice. Changes in the law or the specific facts of your case may result in legal interpretations, which are different than presented here.

Do You Need An Attorney?

You do not need an attorney to file a claim for benefits, and you are not required to have an attorney for any proceedings before the DIA. You may represent yourself or be represented by anyone you delegate, including an attorney. However, due to the complexity of the workers' compensation law it is strongly advised that you seek legal counsel to help protect your rights and interests. If you do get an attorney, the law requires that the insurer pay the attorney's fee if you win your case. In certain cases the insurer can reduce your payments to help pay for your legal representation. If you lose, the attorney can charge you only for very specific expenses.

Employees of the DIA are not allowed to make referrals to attorneys; however, the Massachusetts Bar Association can refer you to attorneys who handle workers' compensation cases. To reach the Massachusetts Bar Association attorney referral service, call (617) 654-0400 in the Boston area or toll free at (866) 627-7577.

What Happens If You Have A Work-Related Injury Or Illness?

If you have a work-related injury or illness which results in lost work time of five full or partial calendar days or more, your employer must file the *Employer's First Report of Injury or Fatality – Form 101* with the DIA and their workers' compensation insurance company within seven calendar days (not including Sundays and legal holidays) from the fifth full or partial calendar day you have been disabled because of the injury or illness. The insurance company has 14 calendar days from when they receive this form from your employer to investigate the claim and make a decision as to whether to pay the claim or not.

Please Note: If your employer does not send the *Employer's First Report of Injury or Fatality – Form 101* to the insurer, you should report the injury in writing to the insurance company yourself or complete the DIA's *Employee's Claim – Form 110* and send the insurer a copy of the completed form. Your employer should have a poster displayed in the workplace with the name and address of its workers' compensation insurer and policy information. If your employer does not have this poster displayed and will not tell you the name of its insurance company, the DIA's Office of Insurance (617-727-4900, ext. 405) will try to help you.

What Happens When The Insurer Decides To Pay The Claim?

If the insurer agrees to pay the claim, they will send you an *Insurer's Notification of Payment – Form 103*.

When will the benefits or check start?

You should start getting a check within three to four weeks after your injury or illness. You will receive compensation for lost wages for any days you are disabled after the first five full or partial calendar days. You are not compensated for the first five calendar days of incapacity unless you are disabled for **21** calendar days or more.

- The first 180 days after your initial injury are considered a "Pay Without Prejudice" period. This means the insurer may pay benefits to you for up to 180 days without making a final decision on your case. Paying you during this period **DOES NOT** mean they have accepted liability. During this initial period, the insurer may stop or reduce your payments by giving you seven calendar days written notice via an *Insurer's Notification of Termination or Modification of Weekly Compensation During Payment-Without-Prejudice Period – Form 106*. The insurer must give the reasons for taking this action. If the insurer continues paying you past this period, they will, in most cases, need permission from you or a judge to stop or reduce your benefits.
- The insurer may ask you to extend the initial 180-day "Pay Without Prejudice" period for up to a year, with your written consent, on an *Agreement To Extend 180 Day Payment Without Prejudice Period – Form 105*. The DIA must approve the form. You should make sure you are aware of all your rights before giving your consent or signing any other document.

What Happens When The Insurer Denies Your Claim?

If the insurer decides to deny your claim, they must send you by certified mail an *Insurer's Notification of Denial – Form 104* that includes the reasons for the denial and must inform you of your right to appeal the denial. If you have questions about a denial or lack of payment on these

forms, contact the insurer's claim representative. Their phone number will be listed on the form. If you have hired an attorney, have the attorney call the claim representative about your denial. The claim representative cannot speak with you about your claim once you retain an attorney.

What You Should Do When The Insurer Denies Your Claim, or You Do Not Receive All The Benefits You Are Entitled To

- You must complete and send an *Employee's Claim – Form 110* to the DIA. It is important that you fill out this form **completely and accurately**. Forms are available on our website at www.mass.gov/dia and at any DIA office. Do not send this form to the DIA unless you have received an *Insurer's Notification of Denial – Form 104*, or it's been 30 or more calendar days from your injury or illness date, and you have not heard from the insurer.
- You need to attach copies of any medical evidence that supports your claim, including medical bills and medical reports (not actual x-rays, MRI's, etc.) that document how your injury or illness is related to your work. Once you complete the claim form, attach the required documents and submit the claim package to the DIA at the address printed on the top of this form.
- You must also send a copy of the completed *Employee's Claim – Form 110* to the insurer. We recommend that you keep a copy of this form for your own files.
- Once the DIA receives your completed *Employee's Claim – Form 110*, you will be scheduled for a Conciliation within two weeks or so. This will start the dispute process. You will be notified in writing of the date, time and location of this meeting.
- **Please Note:** When you come to any DIA office for a proceeding, be sure to bring with you any letters the insurer or the DIA has sent to you, along with any other relevant paperwork, *especially the letter telling you to come to the DIA.*

THE DISPUTE PROCESS

1. Conciliation

When an *Employee's Claim – Form 110* is filed with the DIA or the insurance company requests permission to stop or change your benefits via an *Insurer's Complaint for Modification, Discontinuance or Recoupment of Compensation – Form 108*, an informal meeting will be scheduled between you, the insurer, and a conciliator from the DIA. This meeting, called a "Conciliation," normally takes place within 12 business days of our processing your claim form or the insurer's Form 108. At the Conciliation we will attempt to reach a voluntary agreement between you and the insurer. If a voluntary agreement cannot be reached, the status of your claim would remain the same as before, and your case could be referred to one of our judges for a Conference. You and the insurer could also agree to voluntary arbitration.

2. Conference

The Conference is an informal proceeding before an Administrative Judge. The judge learns about the case from presentations by both parties and the submission of documents, such as medical reports, wage statements and affidavits from witnesses. Witnesses are not called; you just tell the judge what the witnesses would have said. At the Conference you would need to show: (A) you were disabled; (B) the injury or illness was work related; and (C) that any disputed medical

bills were for necessary treatment. After the Conference the judge issues an order, either telling the insurer to pay your benefits or ruling that they are not required to pay your benefits.

The Conference Order can be appealed by either party on an *Appeal of a Conference Proceeding – Form 121*. You have 14 calendar days to appeal from the date of the order. There is a \$450 fee to appeal the Conference Order if your appeal is based on a medical issue. This fee may be waived if you can prove you cannot afford to pay the fee by filing an *Affidavit of Indigence and Request for Waiver of §11A (2) Fees – Form 136*. If either party appeals the Conference Order, a formal hearing before the same judge will be scheduled.

3. Hearing

The Hearing is a more formal proceeding held before the same Administrative Judge who presided at the Conference. Massachusetts Rules of Evidence will apply and sworn testimony is taken. Witnesses are called and cross-examined by the opposing party. A stenographer records the proceedings.

The judge will render a final decision as a result of the Hearing in which he or she will either award benefits or not. The decision can be appealed to the Reviewing Board by either party on an *Appeal to Reviewing Board – Form 112*. This appeal can only be made if the party contends that the judge made an error of law in issuing their decision or during the Hearing. The appeal must be received within 30 calendar days from the date of the Hearing decision. There is an appeal fee equal to 30 percent of the State Average Weekly Wage in place at the time of the appeal. The fee may be waived by filing an *Affidavit in Support of Request for Waiver of Filing Fee Under §11C – Form 112A*.

4. The Reviewing Board

This board is made up of six Administrative Law Judges, three of whom will examine the hearing transcripts. They may ask for written briefs or oral arguments from either party. The Reviewing Board can reverse or uphold the decision of the Administrative Judge. The Reviewing Board may also remand (send back) the case to the Administrative Judge for further finding.

Further Appeals

Reviewing Board decisions can be appealed to the Massachusetts Court of Appeals.

WHAT ARE THE WORKERS' COMPENSATION BENEFITS?

Temporary Total Incapacity Benefits (§ 34)

Who Qualifies?

- You qualify if your injury or illness leaves you unable to work, considering your age, training, and experience for six or more full or partial calendar days (the days do not have to be consecutive).

What Are The Benefits?

- Your benefits will be 60% of your gross average weekly wage. To determine your benefits, take your actual gross earnings, including overtime, bonuses, etc. and divide this number by the number of weeks you worked at your job in order to compute your average weekly wage. Multiply that by 60% (.60) to come up with your approximate weekly compensation. The maximum that you can

receive is the State's Average Weekly Wage (SAWW) at the time of your injury. The SAWW is set annually by the Massachusetts Division of Unemployment Assistance.

For How Long?

- You can receive these benefits for up to 156 weeks. Compensation begins on the sixth day of incapacity; you will not be compensated for the first five days of incapacity unless you are disabled for 21 calendar days or more. Again, these days do not have to be consecutive.

Partial Incapacity Benefits (§ 35)

Who Qualifies?

- You qualify if you can still work but lose part of your earning capacity because of your injury or illness. This may include an injury forcing you to change jobs at a lower pay rate or to work fewer hours.

What Are The Benefits?

- The maximum compensation under this section of the law is limited to 75% (.75) of what your weekly total temporary benefits would be. For example, if you receive \$440 a week as a total temporary benefit, the most you could receive if you collected partial benefits would be \$330 a week. ($\$440 \times .75 = \330)

For How Long?

- You can receive benefits for up to 260 weeks.

Permanent And Total Incapacity Benefits (§ 34A)

Who Qualifies?

- You qualify if you are totally and permanently unable to do any kind of work as a result of a work-related injury or illness. You do not have to exhaust your temporary benefits before applying for permanent benefits.

What Are The Benefits?

- You will get two-thirds of your average weekly wage (or a minimum of 20% of the SAWW) based on the 52 weeks prior to your injury, up to a maximum of the SAWW. You are also entitled to annual Cost-Of-Living Adjustments (COLA).

For How Long?

- You can receive benefits for as long as you are disabled.

Medical Benefits (§ 13 & § 30)

Who qualifies?

- You qualify if you suffer a work-related injury or illness that requires medical attention.

What Are The Benefits?

- You are entitled to adequate and reasonable medical care as a result of the injury or illness. You are also entitled to prescription reimbursement and mileage reimbursement for travel to and from medical visits for your work-related injury or illness. For your first visit to the doctor or hospital, your employer has the right to designate a healthcare provider within the employer's preferred provider arrangement. After that initial treatment, you have the right to choose your own healthcare providers. The insurer has the right to send you periodically to see its doctor for an evaluation of your incapacity.
- Once your claim has been reported to the insurance company, the insurer must issue you an insurance card with a claim number and contact information on it. Give the claim number to your doctor so the doctor can bill the insurer directly and get pre-approval for treatment of your injury or illness. If you do not get this card promptly after your injury or illness, contact the insurer and get the number as most medical providers will not treat you without the claim number.

For How Long?

- You can receive benefits for as long as medical and hospital services are required due to your injury or illness.

Permanent Loss Of Function And Disfigurement Benefits (§ 36)

Who Qualifies?

- You qualify if a work-related injury or illness results in a permanent loss of certain specific bodily functions, scarring and/or disfigurement. The scars must be located on your face, neck or hands.

What Are The Benefits?

- You receive a one-time payment for your disfigurement and/or scarring. This benefit is paid in addition to other payments; for example, medical bills, lost wages, etc. The amount paid depends on the location and severity of the disfigurement or function lost.
- If you were injured or suffered an illness prior to December 24, 1991, you have slightly different benefits. Contact our Public Information Office if you have any questions about these benefits. If you do not have an attorney, you may want to contact our Conciliation Unit once the insurer has made an offer for your scarring and disfigurement and speak to a Conciliator. The Conciliator can give you an idea of whether the offer falls within established guidelines.

For How Long?

- You receive a one-time payment for your loss of body function, disfigurement and/or scarring.

Survivors'/Dependents' Benefits (§ 31)

Who Qualifies?

- You qualify if you are the spouse or child of an employee who has died as a result of a work-related injury or illness. Children are eligible only if they are under age 18, are full-time students or are unable to work because of physical or mental disabilities.

What Are The Benefits?

- Surviving spouses can receive weekly benefits equal to two-thirds of the deceased worker's average weekly wage, up to the maximum of the State's Average Weekly Wage (SAWW) in place at the time of their injury or illness.
- Surviving spouses become eligible for yearly cost of living adjustments two years after the date of the injury or illness.
- If the spouse remarries, \$60 a week is paid to each eligible child. The total weekly amount paid to dependent children cannot exceed the amount the spouse had been receiving.

For How Long?

- Surviving spouses can receive these benefits for as long as they remain dependent and do not remarry.

Burial Expenses (§ 33)

In all cases where death has occurred as a result of an injury or illness, the insurer will pay up to \$4000 for reasonable burial expenses.

WHEN BENEFITS MAY BE STOPPED OR REDUCED

Your benefits may be stopped or reduced for several reasons. Some of the more common reasons are:

- It is ordered by an arbitrator, Administrative Judge, Reviewing Board, or higher court; or
- You have returned to work (the insurer must resume benefits if you leave work again due to the same injury within 28 days, provided that the insurer has accepted or been assigned liability for your injury); or
- The insurer has been given a medical report by your treating doctor or an impartial medical examiner stating that you are capable of returning to work, **and** your employer has reported in writing that a suitable position is available for you that your doctor has approved; or

- You are requested to attend an evaluation by a DIA Vocational Rehabilitation Review Officer, and you refuse to attend or refuse to cooperate with the provision of vocational rehabilitation services; or
- You are asked to go to the insurer's doctor for evaluation, and you fail to attend; or
- You are imprisoned after conviction for either a misdemeanor or felony.

LUMP SUM SETTLEMENTS

A lump sum is a settlement or contract between you, the insurer, and in some cases your employer. This one-time payment may be made in place of your weekly compensation checks and certain other benefits. In accepting a settlement, you give up certain rights, so you must carefully consider whether or not settling your case is in your own best interest. No one is entitled to a lump sum; both you and the insurance company must agree to it. For more information, please visit our website at <www.mass.gov/dia> or call our Public Information Office for a Lump Sum Brochure.

VOCATIONAL REHABILITATION SERVICES

The goal of vocational rehabilitation (VR) is to return you to work earning as close as possible to what you were earning prior to your injury or illness. VR services cover all **non-medical** services that you may require to return to a suitable job.

Services may include: evaluation of your capabilities, vocational testing, counseling or guidance, workplace modifications, and/or job placement assistance/formal retraining.

If you are requested to meet with one of our VR Review Officers, you **must** attend this meeting. This meeting is to determine if you are suitable for these services. If you refuse to come to this meeting, your benefits can be discontinued. If you refuse to take part in a rehabilitation program after being found suitable, your weekly benefits can be reduced by the insurance company with the DIA's permission. For more information, please visit our website at <www.mass.gov/dia> or call our Public Information Office for a VR Brochure.

SOME FREQUENTLY ASKED QUESTIONS BY INJURED WORKERS

Does my employer have to keep my job open while I am out on compensation?

The Massachusetts Workers' Compensation Law does not require your employer to hold your job open if they need to replace you while you are out. However, once you are able to return to work, §75A of the law requires your employer to give you preference in rehiring if a suitable job is available. Visit our website for more information at <www.mass.gov/dia>.

Are my workers' compensation benefits tax free?

Under federal and state tax codes, workers' compensation benefits are tax free.

What about my employee benefits from work? Will those continue?

The Massachusetts Workers' Compensation Law does not require the continuation of most fringe benefits including health insurance. Talk to your personnel office about how your injury will affect your health insurance and such policies as the earning of sick and vacation time. If you are a union member, check with your union regarding benefits and obligations of your employer.

For additional "Frequently Asked Questions," please visit our website at www.mass.gov/dia.

Department of Industrial Accidents
600 Washington St., 7th Floor
Boston, MA 02111

Public Information

Workers' Compensation Law is complex; therefore, the procedures for filing a claim may be confusing. This brochure should answer most of your basic questions. If you need more information, call any of our regional offices or contact our Public Information Office; from within Massachusetts, call our toll-free line: 1-800-323-3249, ext. 470. From outside Massachusetts, call 617-727-4900, ext. 470. You can also get information by visiting our website at www.mass.gov/dia.

TDD (teletype for the hard of hearing only): 1-800-224-6196

DIA Regional Offices:

Boston: (617) 727-4900; **Fall River:** (508) 676-3406; **Lawrence:** (978) 683-6420;
Springfield: (413) 784-1133; **Worcester:** (508) 753-2072 .

COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF INDUSTRIAL ACCIDENTS

YOUR GUIDE TO WORKERS' COMPENSATION is published by the Massachusetts Department of Industrial Accidents, 600 Washington St., 7th Floor, Boston, MA 02111 – **October, 2007 - Printed on recycled paper**