

Workers' Compensation for School Employees

All school employees in Maryland are covered by Workers' Compensation insurance from the first day of employment. This insurance covers employees while working on behalf of the employer. There is no cost to the school employee. Boards of education are required to purchase this insurance to cover their employees. If a board of education fails to purchase this insurance, the Uninsured Employers' Fund will provide coverage to an employee. If there is a possibility that a Workers' Compensation injury has occurred, the school employee should immediately report the injury to the school employee's supervisor and then contact their local MSTA field representative for further assistance.

A claim should be filed within 60 days after an injury; however, a claim may be filed up to two years after an injury under certain circumstances. A claim is usually filed by the employee or the employee's attorney. Just because the school employee has prepared an incident report does not mean that a claim has been filed. The employee must file his/her own claim with the Workers' Compensation Commission (Commission). Once a claim has been filed, the Commission will send to the employee a "Notice of Employee's Claim" that shows the claim information. This information may also be obtained online at http://www.wcc.state.md.us/WFMS/public_inquiry.html. The employee can also call the Workers' Compensation Commission at 800/492-0479 and enter the his/her social security number at the appropriate prompt. Your local Association can help you with this process, including recommending an experienced Workers' Compensation attorney.

Reasons for Payment

To be eligible for benefits, an employee must sustain an accidental injury or occupational disease arising out of and in the course of his or her employment. An accidental injury is an injury that one gets as a result of his or her employment. A disease is considered an occupational disease if it is a disease that would normally be expected to be contracted from the work environment, and does actually result from the work environment. Repetitive motion injuries are often considered occupational diseases.

Summary of Compensation Benefits

There are many benefits that an employee may receive if he or she is found to be eligible. These benefits include, but are not limited to, medical benefits, Temporary Disability benefits, and Permanent Disability benefits.

All reasonable and necessary medical treatments that are needed because of the injury or occupational disease are covered for the remainder of the employee's life.

1. Temporary Disability

Temporary Disability is disability paid while the employee is healing. This healing period lasts until the employee is to the point of maximum medical improvement (MMI). This occurs when the employee's doctors say that he or she has recovered as much under their care as possible and release the employee from active care.

Temporary Disability comes in two forms: (1) Temporary Total Disability (TTD) and (2) Temporary Partial Disability (TPD).

TTD occurs when the employee's doctor tells the employee that he or she cannot go to work and that he or she should stay home and recuperate. Benefits are paid to the employee at two-thirds of the employee's average weekly wage for the thirteen weeks prior to the employee's injury. This amount cannot exceed the state average weekly wage (\$877 in 2008). The employee will continue to receive this until the employee's doctor says he or she can return to work in some capacity. By law, the first three days of TTD are not paid until the employee is off for a minimum of fourteen days.

TPD occurs when the employee's doctor says that he or she can work with limitations, and because of this he or she can't earn the previous average weekly wage. In this case, the benefits paid are one-half of the difference between the employee's weekly earnings and the employee's average weekly wage up to one half of the state average weekly wage for the year of injury.

If the employee's doctor releases the employee to work with restrictions, and the employer cannot provide a job that the employee can perform under the doctor's restrictions, the employee is eligible for TTD payments.

For either TTD or TPD, each time the employee sees his or her doctor he or she should get a doctor's disability statement written by the doctor. Without this, the employee's benefits will not be paid.

Any monetary benefits may be paid throughout the employee's life if medically necessary, so long as there is not more than a five-year gap in payments.

2. Permanent Disability

Once the employee has reached maximum medical improvement (MMI), it is time to have his or her permanent disability evaluated. Under Workers' Compensation law, different parts of the body have different values, expressed in weeks of compensation. These values are listed in the Workers' Compensation statute. Any part of the body that is not listed in the statute is worth 500 weeks. Most notably, backs and necks are not listed, and, thus, are worth 500 weeks.

The permanent disability that the employee suffered as a result of his or her injury is evaluated by a doctor of his or her choice and a doctor of the insurer/employer's choice. These ratings determine the amount of permanent disability that the employee will receive. There are three levels of Permanent Partial Disability: (1) under 75 weeks; (2) 75 weeks to under 250 weeks; (3) and 250 weeks or greater. The amount of weeks the employee gets for his or her injury determines the rate at which he or she is paid for each week. The year of the injury also determines the amount of compensation. For example, if the employee were injured in 2008, he or she would receive \$114.00 per week for each week less than 75 weeks, \$293.00 per week if the number of weeks falls between 75 and 249, and \$658.00 per week for more than 250 weeks.

For example, if the employee injured his or her back and it is found to be 10% disabled as a result of this injury in 2008, he or she will receive compensation for 50 weeks (10% of 500 = 50). A 50-week injury will pay the employee \$114.00 for 50 consecutive weeks. If the employee is found to be 20% disabled, he or she will get \$293.00 per week for 100 weeks.

The figures become more complicated past 249 weeks. The employee's attorney will explain this to the employee, if necessary.

If the employee is permanently totally disabled as a result of his or her injuries, he or she is entitled to lifetime disability payments. The loss of, or total loss of use of, both hands, arms, legs, eyes, or any combination of these is considered permanently totally disabling. These injuries do not have to be suffered in the same accident in order to be permanently disabling under the law. The employee's lawyer will explain these benefits, as well as any other benefits for total disability. Additionally, if the employee experiences a worsening of his/her condition after having his/her permanent disability evaluated, then the employee can be re-evaluated by the Workers' Compensation Commission, so long as this worsening condition occurs within five (5) years of the date of the last payment received from the Workers' Compensation insurer or employer.

3. Other Benefits

Other benefits include vocational rehabilitation and death and funeral benefits. Vocational rehabilitation is assistance in finding a new occupation in the event that the employee can no longer perform his or her occupation because of his or her injuries. This benefit is to insure that the employee may return to some type of gainful employment if at all possible. An employee who is receiving vocational rehabilitation services, as part of a vocational rehabilitation plan approved by the Workers' Compensation Commission, is entitled to compensation as if temporarily totally disabled.

Benefits paid to the employee are not taxable. However, these benefits may be reportable, so the employee should keep a complete record of payments to him or her, as if they were paychecks.

If a school employee decides to take disability retirement as a result of his or her workers' compensation injuries, payments made to the employee for disability retirement will be set off against any permanent disability benefits that he or she receives as a result of his or her Workers' Compensation Claim. The employee will get either the full Workers' Compensation permanent disability benefits or the full disability retirement benefits, whichever is greater, until one or the other ends.

Miscellaneous Matters

MSTA does not provide an attorney to represent school employees before the Workers' Compensation Commission because the law prohibits the Association from paying the attorney's fees on behalf of the employee. However, MST A and your local representatives will assist the employee in locating suitable counsel. As with many areas of the law, Workers' Compensation law is highly specialized. Remember, Workers' Compensation is similar to defending a traffic ticket. Most claims are not accepted by the workers' compensation insurer as being valid. If the employee's claim is contested, it is particularly helpful to have the assistance of an attorney, since the employer will be represented by an attorney. MST A highly recommends that each employee who wishes to make a Workers' Compensation Claim be represented by an attorney.

Further information may be obtained by contacting:
Workers' Compensation Commission
10 East Baltimore Street
Baltimore, MD 21202-1641
410/767-0900 or 800/492-0479
<http://www.wcc.state.md.us/>