

Division of Workers' Compensation fact sheet C

Answers to your questions about temporary disability benefits

This fact sheet will help you understand workers' compensation temporary disability benefits. Temporary disability (TD) benefits are payments you get if you lose wages because your injury prevents you from doing your usual job while recovering.

Q: Do I need to fill out the claim form (DWC 1) my employer gave me?

A: Yes, if you want to make sure you qualify for all benefits. Your employer must give you a DWC 1 claim form within one day of knowing you were injured. Filling out the claim form opens your workers' comp case. State law also lays out benefits beyond the basics you may qualify for once you file the claim form with your employer. Those benefits include, but are not limited to:

- A presumption that your injury or illness was caused by work if your claim is not accepted or denied within 90 days of giving the completed claim form to your employer
- Up to \$10,000 in treatment under medical treatment guidelines while the claims administrator considers your claim
- An increase in your disability payments if they're late
- A way to resolve any disagreements that might come up between you and the claims administrator over whether your injury or illness happened on the job, the medical treatment you receive and whether you will receive permanent disability benefits.

If you do not file the claim form within a year of your injury you may not be able get benefits.

Q: What if my employer didn't give me the DWC 1 claim form?

A: Ask your employer for the form or call the claims administrator to get it. The claims administrator is the person or entity handling your employer's claims. The name, address and phone number of this person should be posted at your workplace in the same area where other workplace information, like the minimum wage, is posted. You can also get the form from the Division of Workers' Compensation (DWC) Web site at www.dir.ca.gov/dwc. Click on "forms."

Q: What are the temporary disability benefits?

A: Temporary disability (TD) benefits are payments you get from the claims administrator if you can't do your usual job while recovering from your injury or illness. TD benefits are not taxable. If you can do some work while recovering but earn less than before the injury, you will receive temporary partial disability (TPD) benefits. If you can't work at all while recovering you will receive temporary total disability (TTD) benefits. Some employers have plans that pay all your wages for all or part of the time you are temporarily disabled. These plans are called salary continuation. There are different types of salary continuation plans. Some use your vacation and/or sick leave to supplement the temporary disability payments required by state law. Check with your employer to find out if you are covered by one of these plans.

Q: How is temporary disability calculated?

A: As a general rule, you are paid two-thirds of your gross (pre-tax) wages at the time of injury, with minimum and maximum rates set by law. Your wages are figured out by using all forms of income you receive from work: wages, food, lodging, tips, commissions, overtime and bonuses. Wages can also include earnings from work you did at other jobs at the time you were injured. Give proof of these earnings to the claims administrator. The claims administrator will consider all forms of income when calculating your temporary disability benefits.

Q: When does temporary disability start and stop?

A: TD payments begin when your doctor says you can't do your usual work for more than three days or you get hospitalized overnight. Payments must be made every two weeks. Generally, TD stops when you return to work, or when the doctor releases you for work, or says your injury has improved as much as it's going to. If you were injured between April 19, 2004 and Jan. 1, 2008, your TD payments won't last more than 104 weeks from the first payment for most injuries. Those injured on or after Jan. 1, 2008 are eligible to receive 104 weeks of disability payments within a five-year period. The five-year period is counted from the date of injury. Payments for a few long-term injuries, such as severe burns or chronic lung disease, can go longer than 104 weeks. TD payments for these injuries can continue for up to 240 weeks of payment within a five-year period.

You can also file a state disability insurance (SDI) claim with the Employment Development Department. You should file this claim even if your workers' comp case is accepted. This will allow you to get SDI payments after the 104 weeks of TD payments if you are still too sick or hurt to go back to work.

Q: Do I get other benefits while receiving temporary disability?

A: You have the right to receive medical treatment right away. The claims administrator may investigate your claim before deciding whether or not to accept it. Even if it investigates, the claims administrator must approve medical treatment for your injury within one working day after you submit a DWC 1 claim form. The treatment you get must be within medical treatment guidelines set by the state. The total cost of the treatment you get during the investigation cannot be more than \$10,000.

You should also be reimbursed for transportation costs including mileage, parking and tolls for trips to and from the doctor's office. The claims administrator also pays for prescriptions, physical therapy visits and other medical costs.

Q: What if there is a problem with my benefits?

A: If you have a concern, speak up. Talk to your employer or the claims administrator handling your claim and try to resolve the problem. Misunderstandings and mistakes sometimes occur, but you can resolve most of them by calling the claims administrator. If this doesn't work, get help by trying the following:

Contact a state Division of Workers' Compensation (DWC) Information and Assistance (I&A) officer: State I&A officers answer questions to help injured workers. They provide information and forms and help resolve problems with your claim. They hold free workshops to teach injured workers about their rights and responsibilities under the law. Check the attached office listing to find an I&A office near you. You can also look up a local office in the government pages of your phone book under state government, industrial relations, workers' compensation, or go to the DWC Web site at www.dir.ca.gov/dwc/. Call 1-800-736-7401 to hear recorded information for injured workers.

Consult an attorney: Lawyers who specialize in helping injured workers with their workers' compensation claims are called applicant's attorneys. Their job is to plan a strategy for your case, gather information to support your claim, keep track of deadlines and represent you in hearings before a workers' compensation judge at your local Workers' Compensation Appeals Board office. If you hire an attorney, the attorney's fees will be taken out of benefits you receive. A judge must approve the fees.

If you have a serious problem with your claim you may need to go before a workers' compensation judge. In that case, you must fill out an application for adjudication of claim. That form normally must be filed within one year from the date of your injury or the last date you were paid benefits. Use I&A guide 4 to help you file this form.

If you need more information, first contact the claims administrator handling your claim. If you need an Information & Assistance (I&A) guide or other help, call an I&A office or attend a workshop for injured workers. The local I&A phone numbers are attached to this fact sheet. You can also get information on local workshops and download the guides from the Web at www.dir.ca.gov/dwc/.

The information contained in this fact sheet 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 different than those presented here.