



The Commonwealth of Massachusetts
Department of Industrial Accidents

Massachusetts Workers' Compensation Guide For Injured Workers

Esta guía está disponible en español en
nuestro sitio electrónico:

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

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អាចមានជាភាសាខ្មែរនៅលើវេបសាយរបស់យើង :

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, **all employers are required to provide Workers' Compensation (WC) insurance coverage to all their employees** by Massachusetts General Laws Ch. 152, Sec.25A. This insurance pays for any reasonable and necessary medical treatment related to a job-related injury or illness, pays compensation for lost wages after the first five calendar days of full or partial disability, and in some cases provides retraining for employees who qualify.

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 responsible for 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 injury or illness claim is denied by the insurer or if you do not receive all the benefits you think you are entitled to, the DIA's Public Information staff is available to help guide you through the 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, have these forms available along with a pen or pencil and notepaper. It might be helpful to write out your questions in advance so you don't forget to ask any questions you might have.

This pamphlet 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 **your employer's insurance company**. The guide will explain the Workers' Compensation dispute process, and available benefits, including Lump Sum Settlements and Vocational Rehabilitation Services. Many frequently asked questions can be found on our website at www.mass.gov/dia.

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?

Half of all injured worker claims are not disputed by an insurer or employer. If your claim is disputed, **it is strongly advised that you seek legal counsel** to protect your rights and interests, due to the complexity of the workers' compensation law. The law requires that the insurer pay the attorney's fee if you win your case. In certain cases the insurer may reduce your payments to help pay your attorney. If you lose, the attorney can charge you only for very specific expenses. You do not necessarily *need* an attorney to file a claim, and you may represent yourself for any proceedings before the DIA. This is not recommended in most cases.

Employees of the DIA are not allowed to make attorney referrals. 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, or visit www.massbar.org, and click on the "**Need a Lawyer?**" tab.

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 at least five full or partial days, your employer must file the *Employer's First Report of Injury or Fatality (Form 101)*. One copy is filed with the DIA, a second with the employer's Workers' Compensation insurance company, and a third provided to you. The *Form 101* must be filed within seven days (not including Sundays and legal holidays) from the fifth day of lost time due to injury or illness. Once the insurance company receives the form from your employer, they have 14 days to investigate the claim and determine whether to pay the claim or not.

IMPORTANT: If your employer does not send the *Form 101* to the insurer within 30 days of your injury, 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. You can access, fill out, and print the form in the Forms and Publications section at www.mass.gov/dia.

Your employer is required to 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. 408 or ext 405) will try to help you. If you suspect your employer is not carrying insurance, call our Office of Investigations at ext. 406.

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 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 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. If you receive a *Form 106* and you receive notification of termination of benefits, be sure to consult an attorney to discuss your rights and responsibilities.
- 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)*, including the reasons for denial and must inform you of your right to appeal. 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 Benefits You Are Entitled To

If an insurer denies your claim, you have the right to file a claim with the DIA. **If you wish to file a claim with the DIA, legal representation is strongly advised at this point in the process.** Fully and accurately complete and submit an *Employee's Claim (Form 110)* to the DIA, which you can access from the "Forms and Publications" area at our website, 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.

- When filing the *Form 110*, be sure to attach copies of any medical evidence that supports your claim, including medical bills and medical reports (do not attach x-rays, MRI's, etc.) that document how your injury or illness is related to your work. Submit the claim package to the DIA at the address printed on the top of the *Form 110*.
- You must also send a copy of the completed *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 *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 any proceeding, be sure to bring with you any communications the insurer or the DIA has sent to you, along with any other relevant paperwork, *especially the Notice of Proceeding telling you to come to the DIA.*

The Dispute Process

1. Conciliation

The first stage of the Dispute Resolution process is initiated when the DIA receives either of the following forms:

1. *Employee's Claim (Form 110)*, which is filed by an injured employee or their legal counsel against the Workers' Compensation insurance carrier.
2. *Insurer's Complaint for Modification, Discontinuance or Recoupment of Compensation (Form 108)*, which is filed when an insurance company requests permission to stop or change your benefits.

Upon receiving either of these forms, an informal meeting will be automatically scheduled between you (or your legal representative), the insurer's attorney, and a conciliator from the DIA. This meeting, called a "Conciliation," normally takes place within 12 business days of filing a *Form 110* or *Form 108*. At the Conciliation, an effort is made 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.

2. Conference

The Conference is an informal legal proceeding before an Administrative Judge, and usually will take place between 8 and 12 weeks from the date of the Conciliation. 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 or your attorney indicates to the judge what the witnesses would have said.

At the Conference you 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 days to appeal from the date of the order. **There is a fee to appeal the Conference Order if your appeal is based on a medical issue.** This fee pays for you to be evaluated by an impartial medical physician. 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 Sec.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 formal legal proceeding. It is usually held before the same 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 Hearing decision in which you will either be awarded 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 days from the date of the Hearing decision. There is an appeal fee equal to 30 percent of the State Average Weekly Wage¹ 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 Sec.11C (Form 112A)*.

¹ As of October 1, 2010, the State Average Weekly Wage (SAWW) is \$1088.06, and the appeal fee is \$326.41. The SAWW is updated annually on October 1. You can find updated information at www.mass.gov/dia and click on the Minimum/Maximum Compensation Rate icon.

4. The Industrial Accidents Review Board

If one or both of the parties wishes to appeal the Hearing decision, that appeal is heard and decided by the Review Board. This board is comprised of six Administrative Law Judges, three of whom will examine the hearing transcripts. They may ask for additional written legal briefs or oral arguments from the parties. The Review Board can reverse or uphold the decision of the Administrative Judge, or can determine that more work needs to be done, and remand (send back) the case to the Administrative Judge for further finding. Either party may appeal Review Board decisions to the Court of Appeals within 30 days of the Review Board decision.

5. Further Appeals

If one or both of the parties wishes to appeal the decision of the Review Board, the appeal is heard by the Massachusetts Court of Appeals.

What Are The Workers' Compensation Benefits?

Temporary Total Incapacity Benefits (Sec. 34)

Who Qualifies?

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

What Are The Benefits?

- Your benefits will be 60% of your gross (pre-tax, pre-benefits) average weekly wage.² To determine your compensation, take the sum of your total gross earnings for all employment within Massachusetts for the 52 weeks prior to injury, including overtime, bonuses, etc., for any work during that period. Divide the sum by 52 to compute your average weekly wage. (**Note:** If you were employed for only a portion of the 52 weeks prior to injury or illness, divide the total gross earnings by the number of weeks of employment in the prior year, to determine your average weekly wage.) Multiply your average weekly wage by 60% (.60) to find your approximate weekly compensation under Sec. 34. The maximum that you can receive is the State's Average Weekly Wage (SAWW)³ at the time of your injury.

For How Long?

- You can receive these benefits for up to 156 weeks (3 years). 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 days or more. These days do not have to be consecutive.

Partial Incapacity Benefits (Sec. 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 an injury that requires you to work fewer hours.

² A complete definition of Average Weekly Wage can be found in Massachusetts General Laws Ch. 152, Sec.1.

³ As of October 1, 2010, the State Average Weekly Wage (SAWW) is \$1088.06. You can find updated information at www.mass.gov/dia and click on the Minimum/Maximum Compensation Rate icon.

What Are The Benefits?

- The maximum compensation under Sec. 35 is up 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 (5 years).

Permanent and Total Incapacity Benefits (Sec. 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 (Sec. 13 & Sec. 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 (Sec. 36)

Who Qualifies?

- You qualify if a work-related injury or illness results in a permanent loss of certain specific bodily functions, or if you suffer scarring or disfigurement 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 (Sec. 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 (as determined by a judge) and do not remarry.

Burial Expenses (Sec. 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. Examples of those reasons are:

- Benefits are ordered to be stopped by an Administrative Judge, Reviewing Board, higher court, or arbitrator.
- 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.
- 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.
- You are requested to attend an evaluation by a DIA Vocational Rehabilitation Review Officer and you refuse to attend, or you refuse to cooperate with the provision of vocational rehabilitation services.
- You are asked to go to the insurer's doctor for evaluation, and you fail to attend.
- You are imprisoned after conviction for either a misdemeanor or felony.

Lump Sum Settlements

A lump sum settlement is a legal contract between you, the insurer, and in some cases your employer. **A lump sum settlement is one-time payment usually made in place of your weekly compensation checks.** A lump sum won't affect your medical benefits. Be sure when accepting a settlement that you are clear on your rights, and what you may be giving up, as you must carefully consider whether settling your case is in your own best interest. Again, this is a critical time to seek legal advice. A lump sum is not given automatically; both you and the insurance company must agree to it, and in most cases, it must be approved by an Administrative Judge at the DIA.

In receiving a lump sum settlement, you may still be eligible for Vocational Rehabilitation Services paid by the insurer. Discuss these rights with a judge or your attorney prior to signing any agreement.

Visit our website at www.mass.gov/dia under "Forms and Publications" to download 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, if not more. VR services cover all **non-medical** services that you may require to return to a suitable job.

Depending on your situation, services *may* include: evaluation of your capabilities, vocational testing and training, counseling or guidance, workplace modifications, formal retraining, and job placement assistance.

If you receive a notice to meet with one of our VR Review Officers, you must attend this meeting. **If you fail to come to this meeting, your benefits can be discontinued.** This meeting is to determine if you are suitable for services designed to help put you back to work. 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.

How to Verify Workers' Compensation Coverage

The DIA provides a free web-based "Proof of Coverage" (POC) tool that can help verify whether an employer has a current Workers' Compensation policy. Although the POC tool is not designed to detect fraud, it may assist in determining whether fraud exists. To access the POC tool, go to www.mass.gov/dia and click on the link to "Verify Workers' Compensation Coverage."

If after checking the POC tool you believe that an employer is not providing coverage, contact our Office of Investigations at 617-727-4900 x214 or toll free at 1-877-MASSAFE (627-7233). Or fill out a referral form online.

Frequently Asked Questions By Injured Workers

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

Public Information

The procedures for filing a Workers' Compensation claim may be confusing. This brochure may answer basic questions. If you need more information, call any of our regional offices or contact our Boston office; from within Massachusetts: 1-800-323-3249, ext. 470. From outside Massachusetts, call 617-727-4900, ext. 470. You can also visit www.mass.gov/dia.

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

DIA Regional Offices

Boston

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**Commonwealth of Massachusetts
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