

# New York Workers Compensation Fact Sheet

## Claims Process:

- Claimant must notify employer within 30 days
- C-3 must be filed within 2 years of accident or within 2 years from when claimant knew or should have known injury was related.
- Employer must report injury to the WCB and Carrier within 10 days of notice.
- Insurer to provide claimant with written statement of rights under the law within 14 days after employer notifies carrier.
- Carrier must begin payments within 18 days after disability or 10 days after employer first has knowledge of alleged accident, or within 10 days after employers' notification of injury/illness, whichever is greater. Carrier files appropriate FROI or SROI indicating that payment has begun or the reason why payments are not being made.
- When the Board notifies a carrier that a case has been indexed, and it decides to controvert the claim, a notice of controversy shall be filed with the Board within 25 days from the date of mailing of the notice of indexing.

## Independent Medical Examinations (IME):

- IMEs are governed under WCL §137
- Claimant shall receive notice by mail of the scheduled IME at least 7 business days prior.
- A copy of the report shall be submitted to the WCB, the carrier, the attending physicians, the claimant's representative, and the claimant.
- In any case where an award has been directed, an IME shall not be the basis for suspending or reducing payments until there is a determination by the Board.

## Average Weekly Wage (AWW):

- Indemnity benefits are tax exempt, and are calculated at a 33% reduction from employee's gross salary amount subject to a maximum (*see chart*) and minimum (\$150).
- Carrier must submit a C-240 showing the gross salary of the injured employee or a similar worker, for the 52 weeks prior to the accident. C-240 should list number of days worked in that 52 week period listed.
- If employee worked 261-299 days, use a straight divisor [gross salary divided by 52].
- Use a '260 multiplier' when calculating the AWW of any employee who worked 5 days per week or one that has worked between 234 and 260 days in the 52 week period [gross salary divided by days worked, multiplied by 260, divided by 52].
- For a seasonal employee, use a '200 multiplier' [gross salary divided by days worked, multiplied by 200, divided by 52].

## Maximum Compensation Rates:

07/01/2019 – 06/30/2020	\$934.11
07/01/2018 – 06/30/2019	\$904.74
07/01/2017 – 06/30/2018	\$870.61
07/01/2016 – 06/30/2017	\$864.32
07/01/2015 – 06/30/2016	\$844.29
07/01/2014 – 06/30/2015	\$808.65
07/01/2013 – 06/30/2014	\$803.21
07/01/2012 – 06/30/2013	\$792.07
07/01/2011 – 06/30/2012	\$772.96

## Maximum Medical Improvement (MMI):

- Date after which further recovery can no longer be reasonably anticipated. This does not necessarily require a complete recovery.
- Medical determination by a treating physician on C-4.3 and/or by an IME consultant.
- This date delineates a temporary disability from a permanent disability.
- A claimant can receive a schedule loss of use (SLU) award, or be classified with a permanent partial disability (PPD) or a permanent total disability (PTD).

## Schedule Loss of Use (SLU):

- When an employee has permanently lost use of an upper or lower extremity. Compensation is limited to a certain number of weeks. Temporary benefits that have previously been paid are deducted from the total SLU award.

BODY PART	SLU WEEKS
Arm	312
Leg	288
Hand	244
Foot	205
Eye	160
Thumb	75
First Finger	46
Second Finger	30
Third Finger	25
Fourth Finger	15
Great Toe	38
Other Toe	16

## Protracted Healing Period (PHP):

- If awards made at the total rate has exceeded a designated number of weeks, listed below, the claimant will be entitled to additional benefits on top of their schedule loss of use award:

Arm: 32 weeks	Hand: 32 weeks
Leg: 40 weeks	Thumb: 24 weeks
Foot: 32 weeks	First finger: 18 weeks
Great toe: 12 weeks	Second finger: 12 weeks
Toe other than great toe: 8 weeks	Third finger: 8 weeks
Eye: 20 weeks	Fourth finger: 8 weeks
Ear: 25 weeks	Thumb: 24 weeks

## Non-Schedule Classification:

- A permanent disability involving a part of the body that is not covered by a SLU (spine, lungs, heart, brain). This is based on the employee's permanent loss of wage earning capacity (LWEC).
- Permanent Total Disability (PTD) entitles the claimant to their total rate of compensation for the remainder of the claimant's life.
- If accident or date of disablement occurred on or after 03/13/2007, benefits are payable:

525 weeks for LWEC of greater than 95%  
 500 weeks for LWEC of greater than 90% - 95%  
 475 weeks for LWEC of greater than 85% - 90%  
 450 weeks for LWEC of greater than 80% - 85%  
 425 weeks for LWEC of greater than 75% - 80%  
 400 weeks for LWEC of greater than 70% - 75%  
 375 weeks for LWEC of greater than 60% - 70%  
 350 weeks for LWEC of greater than 50% - 60%  
 300 weeks for LWEC of greater than 40% - 50%  
 275 weeks for LWEC of greater than 30% - 40%  
 250 weeks for LWEC of greater than 15% - 30%  
 225 weeks for LWEC of 15% or less

## Disfigurement:

- Serious and permanent disfigurement to the face may entitle the worker to compensation up to a maximum of \$20,000.

## Death Benefits WCL 16-4:

If the worker dies from a compensable injury, the surviving spouse and/or minor children, and lacking such, other dependents as defined by law, are entitled to weekly cash benefits. If there are no surviving children, spouse, etc. entitled to compensation, the estate of the deceased worker may be entitled to payment of a sum of \$50,000. Funeral expenses may also be paid. For all deaths on and after June 8, 2016, the maximum amount for funeral expenses was increased from \$6,000 to \$12,500 in Metropolitan New York counties, and from \$5,000 to \$10,500 in all other counties.

## Awards / Penalties:

- Indemnity awards must be paid within 10 days of the filing of a Notice of Decision.
- If any installment of compensation is not paid after it becomes due, a penalty may be assessed.
- Section 25-1(e): Failure of carrier to pay compensation installment within 25 days after same became due.
  - 20% of compensation then due and an assessment of \$300 - Payable to claimant.
- Section 25-2(a) Failure of carrier to file Form C-7, Notice of Controversy, or begin compensation payments within 18 days after disability or within 10 days after knowledge or within 10 days after receipt of notice (Form C-2) by carrier, whichever period is greater.
  - \$300 - Payable to claimant
- Section 25-2(c) Carrier has objected to an award without just cause.
  - \$300 - Payable to claimant
- Section 25-3(d) Frivolous adjournment of "expedited case".
  - \$1,000 - Payable to Chair, for deposit in WCB Special Revenue Account, Paid by carrier or by carrier's atty./rep. if not employee of carrier.

## Workers' Compensation Lien - § 29

- When the compensable injury is due to a third-party tortfeasor, the Carrier shall be subrogated to the rights of claimant against the tortfeasor to the extent of the amount of the compensation benefits.
- To perfect the lien, the Carrier must provide written notice of its subrogation right to the third-party tortfeasor.
- New York State Labor Law § 240/241 holds employers and property owners fully liable when an employee becomes injured due to a gravity-related fall while working at elevations. Common examples: when a claimant falls from a ladder, off a scaffold, off a truck, etc.



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