

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

**Your Guide to the  
Massachusetts  
Workers'  
Compensation  
System**

For injured  
workers



# 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 law to provide workers' compensation (WC) insurance coverage to all their employees. This insurance pays for any necessary medical treatment related to the injury, and also pays partial compensation for lost wages, after the first five days of disability. By having this insurance, your employer is protected from being sued by you because of the injury. You may, however, sue a third party, in a civil suit.

If your claim is contested by the insurer, or if you do not get all the benefits you feel entitled to, or you if have other problems getting your workers' compensation benefits, the Department of Industrial Accidents (DIA) can help you.

This booklet will briefly describe what to expect if you are injured on the job. It will tell you what your responsibilities are and what the responsibilities of your employer and its insurance company are.

## WHAT WE DO



The DIA is primarily an alternative court system, tasked with resolving disputed WC insurance claims. Our public information personnel can answer your questions about workers' compensation benefits and let you know the correct procedures to follow to receive these benefits.

It is important that you keep any documents your employer or its insurer sends you, and copies of any forms they have you fill out for them. If you call our information line 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.

This booklet briefly explains your rights and responsibilities under the Massachusetts workers' compensation law. After you read it carefully, you should have a basic understanding of how our system works.

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. These issues are not within the jurisdiction of the Department of Industrial Accidents. The MA workers' compensation law also 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, Sec. 75A of the law requires your employer to give you preference in re-hiring, if a suitable job is available. See our web site for more information.

Please keep any and all records of your injury because you may need them if you become eligible to collect retirement, and/or Social Security benefits.

**Important:** The DIA has many 'numbered forms' that we require employers and insurers to use to keep you informed of actions they are taking on your claim. The DIA's phone number is on these forms, but if you have questions about the information on these forms, *call the Insurance Company's Claims Representative - not the DIA!*

## WHERE TO START

When you are hurt on the job your **employer** begins the claim process. If you need medical attention your employer must notify its workers' compensation insurance company of the medical bills. The insurer (your employer's workers' compensation insurance company) will issue you an insurance card, with a claim number, which you will give to your doctor so the medical bills can be sent directly to the insurer. If you don't get this card promptly after your injury, contact the insurer. Most medical providers will be looking for this number. When you see a doctor or other health-care professional make sure you inform them that you are seeking treatment for a work-related injury. If they accept you as a patient, they are agreeing to bill the insurer for your treatment. The insurer is responsible for the entire bill; there is no co-payment you need to make.

If you are disabled, unable to earn your full wages for a period of five or more calendar days, your employer has to report your incapacity to its insurance company and to the DIA on an *Employer's First Report of Injury/Fatality* form (Form 101). These five days do not have to be consecutive, and any day you are totally or partially disabled is counted.

Your employer must furnish this report within seven calendar days, not including Sundays and legal holidays, after your fifth calendar day of incapacity. If you report the injury to your employer after you have already been disabled for five or more days, your employer is obligated to file the Form 101 within seven days of the day you actually reported the injury to them. If your employer does not send this report to the insurer, you should report the injury to the insurance company yourself. Your employer should have displayed in the workplace a poster, with the name and address of its WC insurer, and other information. If your employer does not have this poster up, and will not tell you the name of its insurance company, the DIA's office of insurance (x 405) will try to help you.

The **insurer** must begin to pay you for lost wages or send you a notice of denial that includes its reasons for the denial, within 14 days of receiving the Form 101 from your employer. This means you should start getting a check within three to four weeks after your injury. You will receive compensation for lost wages for any days you are disabled after the first five days. You are not compensated for the first five days of incapacity unless you are disabled for 21 days or more.

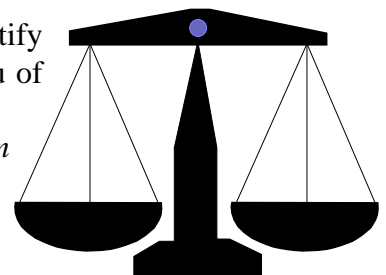
The insurer may pay benefits to you for up to 180 days without making a final decision on your case. This is referred to as the "Pay Without Prejudice" period. During this initial period the insurer may stop or reduce your payments by giving you seven days written notice of the termination or reduction. They 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.

**Please note:** The 180-day "Pay Without Prejudice" period can be increased by the insurer to one year, with your written consent, on a Form 105 "Agreement to Extend 180 Day Payment Without Prejudice". The Department must approve the Form 105. You should make sure you are aware of all your rights before giving your consent, or signing any other document.

## WHAT IF YOUR CLAIM IS DENIED?

If the insurer decides to deny the initial claim for benefits, it must notify you by certified mail of the denial, telling you its reasons, and must tell you of your right to appeal the denial by filing a claim with this department.

Your claim **must** be submitted on a Form 110 *Employee's Claim Form*. The form must be filled out **completely and accurately**. Forms are available on our web page <[www.mass.gov/dia](http://www.mass.gov/dia)>, and at any DIA office; or call our Public Information Office, 617-727-4900, ext. 470. This form is the same one you would file if the insurer began paying you for lost wages and then later notified you



that they were stopping or reducing your benefits.

There are documents that need to be attached to the claim form. A list of the required documents is contained on our web site, along with other information about filing a claim with us. If you cannot get access to a computer, you can get help from our Information Office, or at a law library. At minimum, you need to attach any and all evidence that supports your claim, including medical bills, medical reports that document your injury and that it is related to your work injury or illness.

Once you complete the claim form, attach the required documents, then submit the claim package to the DIA, 600 Washington St., 7<sup>th</sup> Floor, Boston, MA 02111 (the address is printed on the top of the form). **DO NOT SUBMIT CLAIM FORMS TO A REGIONAL OFFICE! All claim forms must be submitted to the Boston Office.**

You must also send a copy to the insurer. By law your employer must provide you with the name and address of the insurer. If your employer refuses to provide this information, or they do not have workers' compensation insurance, notify the DIA at once. We recommend that you keep a copy of the Form 110 for your own files. **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 you, along with any other relevant paperwork, especially the notice telling you of the proceeding.**

### **Conciliation**

When you file an *Employees' Claim* form with the DIA, or the insurance company requests permission to stop or change your benefits, an informal meeting will be scheduled between you, the insurer, and a conciliator from this department. This meeting, called a Conciliation, normally takes place within 12 business days of our processing your claim form. At this informal meeting we will attempt to reach a **voluntary agreement** between you and the insurer. No decision can be ordered at this proceeding. 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.

### **Voluntary Arbitration**

Any time prior to five days before a Conference you and the insurer can agree to refer your disputed case to an independent arbitrator. No further action is taken by our department on your claim. You would present your case to the arbitrator, the insurance company does the same, and the arbitrator will then issue a decision that is binding on both parties.

### **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. Testimony is not sworn. At the Conference you would need to show that you were disabled, the incapacity was work-related, and 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 liable for payments to you.

The Conference Order can be appealed by either party. This appeal must be filed with this department within 14 days of the issuance 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. If either party appeals the Conference Order, a formal Hearing before the same judge will be scheduled.

### **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 may continue to gather information after the Hearing.

The decision at a Hearing can be appealed to the Reviewing Board by either party. The Appeal to the Reviewing Board (Form 112) must be filed within 30 days of the issuance of the Hearing decision. There is a fee equal to 30 percent of the State Average Weekly Wage (at the time of the appeal) to appeal a Hearing decision.

### **The Reviewing Board**

This board is made up of six judges, three of whom will examine the hearing transcripts. They may ask for written briefs or oral arguments from either party. This panel can reverse or uphold the decision of the administrative judge.

### **Further Appeals**

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

## **HOW YOUR BENEFITS ARE DETERMINED**

Most benefits are based on your average weekly wage (AWW) prior to your injury (including overtime, tips, etc.), going back up to 52 weeks prior to your date of injury. If you have not been in your current job long enough to fairly determine your AWW, the insurer can use the actual wages of a co-worker who had been in a similar job as yours long enough to determine an AWW, or another method.

### **Medical Benefits**

You are entitled to adequate and reasonable medical care. You will also be paid mileage for travel to and from medical visits. For your first visit to the doctor or hospital your employer has the right to designate a health care provider within the employer's preferred provider arrangement. After that initial treatment, you have the right to choose your own health care providers. You may change these providers one time without the permission of the insurer. To change providers again you will need the insurer to agree to the change. The insurer has the right to send you to see its doctor for an evaluation of your incapacity.

### **Temporary Total Incapacity Benefits**

You qualify for total temporary benefits if your injury leaves you unable to work, considering your age, training, and experience, for six or more calendar days (the days do not have to be consecutive). 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 days or more. Again, these days do not have to be consecutive.

Temporary total benefits are based on your gross earnings over the 52 weeks prior to your injury. To determine your benefits, take your actual gross earnings, including overtime, bonuses, etc., and divide this number by the number of weeks you worked, in order to compute your average weekly wage. Multiply that number by 60 percent (.60) and you will 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.

### **Partial Incapacity Benefits**

If you have an earning capacity, but have not been cleared by your doctor to return to full duty, you may qualify for partial benefits for a maximum of 260 weeks. For certain types of severe incapacity, you may receive benefits for up to 520 weeks.

Partial incapacity payments equal 60 percent of the difference between your average weekly wage prior to your injury and the weekly wages you are now capable of earning. The maximum compensation under this section of the law is limited to 75 percent of what your weekly total temporary benefits would be. For example, if you would receive \$440 a week as a total temporary benefit, the most you could receive if you collected partial benefits would be \$330 a week.

### **Permanent and Total Incapacity Benefits**

If you are totally and permanently unable to do any kind of work as a result of a work-related injury or illness you may be entitled to permanent benefits. You can receive these benefits for as long as you are unable to work. You do not have to exhaust your temporary benefits before applying for permanent benefits.

You will get two-thirds of your average weekly wage (or a minimum of 20 percent of the SAWW) based on the 52 weeks prior to your injury, up to a maximum of the SAWW.

### **Permanent Loss of Function, Disfigurement and Scarring Benefits**

If your injury results in a permanent loss of certain specific bodily functions, or in scarring, you can receive a one-time payment under Section 36 of the workers' compensation law. This benefit is paid in addition to other payments -- medical bills, lost wages, etc. You receive this additional compensation for scars only if they are on your face, neck, or hands. Persons injured prior to December 24, 1991, have slightly different benefits. Contact our Public Information Office if you have any questions about benefits under Section 36. For specific compensation calculations, after the insurance company has made you an offer, call our Conciliation Unit to talk to a Conciliator - 617-727-4900, ext. 369.

### **Other WC Benefits**

Reasonable burial expenses up to \$4000 will be paid in cases where the injury results in death. Surviving spouses can receive weekly benefits equal to two-thirds of the deceased worker's average weekly wage, up to a maximum of the SAWW. They can receive these benefits for as long as they remain dependent and do not remarry. Surviving spouses become eligible for yearly cost of living increases two years after the date of injury. 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.

## **WHEN YOUR BENEFITS MAY BE STOPPED OR REDUCED**

Your benefits might be stopped or reduced for several reasons. Some of the more common reasons, when liability has been established, are:

- it is ordered by an arbitrator, administrative judge, reviewing board, or higher court;
- you have returned to work (the insurer must resume benefits if within 28 days you leave work again due to the same injury, 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 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 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.

If the insurer has accepted legal liability for your injury, when you lump sum your case your medical benefits will remain open. This means the insurer must continue to pay for necessary and reasonable medical treatment and vocational rehabilitation services. The insurer still has the right, however, to deny any treatment it feels is unnecessary or unreasonable. For a lump sum brochure further explaining your rights, please go to our website or call our Public Information Office to have one sent to you.

## 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 department. You may represent yourself, or be represented by anyone you delegate, including an attorney. If you do get an attorney, the law requires that the insurer pay their fee **if you win your case**. In certain cases the insurer can reduce payments to you to help pay for your legal representation. **If you lose**, the attorney can charge you only for very specific expenses.

## VOCATIONAL REHABILITATION SERVICES

If a doctor decides that due to your injury you will not be able to return to your job you may be eligible for vocational rehabilitation services. The goal of vocational rehabilitation is to get you back to work earning as close as possible to what you were making prior to your injury. Vocational rehabilitation 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 vocational rehabilitation review officers you **must** attend this meeting. This meeting is to determine if you are a suitable candidate 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 determined suitable, your weekly benefits can be reduced by the insurance company, with the permission of this department.

## Public Information

Workers' compensation law is complex, and therefore the procedures for filing a claim may be confusing. This pamphlet 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 web site - <[www.mass.gov/dia](http://www.mass.gov/dia)>

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

### DIA Regional Offices:

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

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**COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF INDUSTRIAL ACCIDENTS**

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