

Quick Reference Guide to Louisiana Workers' Compensation

Excellence Through Experience
OFFICES THROUGHOUT LOUISIANA IN
LAFAYETTE 337-362-1600
ALEXANDRIA 337-362-2600
www.ParkerLandry.com



The Courts

- Louisiana Workers' Compensation is an Administrative Court system administered through 10 District Offices located throughout the State. Districts 1 East, 1 West and Districts 2-9.
- Hearing Officers/Judges are assigned to handle claims are appointed by the Governor of Louisiana.
- Appeals from the District Offices go directly to one of the five Courts of Appeal with discretionary jurisdiction exercised by the Supreme Court of Louisiana.
- Appeals from the denial of medical treatment are handled through a 1009 process through the Medical Director. Appeals from the Medical Director are handled at the District level and then to the Court of Appeal.

Coverage of the Act

- The Act is intended to provide reasonable and necessary medical care and wage replacement for an employee injured while in the course and scope of her employment.

Employment

Presumption of Employment - R.S. 23:1044

Person rendering service for another in any trade/businesses/occupation is presumed to be an employee.

Borrowed Servant

If general employer gives up control of employee to another employer (e.g. temp agencies), both are responsible for compensation benefits.

Independent Contractors - R.S. 23:1021(7)

Generally excluded from compensation unless a substantial part of their time is spent in "manual labor" (driving a truck is excluded from manual labor by law but loading and unloading is not).

Statutory Employment - La. R.S. 23:1061

"Two-Contract Theory" - R.S. 23:1061(A)(2)

Services or work provided by the immediate employer is included in a contract between the principal and any person or entity other than the employee's immediate employer.

"Magic Language" - R.S. 23:1061(A)(3)

No statutory relationship shall exist between the principal and contractor's employees, unless there is a written contract which recognizes the principal as a statutory employer.

Accident

Definition (23:1021)(1) - an unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration.

NOTE - Despite a very specific definition, Courts do not tend to apply the statute as written.

An Accident must arise out of and occur in the course and scope of the employment;

Arising Out Of

Increased risk due to employment activity
Was it incidental to an employment activity

Course Of

Kind of work to be performed that occurs
Substantially within the time and area of the job

Coming and Going Rule

Injuries traveling to and from work generally excluded from coverage.
Exception may include:

- *Special missions for employer*
- *Threshold doctrine - risk not incurred by public*
- *Accidents on premises*
- *Travel provided by the employer*
- *Some company vehicles*

Calculating Average Weekly Wage

HOURLY

Full Time - Hourly rate times average of actual hours worked in four full weeks preceding accident, or 40 hours, whichever is greater.

If the employee is offered 40+ hours but "regularly and at her own discretion" works less than 40 hours, average of actual earnings in four full weeks preceding accident.

NOTE - *Benefits are subject to a maximum compensation rate which updates September 1 of every year.*

Part Time - Hourly rate times average actual hours worked in four full weeks preceding accident. For "moonlighting" employees who work part time for two or more employers (and lose wages from both), hourly rate at job-of-injury times average total hours worked for all employers up to 40 hours.

Note - *earnings include all taxable income*

Monthly - Monthly salary times 12, divided by 52

Annual - Annual salary divided by 52

Other (piecework, commission, unit for example)

Gross earnings for 26 preceding weeks, divided by the number of days actually worked during those 26 weeks, times the average number of days worked per week. (Commonly used for truck drivers)

SUPPLEMENTAL EARNINGS BENEFITS

- Owed when an injured employee is unable to make 90% of her pre-injury wages as a result of a work related disability.
- The amount due is 2/3 of the difference between the pre-injury average monthly wage and the post-injury average monthly wage.
- Maximum of 520 weeks subject to a week for week credit for all prior payments.
- Paid monthly if the claimant is working or if there is an established wage earning capacity by voc-rehab.
- Paid at the same time as TTDs were paid otherwise.
- WSEB's are subject to the maximum compensation rate.

Death Benefits

Paid to 'dependents'

Certain persons are legally presumed to be dependents, otherwise must prove dependency.

Minors, unless incompetent, are entitled to benefits until death, marriage, turning 18, unless enrolled as a full-time student in an accredited educational institution which extends the time to 23 years of age.

Widows who remarry are entitled to 2 years of benefits.

Burial benefits of \$8500 are owed.

Schedule of payment to dependents:

Widow(er) - 32.5% of wages

Widow(er) & 1 child - 46.25% of wages

Widow(er) and 2+ children - 65% of wages

One child - 32.5% of wages

Two children - 46.25% of wages

Three or more children - 65% of wages

Etc.

Time Deadlines

- Filing a claim for benefits - 1 year from the date of the accident. Exceptions for developmental injuries which may be up to three years.
- Filing a claim after benefits terminated - one year for TTD, three years for SEB
- Medical benefits - 3 years after last payment of medical.
- Death Benefits - two years after last treatment resulting from the work accident.
- First payment - 14 days after notice of injury or death (7 day waiting period)
- SEB's - 14 days after knowledge of benefits being due.
- Medical benefits - 60 days after written notice unless providers utilize electronic billing then 30 days.
- Form 1003 - 14 days after final payment of benefits.
- 1002 - Initial payment - sent same day as payment made to the employee, 10 days to send to OWC.
- 1002 - Modification - send to employee by certified mail on or before effective date of modification, send to office and employees representative same day.

Common OWC Forms

LWC-WC IA-1 Workers Compensation - First Report of Injury or Illness, must be filed electronically (*formerly LWC-WC-1007*)

LWC-WC-1002 - Notice of Payment, Modification, Suspension, Termination or Controversion of Compensation or Medical Benefits

LWC-WC-1008 Disputed Claim for Compensation

LWC-WC-1009 Disputed Claim for Medical Treatment request for OWC medical director to review denial of medical treatment

LWC-WC-1121 Choice of Physician form

LWC-WC-1010 Request to payor for approval of treatment

LWC-WC-1011 Request for Compromise of Lump Sum Settlement

LWC-WC-1015 Request for Independent Medical Examination - request for IME through OWCA Medical Services section

LWC-WC-1020 Employee's Monthly Report of Earnings

Common Penalties

1201 (f) - failure to pay benefits, approve choice of physician, failure to pay mileage, failure to pay medical, 12% of amount due up to \$50 per day up to \$2000, plus atty fees.

1201 (g) - failure to pay final, non-appealable judgment with 30 days - max of \$3000 plus atty fees

1201 (i) - arbitrary/capricious discontinuance of benefits, up to \$8000 plus atty fees.

The information provided herein does not, and is not intended to, constitute legal advice. All information is for general informational purposes only. Information provided herein may not constitute the most up-to-date legal or other information. You should contact your attorney to obtain advice with respect to any particular legal matter. No user of this material should act or refrain from acting on the basis of this information without first seeking legal advice from counsel. Only your individual attorney can provide assurances that the information contained herein - and your interpretation of it - is applicable or appropriate to your particular set of facts. Use of this material does not create an attorney-client relationship between the user and Parker & Landry, LLC and/or its attorneys.

www.ParkerLandry.com

4023 Ambassador Caffery Pkwy • Suite 320 • Lafayette, LA 70503 • Phone 337-362-1600
201 Johnston St. • Suite 200 • Alexandria, LA 71301 • Phone 337-362-2600

