

Injured On The Job:

A Guide to Michigan Workers Compensation Law

*A Practical Guide for Michigan Workers
and Their Families*

**Michigan Workers Comp Lawyers
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Meet
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The Law Offices of
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Caring For More Than 35 Years*



For more than 35 years, the attorneys and legal professionals at the Law Offices of Alex Berman, P.C., have used hard-won, battle-tested skill and experience to make sure workers injured on the job get the workers compensation they and their families are entitled to by state statute.

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The real help we provide for people is a source of great satisfaction for us. We are certain you will sense this pride when you read the following guide. If after reading it, you still have questions about using Michigan's Workers Disability Compensation Act to get your employer — or a family member's employer — to pay the workers compensation benefits warranted by a work-related injury, disease or death, don't hesitate to call us — we will help you in any way we can.

Sincerely,

Alex Berman, Esq., Founding Partner

**The Law Offices of
Alex Berman, P.C.**

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The Law Offices of Alex Berman, P.C. Experience & Caring

"I've known **Alex Berman** for 20 years and I've sent 30 to 40 people to him because he **is an amazing lawyer**. Alex has handled all of my cases, which have ended in **success**. But what's just as important is how he treats me. If Alex is in court, he will call me back - even in the evening on a cell phone on his time. **I don't know the phrase for workers comp attorneys, but if he were a doctor, I'd say Alex has a wonderful bedside manner**. He has a great personality. He truly does care about you and your case and he's very honest. He's an all around great guy who really cares about people. ... **I believe the reason Alex Berman is a good workers compensation lawyer is because he truly cares about people**. I'm lucky to have him in my life."

– *Margaret Sparks, Garden City*

* * *

"**My workers comp lawyer was Jeff Kaufman and he was awesome**. Once I had a conversation with him, I felt my fears were going to be put to rest. It wasn't a matter of if it was going to happen, but when. Jeff worked it out so through my contract with my employer, I could still get paid after I was injured. ... I've been very happy with everything Jeff has

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done. **He was very professional ... [and] he is brilliant.** He was always very thorough, too. ... These past two years [since my injury] have been really hard – we've been struggling with the bills, foreclosure, etc. But **Jeff made the outcome a lot better.** I don't think I could have come out any better for the circumstances."

– *Scott Lance, Southgate*

* * *

"I hurt myself on the job. ... **[My employer] put me on workmans comp and then cut off my benefits. So I found Steve Kaufman.** He was good, and I liked him very much. He'd tell me what was going on and I appreciated that. You could always call him and talk to him. **Steve Kaufman made sure my workmans comp benefits were provided for and he fought for me.** So I try to send anyone I can to him. **I tell people he's not God but he's probably the closest thing. He can walk on water, he's that good!** Being from Monroe County, many people around here get attorneys from Ohio. They don't realize the drive to Farmington Hills is less than an hour away and the best workmans comp attorney is right here. I highly recommend this law firm. I think they're outstanding."

– *Donald Sharp, Newport*

* * *



"Attorney Dennis Morse represented me for workman's comp. He was successful in obtaining my benefits. I was involved in a train accident and I've never worked since then. **Dennis made sure I was compensated and taken care of in a proper manner.** I went through all the medical treatments, surgeries and physical training and a settlement was reached eventually. **Dennis is knowledgeable, fair and honest.** He would let you know what was right, what was wrong, the proper protocol or direction to take. He didn't beat around the bush. **He was up front. And I trusted him.** He was prompt to get back with me had I called and he was busy. I was also pleased with how all of the staff treated me. This is a knowledgeable workman's compensation law firm that has been around for a long time."

– Larry Cholette, Taylor

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Chapter One: Introduction to Michigan's Workers Disability Compensation Act

In this chapter, you will discover:

- How Michigan's Workers Disability Compensation Act (WDCA) provides a safety net for injured workers and their families.
- How Michigan's WDCA covers one-time injuries; injuries resulting from repetitive work actions; disabilities brought about by occupational diseases; and death resulting from work-related personal injuries or occupational diseases.
- How Michigan's WDCA provides injured workers with generous compensation such as weekly wage loss benefits, medical benefits, and vocational rehabilitation benefits. The WDCA also provides benefits to the families of workers who died as a result of work-related injuries or disease.
- How Michigan's workers compensation system is a "No Fault" system.



The injured workers 'Safety net'

"Workers compensation" is a legal safety net for workers who have been injured on the job.

The workers compensation net consists of benefits and services that are intended to help injured workers heal, recover, return to work, and resume or otherwise continue with their lives.

The legal framework for the workers compensation safety net is the Michigan Workers Disability Compensation Act (WDCA).

Injuries warranting compensation

It ensures that workers compensation benefits and services will be provided by Michigan employers to eligible workers who have suffered any of the following work-related "injuries":

- **Personal injuries that are attributable to a single event.** (MCL 418.301(1))
- **Personal injuries that are *not* attributable to a single event, such as a back injury that developed gradually as the result of repetitive work activity.** (MCL 418.301(1))



- **Occupational or work-related diseases.** (MCL 418.401(1) and (3); 418.415; 418.441)
- **Death resulting from personal injury or occupational disease.** (MCL 418.301(1); 418.415; 418.441)

Workers compensation benefits

The workers compensation benefits and services promised by the WDCA to eligible, injured workers include:

- **Weekly Wage Loss Benefits**
- **Medical Benefits**
- **Vocational Rehabilitation Benefits**
- **Total and Permanent Disability Benefits**
- **Specific Loss Benefits**
- **Death Benefits**

No Fault system

Under Michigan's Workers Disability Compensation Act (WDCA), workers compensation benefits are paid regardless of fault.



In other words, if a worker is injured on the job, then the negligence of the workers employer or the contributory negligence of the worker is irrelevant to the injured workers eligibility for and receipt of workers compensation benefits.

Accordingly, Michigan's workers compensation system is considered a "No Fault" system.



Chapter Two: Weekly Wage Loss Benefits

In this chapter, you will discover:

- How injured workers are compensated with “weekly wage loss benefits” under Michigan’s Workers Disability Compensation Act (WDCA).
- How “weekly wage loss benefits” calculated.
- How to determine the maximum allowable amount of weekly wage loss benefits.
- How an injured workers weekly wage loss benefits could be terminated.

‘Weekly wage loss benefits’

“Weekly wage loss benefits” is one of the forms of workers compensation guaranteed under Michigan’s Workers Disability Compensation Act.

Weekly wage loss benefits is money that the WDCA requires employers to pay to injured workers to compensate them for wages lost when a work-related injury or disease prevents them from working.

Calculating weekly wage loss benefits: The 80% rule

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The general rule is that an injured worker is paid weekly wage loss benefits equal to about 80% of what the worker was earning at the time he or she was injured. (MCL 418.351(1) and 418.361(1))

The workers income at the time of his or her injury is referred to as the workers “after-tax average weekly wage” in the WDCA.

The amount of weekly wage loss benefits paid to an injured work depends on two major factors:

- Has the worker been totally or partially incapacitated from working due to a work-related injury or disease?
- How much was the worker earning weekly at the time he or she was injured?

Total and partial incapacity for work

If a worker is totally incapacitated, then the workers employer will pay weekly wage loss benefits equal to 80% of the workers “after-tax average weekly wage” at time of the work-related injury or disease. (MCL 418.351(1))

However, if the worker is only partially incapacitated, then the employer will pay weekly wage loss benefits equal to 80% of the difference



between the workers pre- and post-injury “after-tax average weekly wage.” (MCL 418.301(5)(b); 418.361(1); 418.401(3)(b))

Return To Work

In a partial incapacity to work situation, the injured worker has returned to work, but the worker earns less from his or her post-injury employment than he or she earned before being injured.

After-tax average weekly wage

An injured workers “after-tax average weekly wage” at the time he or she was injured is determined by averaging the workers total wages from all employment paid in the “highest paid 39 weeks of the 52 weeks immediately preceding the date of injury.” (MCL 418.371(2))

For a worker who worked less than 39 weeks in the year before his or her injury, the workers after-tax average weekly wage is based on the average of the workers total wages from all employment for the weeks actually worked. (MCL 418.371(3))

Only under limited circumstances will the value of an injured workers fringe benefits be included in the “after-tax average weekly wage” calculation. Fringe benefits include employer-provided health



insurance, employer contributions to pensions and/or 401(k) plans, and vacation and/or holiday pay. (MCL 418.371(2))

Making the 'After-Tax' Wage Calculation

The Workers Compensation Agency, which is the part of state government that oversees Michigan's workers compensation system, publishes an annual report that calculates the 80% after-tax amount of various average weekly wages.

The most recent report is the "2010 Weekly Benefits Table," and it can be found on the Workers Compensation Agency's web site, under "Claims Processing" and "Other Information," www.michigan.gov/wca.

Maximum 'weekly wage loss benefits' amount

Generous as the WDCA's "weekly wage loss benefits" guarantee is, there is a limit.

Regardless of whether the injured worker is totally or partially incapacitated, or whether the workers after-tax average weekly wage before the injury was \$1,000,000, the WDCA says no injured worker will receive "more than the maximum weekly rate of compensation" in weekly wage loss benefits.

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(MCL 418.301(5)(b); 418.351(1); MCL 418.361(1)
MCL; 418.401(3)(b))

The “maximum weekly rate of compensation” equals “90% of the state average weekly wage.” (MCL 418.355(1) and (2))

The annual “State Average Weekly Wage Chart,” which is “determined by the Michigan employment security commission” (MCL 418.355(1) and (2)), is published on the Workers Compensation Agency’s web site under “WCA Quicklinks,” www.michigan.gov/wca.

No Minimum

Although there is generally no minimum amount of allowable weekly wage loss benefits (especially for a total incapacity for work (MCL 418.356(4)), a minimum does exist for workers who lost a body part (or use of body part) or who have suffered total and permanent disabilities. Additionally, there exists a minimum for dependents of a deceased worker.

No time limit

Workers compensation in the form of weekly wage loss benefits will be paid to injured workers — whether the workers are totally and/or partially incapacitated from work — “for the duration of the disability.” (MCL 418.351(1) and 418.361(1))



Termination of weekly wage loss benefits

An injured workers right to weekly wage loss benefits under the WDCA is not absolute.

The three primary triggers for terminating an injured workers weekly wage loss benefits are:

First, without "good and reasonable cause," the injured worker rejects a "bona fide offer of reasonable employment. (MCL 418.301(5)(a); 418.401(3)(a))

'Reasonable Employment'

"Reasonable employment" is "work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from that employee's residence." (MCL 418.301(9); 418.401(7))

Second, if an injured employee finds post-injury employment earning the same or more than he or she did before the injury, "the employee is not entitled to any wage loss benefits under this act for the duration of such employment." (MCL 418.301(5)(c); 418.401(3)(c))

Third, if it is determined that an injured employee has a "wage earning capacity" and is only partially



disabled - wage loss benefits can be offset. (MCL 418.301(4)(a); MCL 418.301(4)(b))

Think of wage earning capacity as an injured employee's ability to earn wages in other employment taking into consideration any work-related restrictions.

If the injured employee has a wage earning capacity, wage loss benefits can be reduced or eliminated.

It does not matter whether the injured employee is actually working or earning wages. The wage earning capacity will act as a set-off. (MCL 418.301(4)(a); MCL 418.301(4)(b))

If a personal injury causes partial disability, the employer shall pay or cause to be paid to the injured employee weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury. (418.301(8))

The injured employee can challenge an unfair wage earning capacity assessment by performing a good faith job search and showing that no work is reasonably available. (418.301(4)(c))



Getting Smaller With Age

After an injured worker has turned 65, his or her weekly payments are reduced 5% every year. (MCL 418.357(1))

However, the reductions must cease once the weekly benefit is equivalent to 50% of the benefit paid or payable when the worker was 65. Additionally, the “[w]eekly payments shall not be reduced below the minimum weekly benefit ...” (MCL 418.357(1))

If the injured worker is not eligible for social security benefits or his or her workers compensation benefits are coordinated, then the “65 and older” reduction does not apply. (MCL 418.357(2))



Chapter Three: Medical Benefits

In this chapter, you will discover:

- How injured workers are compensated with “medical benefits” under Michigan’s Workers Disability Compensation Act (WDCA).
- How an injured workers “medical benefits” cover a wide range of medical care costs.
- How long an injured worker is entitled to claim medical benefits.
- How the WDCA’s requirements affect an injured workers choice of doctor.

‘Medical benefits’

“Medical benefits” is one of the forms of workers compensation guaranteed under Michigan’s Workers Disability Compensation Act.

The WDCA’s medical benefits guarantee provides that employers will pay for the medical care necessitated by a workers work-related injury or disease. (MCL 418.315(1))



Covered medical care

The medical care that is covered by the WDCA's medical benefits provision includes:

- “[R]easonable medical, surgical and hospital services and medicines.” (MCL 418.315(1))
- “[D]ental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury.” (MCL 418.315(1))
- Attendant or nursing care. (MCL 418.315(1))
- Medical rehabilitation services. (MCL 418.319(1))
- Treatment. (MCL 418.315(1))

Duration of medical benefits

Medical benefits must be provided to an injured worker for as long as the worker needs them — which could be the rest of the workers life.

Under the WDCA, an employer must pay for an injured workers medical benefits “when they are needed.” (MCL 418.315(1))



Put another way, the WDCA requires that an injured worker be provided medical benefits so long as the benefits are “necessary to cure, so far as reasonably possible, and relieve from the effects of the injury.” (MCL 418.315(1))

Limitation On Attendant Or Nursing Care Services

“Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee’s spouse, brother, sister, child, parent, or any combination of these persons.” (MCL 418.315(1))

Choice of doctor

For the first 28 days after an injury, the injured worker must treat with a physician of the employer’s choosing. (MCL 418.315(1))

However, after 28 days, “the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician.” (MCL 418.315(1))



Chapter Four: Vocational Rehabilitation Benefits

In this chapter, you will discover:

- How injured workers are compensated with “vocational rehabilitation benefits” under Michigan’s Workers Disability Compensation Act (WDCA).
- The services included in “vocational rehabilitation benefits.” “How an injured workers “medical benefits” cover a wide range of medical care costs.
- How long an injured worker is entitled to receive vocational rehabilitation benefits.

‘Vocational rehabilitation benefits’

“Vocational Rehabilitation benefits” is one of the forms of workers compensation guaranteed under Michigan’s Workers Disability Compensation Act.

The WDCA’s vocational rehabilitation benefits guarantee provides that an injured worker shall be provided those vocational rehabilitation services that are “reasonably necessary to restore him or her to useful employment.” (MCL 418.319(1))



Covered services

The vocational rehabilitation services covered by the WDCA include:

- Counseling.
- Vocational Assessment (“Evaluation of your skills, aptitudes, interests and physical abilities to help you decide on an appropriate occupation”).
- On-the-Job Training.
- Short-term Retraining.
- Job Placement Assistance.
- Costs of Transportation and Other Expenses.

(MCL 418.319(1); Workers Compensation Agency, “Vocational Rehabilitation for Injured Employees,” August 2010 Pamphlet.)

Duration of vocational rehabilitation benefits

Generally, “[v]ocational rehabilitation training, treatment or service” is provided to an injured worker for no more than one year after his or her work-related injury or disease. (MCL 418.319(1))



However, with the approval of the director of the Workers Compensation Agency, vocational rehabilitation benefits can be extended for an additional year. (MCL 418.319(1))

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Chapter Five: Total and Permanent Disability Benefits

In this chapter, you will discover:

- How injured workers are compensated with “total and permanent disability benefits” under Michigan’s Workers Disability Compensation Act (WDCA).
- The specific injuries that are presumed to cause “total and permanent disabilities.”
- How compensation for “total and permanent disability benefits” is calculated.
- The maximum and minimum allowable amounts for total and permanent disability benefits.
- How long an injured worker may receive total and permanent disability benefits.

‘Total and permanent disability benefits’

“Total and permanent disability benefits” is one of the forms of workers compensation guaranteed under Michigan’s Workers Disability Compensation Act.



Through its total and permanent disability provision, the WDCA ensures a guaranteed minimum amount of benefits for a guaranteed minimum amount of time for workers who are totally and permanently disabled as a result of specific work-related injuries or diseases. (MCL 418.351(1); 418.356(3); 418.361(3))

Specific injuries resulting in total and permanent disabilities

Generally, the total and permanent nature of an injured workers disability resulting from an injured workers work-related injury or disease will be determined on a case by case basis, depending on the facts of each case.

However, when certain specific injuries are present, the WDCA says that an injured worker is presumed to have suffered a total and permanent disability.

The specific injuries that give rise to the presumption of total and permanent disability are the following (MCL 418.361(3)):

- Total and permanent loss of sight of both eyes.
- Loss of both legs or both feet at or above the ankle.



- Loss of both arms or both hands at or above the wrist.
- Loss of any 2 of the members or faculties in subdivisions (a), (b), or (c).
- Permanent and complete paralysis of both legs or both arms or of 1 leg and 1 arm.
- Incurable insanity or imbecility.
- Permanent and total loss of industrial use of both legs or both hands or both arms or 1 leg and 1 arm ...”

Calculating benefit amounts

A totally and permanently disabled worker is entitled to benefits equal to 80% of the workers “after-tax average weekly wage” at the time of the work-related injury or disease that resulted in total and permanent disability. (MCL 418.351(1); 418.361(3))

The WDCA provides that total and permanent disability compensation be calculated in the same manner as compensation for weekly wage loss benefits due to a total incapacity for work. (MCL 418.361(3))



Maximum 'total and permanent disability benefits' amount

No worker who has suffered a total and permanent disability, even one resulting from the specific injuries identified by the WDCA, will receive "more than the maximum weekly rate of compensation" in weekly wage loss benefits. (MCL 418.301(5)(b); 418.351(1); MCL 418.361(1) MCL; 418.401(3)(b))

The "maximum weekly rate of compensation" equals "90% of the state average weekly wage." (MCL 418.355(1) and (2))

The annual "State Average Weekly Wage Chart," which is "determined by the Michigan employment security commission" (MCL 418.355(1) and (2)), is published on the Workers Compensation Agency's web site under "WCA Quicklinks," www.michigan.gov/wca.

Minimum 'total and permanent disability benefits' amount

A worker who has suffered a total and permanent disability as a result of the specific injuries identified by the WDCA will receive a "minimum weekly benefit" of not less than "25% of the state average weekly wage ..." (MCL 418.356(3))



Duration of total and permanent disability benefits

Workers compensation in the form of total and permanent disability benefits will be paid to an injured worker “for the duration of the disability,” i.e., for as long as the worker is totally and permanently disabled. (MCL 418.351(1) and 418.361(1))

However, if a worker is presumed to be totally and permanently disabled because he or she has suffered one of the specific injuries identified by the WDCA, then the workers total and permanent disability benefits shall not be guaranteed to continue “beyond 800 weeks from the date of injury ...” (MCL 418.351(1))

After that point, “the question of permanent and total disability shall be determined” by the facts of the workers case as those facts exist at the time. (MCL 418.351(1))



Chapter Six: Specific Loss Benefits

In this chapter, you will discover:

- How injured workers are compensated with “specific loss benefits” under Michigan’s Workers Disability Compensation Act (WDCA).
- How the WDCA defines a “specific loss” injury.
- How compensation for “specific loss benefits” is calculated.
- The maximum and minimum allowable amounts for specific loss benefits.
- How long an injured worker may receive specific loss benefits.

‘Specific loss benefits’

“Specific loss benefits” is one of the forms of workers compensation guaranteed under Michigan’s Workers Disability Compensation Act.

Through its specific loss benefits provision, the WDCA ensures that workers who suffer the loss of a specified body part will receive workers compensation benefits for a guaranteed minimum amount of time. (MCL 418.361(2))



'Specific losses' and 'disability periods'

The WDCA identifies the "specific losses" and their corresponding "disability periods" or periods of time during which the injured worker is guaranteed to receive workers compensation benefits. (MCL 418.361(2))

For the loss of the following body parts, the WDCA says the resulting "disability shall be considered to continue for the period specified ..."
(MCL 418.361(2)(a-l))

<u>Loss</u>	<u>Disability period</u>
Loss of a thumb	65 weeks
Loss of a first finger	38 weeks
Loss of a second finger	33 weeks
Loss of a third finger	22 weeks
Loss of a fourth finger	16 weeks
Loss of a hand	215 weeks
Loss of an arm	269 weeks
Loss of a great toe	33 weeks
Loss of a non-great toe	11 weeks
Loss of a foot	162 weeks
Loss of a leg	215 weeks
Loss of an eye	162 weeks



Calculating benefit amounts

The amount of specific loss benefits paid to an injured person will equal 80% of the workers after-tax average weekly wage at time he or she suffered the specific loss. (MCL 418.361(2))

Maximum 'specific loss benefits' amount

The maximum "specific loss benefit" amount that an injured worker will receive will not exceed "the maximum ... rate of compensation" under the WDCA. (MCL 418.361(2))

The "maximum weekly rate of compensation" equals "90% of the state average weekly wage." (MCL 418.355(1) and (2))

The annual "State Average Weekly Wage Chart," which is "determined by the Michigan employment security commission" (MCL 418.355(1) and (2)), is published on the Workers Compensation Agency's web site under "WCA Quicklinks," www.michigan.gov/wca.

Minimum 'specific loss benefits' amount

A worker who has suffered one of the specific losses identified by the WDCA will receive a "minimum weekly benefit" of not less than "25% of the state average weekly wage ..." (MCL 418.356(3))



Duration of specific loss benefits

Workers compensation in the form of specific loss benefits will be paid to an injured worker for disability periods specified in the WDCA and discussed above.



Chapter Seven: Death Benefits

In this chapter, you will discover:

- How the dependents of deceased workers are compensated with “death benefits” under Michigan’s Workers Disability Compensation Act (WDCA).
- How death benefits are calculated.
- The maximum and minimum allowable amounts for death benefits.
- How long a deceased workers dependents may receive death benefits.

‘Death benefits’

“Death benefits” is one of the forms of workers compensation guaranteed under Michigan’s Workers Disability Compensation Act.

The WDCA’s death benefits guarantee provides compensation to the dependents of a deceased worker, including payment of a portion of the workers funeral and burial expenses.

Calculating benefits amount

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The amount of workers compensation benefits paid to the dependent of a deceased worker depends on the nature of the dependent's relationship to the worker.

If the dependent was "wholly dependent upon the [workers] earnings for support at the time of the injury" that caused the workers death, then the workers employer will pay to the dependent a weekly amount "equal to 80% of the employee's after-tax average weekly wage ..." (MCL 418.321)

Who Is A 'Wholly Dependent' Dependent?

Children under the age of 16, or 16 and older if physically or mentally incapacitated from an earning, "shall be conclusively presumed to be wholly dependent for support upon a deceased employee," but other family members of the deceased employee may prove that "as a matter of fact" they were wholly dependent on the deceased employee. (MCL 418.331(a) and (b); MCL 418.353(1)(a))

On the other hand, if the dependent was "only partially dependent upon [the deceased workers] earnings for support at the time of [the fatal] injury," then the workers employer will pay to the dependent weekly compensation equal to 80% of that portion of



the deceased's after-tax average weekly wage that went to the dependent's support. (MCL 418.321)

Who Is A Dependent?

"Except as to those conclusively presumed to be dependents children under 16, MCL 418.331(a) and (b)], no person shall be deemed a dependent who receives less than ½ of his support from an injured employee." (MCL 418.353(b))

Spouses

A spouse must prove that he or she was dependent on the deceased worker to receive benefits. A spouse could be found to be wholly or partially dependent. This determination can be very complicated as several factors must be considered. Some factors include whether the spouse is receiving income from another source and how much the deceased worker actually contributed to the surviving spouse.

Funeral and burial expenses

As part of the death benefits provided to the dependents of a deceased worker, the WDCA requires the workers employer to pay \$6,000 or the actual



cost, whichever is less, of the deceased workers funeral and burial. (MCL 418.345)

Maximum 'death benefits' amount

The "maximum weekly rate of compensation" to be paid to the dependents of a deceased worker equals "90% of the state average weekly wage ..." (MCL 418.321; 418.355(1) and (2))

The annual "State Average Weekly Wage Chart," which is "determined by the Michigan employment security commission" (MCL 418.355(1) and (2)), is published on the Workers Compensation Agency's web site under "WCA Quicklinks," www.michigan.gov/wca.

Minimum 'death benefits' amount

"The minimum weekly benefit for death ... shall be 50% of the state average weekly wage ..." (MCL 418.321; 418.355; 418.356(2))

Duration of death benefits

Generally, an employer's duty to pay death benefits to the dependents of a deceased worker ends at "500 weeks from the date of death." (MCL 418.321)



However, if a dependent is not yet 21 at the 500-week point, the employer may be ordered to continue to pay benefits until that dependent reaches 21. (MCL 418.321)

End Of Spousal Benefits

Remarriage of a dependent spouse will terminate that dependent's right to receive death benefits. (MCL 418.335(1))



Chapter Eight: Eligibility for Workers Compensation Benefits

In this chapter, you will discover:

- How to determine whether an injured worker – or the dependent of a deceased worker – is generally eligible for workers compensation benefits under Michigan's Workers Disability Compensation Act (WDCA).
- How to determine whether an injured worker – or the dependent of a deceased worker – is eligible for any or all of the six specific forms of workers compensation under the WDCA.
- How to determine if an injured worker — or the dependent of a deceased worker — is disqualified from receiving workers compensation benefits.

General rules for workers compensation eligibility

For an injured worker — or the dependents of a deceased worker — to be eligible for workers compensation benefits under Michigan's Workers Disability Compensation Act (WDCA), the following eligibility requirements must be satisfied:

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1. The injured or deceased worker must have worked for an employer that is subject to the requirements of the WDCA.

Employers Who Must Comply With Michigan's Workers Disability Compensation Act:

All Michigan private, non-agricultural employers who "regularly employ 3 or more employees at 1 time," or who employ at least one employee for 35 or more hours per week for 13 weeks or more out of the preceding 15 weeks. (MCL 418.115(a) and (b))

All Michigan public employers (MCL 418.115(c)), such as the State of Michigan, counties, cities, townships, incorporated villages and school districts. (MCL 418.151(a))

All Michigan agricultural employers who employ three or more regular hourly or salaried employees for 35 or more hours per week for 13 weeks or more out of the preceding 15 weeks. (MCL 418.115(d))

2. The injured or deceased worker must have qualified as an "employee" under the WDCA.



Who is an 'Employee' under the Workers Disability Compensation Act?

A worker is an "employee" if the worker is "in the service" of an WDCA-covered employer by appointment or under a "contract of hire, express or implied, oral or written." (MCL 418. 154(b); 418.161(a), (l))

Put another way, a worker is an "employee" if the worker is "performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to this act." (MCL 418.161(n))

Generally, self-employed persons and independent contractors are not considered "employees" for workers compensation purposes.

On and after January 1, 2013, services are employment if the services are performed by an individual whom the Michigan administrative hearing system determines to be in an employer-employee relationship using the 20-factor test announced by the internal revenue service of the United States department of treasury in revenue ruling 87-41, 1 C.B. 296. (MCL 418.161(n))



3. The injured or deceased worker must have suffered an “injury” that is compensable under the WDCA.

Compensable ‘Injuries’

Under Michigan’s Workers Disability Compensation Act (WDCA), there are several types of “injuries” that may render a worker — or the dependents of a deceased worker — eligible for workers compensation benefits:

A “personal injury arising out of and in the course of employment ...” (MCL 418.301(1))

A “disease ... which is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which arises out of and in the course of the employment.” (MCL 418.401(2)(b); 418.415)

“[D]eath resulting from ... a personal injury arising out of and in the course of employment ...” (MCL 418.301(1))

“[D]eath ... caused by a disease and the disease is



due to the nature of the employment in which such employee was engaged and was contracted therein ...” (MCL 418.415)

4. The injured or deceased workers injury or disease incapacitated him or her “from earning full wages ... for a period of at least 1 week ...” (MCL 418.311)

5. The worker must have suffered his or her work-related injury within the State of Michigan.

The Out-of-State Injury

Although the general rule is that workers compensation benefits are only paid out for injuries that occurred in Michigan, there is an exception to the rule under certain, limited circumstances.

Out-of-state injuries are covered if the injured workers employer is subject to the WDCA and either the worker was a Michigan resident at the time of the injury or “the contract of hire” was made in Michigan. (MCL 418.845)

Special rules for workers compensation eligibility



In addition to the general eligibility rules set forth above, there are special eligibility rules for some of the six workers compensation benefits available under the WDCA.

To qualify for workers compensation benefits, an injured worker — or the dependent of a deceased worker — must satisfy both the general and special eligibility rules for each of the benefits sought.

The WDCA's special eligibility rules will be discussed in the sections below.

Weekly wage loss and total and permanent disability benefits

The special eligibility rule that makes weekly wage loss and total and permanent disability benefits stand out from the other workers compensation benefits provided by the WDCA is the "disability" rule. (MCL 418.301(4) and (5); 418.351(1); 418.401(1) and (3))

Under the "disability" rule, an injured workers eligibility for either of these benefits depends on his or her ability to prove that a work-related injury or disease has prevented the worker from earning what he or she is capable of earning — given the workers qualifications and training.



The WDCA defines “disability” as “a limitation of [the workers] wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease.” (MCL 418.301(4); 418.401(1))

To establish an initial showing of disability, an employee shall do all of the following:

(a) Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.

(b) Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.

(c) Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.

(d) If the employee is capable of performing any of the jobs identified in subdivision (c), show that he or she cannot obtain any of those jobs. The evidence shall include a showing of a good-faith attempt to procure post-injury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury. (MCL 418.301(5))



Medical benefits

To be eligible for workers compensation medical benefits, an injured worker must establish that the medical care sought is both “reasonable,” “needed” and “necessary to cure, so far as reasonably possible, and relieve from the effects of the injury.” (MCL 418.315(1))

Vocational Rehabilitation benefits

To be eligible for vocational rehabilitation benefits, an injured worker must show:

1. He or she is “unable to perform work for which he or she has previous training and experience.” (MCL 418.319(1))
2. Vocational rehabilitation services “may be reasonably necessary to restore [the injured worker] to useful employment.” (MCL 418.319(1))

Specific loss benefits

To be eligible for specific loss benefits, an injured worker must have suffered a loss of one or more of the body parts specified by the WDCA. (MCL 418.361(2))



Disqualified from receiving workers compensation benefits

An injured workers right — or the right of the dependent of a deceased worker — to receive workers compensation is not absolute.

Under the following, limited circumstances, some prospective workers compensation beneficiaries may find themselves disqualified from receiving the benefits guaranteed by the WDCA:

- If the “injury” giving rise to the workers compensation claim was “incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under” the WDCA. (MCL 418.301(3))
- If the worker was injured by reason of his or her own “intentional and willful misconduct ...” (MCL 418.305)
- If an employee is terminated from reasonable employment for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits.



Chapter Nine: Paying for Workers Compensation Benefits

In this chapter, you will discover:

- Who pays for the workers compensation benefits provided to an injured worker or the dependents of a deceased worker.
- How and when payments of workers compensation benefits are made.

The employer pays

Generally, the injured or deceased workers employer pays for the workers compensation benefits provided to the injured worker or the dependents of the deceased worker.

That is true with weekly wage loss benefits (MCL 418.351(1); 418.361(1)); medical benefits (MCL 418.315(1)); vocational rehabilitation benefits (MCL 418.319(1)); specific loss benefits (MCL 418.361(1) and (2)); and death benefits (MCL 418.321)

How Do Employers Pay?



The Workers Disability Compensation Act requires covered-employers to make the necessary financial arrangements to ensure they can meet their workers compensation obligations to their injured workers.

Covered-employers can satisfy the WDCA requirement by either purchasing a private workers compensation insurance policy or by getting approval from the state's Workers Compensation Agency to insure itself, or become what is called "self-insured." (MCL 418.611(a) and (b))

Making workers compensation payments

The payment of workers compensation benefits does not begin immediately after a worker has been injured.

To the contrary, no workers compensation benefits will be paid unless the injured worker has been incapacitated "from earning full wages ... for a period of at least 1 week ..." (MCL 418.311)

If the injured workers incapacity to earn full wages lasts more than one week, but less than two weeks, then compensation is computed starting on the eighth day after the injury. (MCL 418.311)

However, if an employee's injury-related incapacity to earn full wages lasts two weeks or



longer, then “compensation shall be computed from the date of the injury.” (MCL 418.311)

Injuries Not Attributable To A Single Event

“Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee’s disability or death.” (MCL 418.301(1))



Chapter Ten: Employer Tactics to Avoid Paying Workers Compensation Benefits

In this chapter, you will discover:

- How employers try to use the “wage earning capacity” defense to avoid paying weekly wage loss benefits.
- How employers use other tactics to challenge their obligation to pay other benefits.
- How employers will use the “coordination” provision of Michigan’s Workers Disability Compensation Act to minimize the benefit amounts they are responsible for paying.

Wage earning capacity

When an injured worker attempts to work after an injury — even temporarily — the worker runs the risk of having his or her employer use it against the worker to try to cut off the workers weekly wage loss benefits.

The employer’s logic is this:



- To get weekly wage loss benefits, a worker must have suffered a “disability” as that term is defined by the WDCA.
- To have suffered a “disability,” the workers work-related injury or disease must have limited the workers “*wage earning capacity* in work suitable to his or her qualifications and training ...” (MCL 418.301(4); 418.401(1)) In other words, the workers injury or disease has left the worker with “no reasonable employment options for avoiding a diminution in wages.” (*Stokes v. Chrysler LLC, Michigan Supreme Court, 2008*)
- Therefore, if the worker has returned to work, then, arguably, the worker has either resumed his or her previous “wage earning capacity” or has established a new one.
- In either case, the workers wage earning capacity is no longer limited and, thus, the worker no longer suffers a “disability” entitling him or her to receive weekly wage loss benefits under the WDCA.
- Recent amendments to the workers' compensation law allow an employer or insurance company to reduce wage loss benefits based upon “wage earning capacity” - even if the injured employee has not returned



to work. MCL 418.301(4)(a); MCL 418.301(4)(b)

In situations where an injured worker returns to work for 250 weeks or more, the employer's case for avoiding or terminating weekly wage loss benefits is strengthened because "[t]here is a presumption of wage earning capacity established for employments totaling 250 weeks or more." (MCL 418.301(5)(d)(i))

Vocational Assessment and Independent Medical Evaluation

The vocational assessment and the independent medical evaluation are the two main tools used by employers to test an injured workers wage earning capacity for purposes of challenging the workers eligibility for weekly wage loss benefits.

Independent Medical Evaluation: Under the WDCA, an employer has a right to request that an injured worker submit himself or herself to an examination by a physician or surgeon hired by the employer. A workers refusal to submit will result in a suspension, and possible forfeiture of benefits. (MCL 418.385)

Vocational Assessment: An injured worker may be required to submit to a vocational assessment with an expert hired by the workers employer. The ostensible purpose of the assessment is to determine the effect of the workers injury or disease on his or her wage earning capacity. The assessment may involve a "transferable-skills



analysis based on claimant's profile and work restrictions" and "contact[ing] potential employers to determine job availability and wages for any jobs falling within claimant's qualifications, training and restrictions." (*Stokes v. Chrysler LLC, Michigan Supreme Court, 2008, pages 17-18, 21*)

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Not work related

An employer may try to avoid its workers compensation obligations by arguing that the injured workers injury or disease is not “work related.”

To be compensable under the WDCA, injuries, disease, and death must have “arisen out of and in the course of employment.” (MCL 418.301(1); 418.401(2)(b); 418.415)

Accordingly, an employer may take the approach that a workers claimed injury or disease did not arise out of or in the course of employment.

‘Course Of Employment’

“An employee going to or from his or her work, while on the premises where the employees’ work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment.” (MCL 418.301(3))

Disqualification

An employer may challenge a workers right to workers compensation by contending the worker, through his or her actions, disqualified himself or herself from receiving benefits under the WDCA.



For example, if the “injury” giving rise to the workers compensation claim was “incurred in the pursuit of an activity the major purpose of which is social or recreational,” then the worker may be disqualified under the WDCA. (MCL 418.301(3))

Similarly, a worker may have disqualified himself or herself from workers compensation benefits if the worker was injured by reason of his or her own “intentional and willful misconduct ...” (MCL 418.305)

Coordination

Coordination is usually seen as a good thing.

But that may not necessarily be the case if you are an injured worker trying to maximize your workers compensation benefits.

Depending on what other injury-related benefits an injured worker may be receiving, the WDCA allows his or her employer to reduce its workers compensation obligation by the amount of those other benefits. (MCL 418.354(1)(a) through (f))



Benefits that trigger this “coordination” option for employers include:

- Old-age social security benefits.
- Self-insurance plan payments.
- Wage continuation plan payments.
- Payments under a disability policy provided by the workers employer.
- Pension and retirement plan payments.
- Profit-sharing program payments.
- Wage loss benefit payments under Michigan’s No Fault Insurance law (In the event an employee was injured in an auto accident that arose out of and in the course of employment).
- Unemployment insurance payments (Weekly benefits “shall be reduced by 100% of the amount of benefits paid or payable to the injured employee under the Michigan employment security act ...” (MCL 418.358))



No Coordination

Total and permanent disability benefits, specific loss benefits, and death benefits are not subject to the WDCA's coordination of benefits provision. (MCL 418.354(1), (16), and (18))



Chapter Eleven: Making a Claim for Workers Compensation Benefits

In this chapter, you will discover:

- How an injured worker must give notice of his or her work-related injury and make a claim for workers compensation benefits within specified periods of time.
- How the workers compensation benefits provided under Michigan's Workers Disability Compensation Act (WDCA) are the "exclusive remedy" available for injured workers.
- How the WDCA's "exclusive remedy" rule is subject to several limited exceptions.
- How recovery of workers compensation benefits may be subject to certain time restrictions.
- How disputed workers compensation claims are handled.
- How workers compensation claims may be resolved.



Timing requirements: Notice of injury

An injured worker — or the dependents of a deceased worker — must provide “notice of injury” to the workers employer “within 90 days after the happening of the injury, or within 90 days after the employee knew, or should have known, of the injury.” (MCL 418.381(1))

Timing requirements: Claim for workers compensation benefits

Generally, an injured worker — or the dependents of a deceased worker — have two years to file a claim for workers compensation benefits. (MCL 418.381(1))

However, the commencement of the two-year period depends on the nature of the “injury” on which the claim for workers compensation benefits is based:

- For claims based on a personal injury attributable to a single event, the two-year period starts with “the occurrence of the injury.” (MCL 418.381(1))
- For claims based on an occupational or work-related disease, the two-year period starts on the date the worker “had knowledge, or a reasonable belief, or through ordinary diligence could have discovered that the occupational



disease or death was work related.” (MCL 418.441(1) and (2))

- For claims based on death resulting from a work-related personal injury, the two-year period starts on the date that death occurred. (MCL 418.381(1))
- For claims based on death resulting from an occupational or work-related disease, the two-year period starts on the date the deceased workers dependents “had knowledge, or a reasonable belief, or through ordinary diligence could have discovered that the ... death was work related.” (MCL 418.441(1) and (2))

Injuries Not Attributable To A Single Event

“Time of injury or date of injury ... in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee’s disability or death.” (MCL 418.301(1))



Relief available under Michigan's Workers Disability Compensation Act

The workers compensation benefits provided under the WDCA are the “exclusive remedy” for workers who suffer a personal injury or occupational disease on the job. (MCL 418.131(1))

That means that, except for under very limited circumstances, an injured worker — or the dependents of a deceased worker — can seek only workers compensation benefits from the workers employer.

In other words, the injured worker — or the deceased workers dependents — cannot sue the workers employer for compensation for the pain and suffering caused by the workers work-related injury, disease or death.

The Trade-Off

The Workers Disability Compensation Act is a legislative compromise between employers and workers.

In return for the employers' promise to provide injured workers with the benefits described above, regardless of fault, workers promised to relinquish



their right to sue employers for injury-related pain and suffering — except under very limited circumstances.

Exceptions to the ‘exclusive remedy’ rule

As with many other rules, the WDCA’s “exclusive remedy” rule — which shields employers from liability for pain and suffering damage — has its exceptions.

The exceptions to the “exclusive remedy” rule include:

- **Commission of an intentional tort by the workers employer:** “[W]hen [a worker] is injured as a result of a deliberate act of the employer and the employer specifically intended an injury,” then the exclusive remedy rule does not apply. (MCL 418.131(1))
- **Employer’s failure to secure workers compensation insurance:** If an employer fails to comply with the WDCA’s requirement that employers secure workers compensation insurance, then the injured worker — or the dependents of a deceased worker — “shall be entitled to recover [pain and suffering] damages from the employer in a civil action because of an injury that arose out of and in the course of employment notwithstanding”



the exclusive remedy rule. (MCL 418.611(a) and (b); 418.641(2))

- **The workers injury was related to social or recreational activity:** If the employer successfully avoids having to pay workers compensation benefits by arguing that the workers injury was not work-related but was “incurred in the pursuit of an activity the major purpose of which is social or recreational,” then the employer loses the protection of the WDCA’s “exclusive remedy” rule and can be sued for pain and suffering compensation. (MCL 418.301(3))

Recovery restrictions

The WDCA imposes two time restrictions on workers recovery of workers compensation benefits.

- **Two-year back rule for all workers compensation benefits:** “[1]f any compensation is sought under this act, payment shall not be made for any period of time earlier than 2 years immediately preceding the date on which the employee filed an application for a hearing with the bureau.” (MCL 418.381(2))[Two-year back rule]



- **One-year back rule for nursing or attendant care claims:** "Payment for nursing or attendant care shall not be made for any period which is more than 1 year before the date an application for a hearing is filed with the bureau." (MCL 418.381(3))

Disputed claims process

A claim for workers compensation benefits becomes disputed when the workers employer either denies the claim or cuts off benefits after paying on the claim for a period of time.

If either of those scenarios occur, the injured worker — or the dependents of a deceased worker — can start the formal dispute process by filing an "application for mediation or hearing" with the Workers Compensation Agency.

The application is commonly referred to as a "WC-104A" form and it requires information concerning the details of the injury in question (how and when it occurred as well as the extent to which medical care has been required), the benefits that are being sought, the workers weekly wage, and whether the worker returned to work post-injury. (MCL 418.222(2) and (3))

If the employer denies a workers compensation claim or cuts off benefits, then the



employer files a "Notice of Dispute," which is referred to as a "WC-107" form.

The reasons an employer may give for denying or cutting off a claim for benefits may include: "Injury not work related"; "Medical treatment not related to injury"; or "Further investigation" or "Additional Information" needed.

Once the forms have been filed and the disputed claims process has begun, the disputed workers compensation claim may go to mediation or to a full hearing before a workers compensation magistrate. (MCL 418.223(1) and (5); 418.847)

A magistrate's decision can be appealed to the Workers Compensation Appellate Commission and review of the commission's decision can be sought in the Michigan Court of Appeals and the Michigan Supreme Court. (MCL 418.859a(1); 418.861a(1))

Benefits While Case Pending On Appeal

While the case is pending before the WCAC, the injured worker shall be paid "70% of the weekly benefit required by the terms of the award of the workers compensation magistrate," as well as the "medical benefits required by the terms of the award." (MCL 418.862(1) and (2))



Resolving a workers compensation claim

A workers compensation claim can be resolved in various ways:

- The employer recognizes the merit of the claim and voluntarily pays the full claim amount.
- The worker withdraws the claim based on a change in circumstances.
- The injured worker — or the dependents of a deceased worker — and the employer reach a compromise about the amount of benefits due and the employer pays a lump sum equal to the compromised amount.
- The injured worker — or the dependents of a deceased worker — agree to what is called a “redemption of liability.”

In the first three “resolution” scenarios above, the injured worker — or the dependents of a deceased worker — retains the right to file new claims in the future based on the same injury.

However, in the “redemption of liability” scenario, the right to file future claims is not retained.



A “redemption of liability” agreement consists of two promises. The employer promises to pay the injured worker — or the dependents of a deceased worker — a lump sum amount of money to resolve claims for workers compensation benefits. And, the worker — or the workers dependents — promise to never again seek workers compensation benefits from the employer.

The Makings Of A Valid 'Redemption Of Liability' Agreement

Redemptions are valid only if they have been approved by a magistrate after a hearing, and only if six months or more has elapsed from the date of the injury, disease, or death on which the workers compensation claim is based. (MCL 418.835, 836, 837)



Conclusion

The attorneys, paralegals, and professionals at The Law Offices of Alex Berman, P.C., wish you success in using Michigan's Workers Disability Compensation Act to get your employer — or a family member's employer — to pay the workers compensation benefits warranted by a work-related injury, disease or death.

Please do not hesitate to contact The Law Offices of Alex Berman, P.C., if you have questions about this guide or injuries you or a loved one suffered at work.

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