



# Workers' Compensation – Employee Benefits

Massachusetts' workers' compensation laws (MWCLs) determine the benefits available to employees who are injured in the course and scope of employment. An injury qualifies for workers' compensation coverage if the damage or harm an employee suffers is the direct result of an accident or exposure to a hazardous environment in the normal course of his or her employment.

Benefits under Massachusetts' workers' compensation laws include coverage for medical expenses, death benefits, burial costs and wage replacement. The [Massachusetts Department of Industrial Accidents](#) (DIA) investigates and handles workers' compensation claims in the state.

## MEDICAL CARE BENEFITS

Employers must provide prompt and adequate medical care benefits to their employees for work-related injuries and illnesses. Medical care benefits usually include:

- Medical, surgical, hospital, nursing and rehabilitative services;
- Reasonable travel expenses related to treatment;
- Medicines; and
- Medical and surgical supplies.

Employers have the right to determine the physician or health care provider that will provide initial treatment for an injured employee. After initial treatment, employees may choose their own healthcare providers.

However, an employer may require an injured employee receiving benefits to submit to an examination performed by an employer-approved physician **once every six months**. Massachusetts law requires employers to cover the cost of these examinations. At his or her own expense, the employee may request his or her personal physician to be present at the examination.

Employees who refuse to submit to, or in any way obstruct, an examination may forfeit their right to compensation.

## DEATH AND BURIAL BENEFITS

Employers must provide **up to \$4,000** in reasonable funeral expenses for employees who die because of a work-related injury or illness.

Death benefits—a benefit intended to compensate an employee's surviving dependents for their loss of income—are available at a rate of **up to two-thirds** of the employee's average weekly wage (AWW), subject to the minimum and maximum rates described below. The AWW is determined using the deceased employee's pre-injury wages.

A **surviving spouse** may receive death benefits until he or she dies or remarries. **Surviving children** may receive benefits until they are over the age of 18. However, exceptions are possible for individuals who are physically or mentally disabled and for full-time students who qualify as dependents under the federal tax code.

Reduced benefits are also available to other individuals who were wholly or partially dependent on the deceased employee's income.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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The table below summarizes the death benefits available to different types of survivors.

Survivor	Available Benefits
Surviving Spouse	<ul style="list-style-type: none"> <li>• The lesser of two-thirds of the deceased employee's AWW or 100 percent of the state average weekly wage (SAWW). The SAWW is \$1,181.28 for 2013-2014.</li> <li>• At least \$110 per week.</li> <li>• An additional \$6 per week for each dependent child is available to a spouse who receives less than \$150 in death benefits per week.</li> <li>• Available until the surviving spouse dies or remarries.</li> </ul>
Surviving Children	<ul style="list-style-type: none"> <li>• Benefits for surviving children who live with the employee's surviving spouse are paid to the surviving spouse.</li> <li>• If children are from a previous marriage, the benefit is distributed in equal shares among the children and the surviving spouse.</li> <li>• If surviving spouse remarries, children receive \$60 per week (total benefit amount cannot exceed the maximum benefit amount).</li> </ul>
Other Full Dependents	<ul style="list-style-type: none"> <li>• Maximum benefit amount is the lesser of two-thirds of the deceased employee's AWW or \$80 per week.</li> <li>• The total amount of benefits paid to all dependents cannot exceed the maximum amount payable to a surviving spouse.</li> <li>• Available to individuals who are wholly dependent on the deceased employee's support.</li> </ul>
Partial Dependents	<ul style="list-style-type: none"> <li>• Partial dependency must be independent of gifts and gratuities.</li> <li>• Compensation must be equal to the amount they received from the deceased employee.</li> <li>• Aggregate compensation paid cannot exceed the maximum compensation that would be due to a surviving spouse.</li> </ul>

## WAGE REPLACEMENT BENEFITS

If an employee cannot return to work because of a work-related injury or illness, he or she is entitled to receive wage replacement benefits (also called disability, indemnity or cash benefits) while recovering. These benefits are generally immune from wage assignments, creditor claims, levies, executions, attachments and other remedies for debt collection (some exceptions apply for support orders).

Employers in Massachusetts must begin paying wage replacement benefits or deny a claim for benefits **within 14 days** of receiving an employee's first report of injury or initial benefit claim. Employers that deny a benefit claim must issue a written notice to justify the refusal.

While these benefits are usually paid on a weekly basis, employers and their employees may choose to settle compensation for wage replacement benefits in a lump sum. Employees do not forfeit any claim or right they may have for medical benefits when they accept a lump sum for wage replacement benefits. A settled lump sum may be subject to further modification for an employee who suffers substantial deterioration of his or her medical condition if:

- It was not reasonably foreseeable at the time of the settlement that the deterioration could occur; and
- The insurer would have been liable for the deterioration if there had been no settlement.

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## **Total Incapacity**

An injured employee has total incapacity when he or she sustains an injury that prevents him or her from returning to work. Total incapacity can be temporary or permanent.

Temporal Total Incapacity (TTI):	Permanent Total Incapacity (PTI):
<p>TTI benefits are available to injured employees who are expected to recover from their injuries or illnesses. Usually, this includes employees who, considering their age, training and experience, are unable to work for at least six full or partial calendar days.</p> <p>Weekly TTI benefits are paid at a rate of 60 percent of the employee's AWW, subject to the minimum and maximum rates described below. These benefits are usually available for up to 156 weeks.</p>	<p>An injured employee qualifies for PTI benefits only if his or her injuries or illness are both permanent and total.</p> <p>PTI benefits are paid at a rate of two-thirds of the employee's AWW, subject to the minimum and maximum rates described below. PTI benefits are subject to annual cost-of-living adjustments.</p>

## **Temporal Partial Incapacity (TPI)**

Partial incapacity benefits are available to individuals who have sustained a work-related injury or illness but retain some capacity to work. Employees may qualify for these benefits even if they are forced to change jobs at a lower pay rate or work fewer hours.

The benefit rate for partial disability is **60 percent of the difference** between an employee's pre- and post-injury wages. Partial disability is limited to **75 percent** of what the employee would receive if he or she were receiving TTI benefits. In addition, employers may be able to reduce an employee's TPI so it does not exceed 200 percent of the SAWW (calculated at the time the reduction is made).

These benefits are generally available for **260 weeks**. However, the benefit period can be extended up to 520 weeks if the insurance provider allows it or a judge determines the employee has:

- Suffered a permanent loss of at least 75 percent of any bodily function or sense;
- Developed a permanently life-threatening physical condition; or
- Contracted a permanently disabling occupational disease of a physical nature and cause.

## **Permanent Loss of Function and Disfigurement**

In addition to the benefits mentioned above, employees suffering certain injuries are entitled to a one-time lump sum benefit for the permanent loss of function or disfigurement of their bodies. Whether an employee has suffered a permanent loss of function or disfigurement is determined according to the standards set by the American Medical Association Guides to the Evaluation of Permanent Impairments. This benefit does not apply to employees who die from any cause within 30 days of injury.

This benefit is a multiple of the SAWW. The size of the benefit depends on the severity and location of the disfigurement or function lost. For example, an employee may receive 39 times the SAWW in a single lump sum payment for the total loss of one eye or 43 times the SAWW for the total (functional or anatomical) loss of an arm.

An employee that receives a permanent loss of function and disfigurement benefit remains entitled to pursue any other benefit he or she is entitled to under state law. If an employee dies before collecting the full amount of this benefit, the employee's survivors are entitled to collect the.

## **Waiting Period**

Injured employees are not eligible to receive wage replacement benefits for the **first five days** of their disability. However, if the injury results in **more than 21 days** of disability, benefits for the first five days must be paid retroactively.

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The figure below provides an overview of the waiting period requirements.



## Minimum and Maximum Benefit Amounts

Below are the SAWW, the maximum and the minimum benefit rates for the 2014-2015 period:

	SAWW	Maximum Weekly Compensation	Minimum Weekly Compensation
Calculation	Adjusted annually by October 1.	<b>100 percent of the SAWW.</b>	<b>20 percent of the SAWW</b> If an employee's AWW is lower than the minimum wage replacement benefit, the employee is entitled to receive 100 percent of his or her AWW.
Amount (2014 – 2015)	\$1,214.99	\$1,214.99	\$243

## MORE INFORMATION

Contact 21st Century Benefit Advisors, Inc. or visit the Executive Office of Massachusetts Labor and Workforce Development [website](#) for more information on workers' compensation laws in Massachusetts.