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KENTUCKY WORKERS' COMPENSATION

Kentucky Department of Labor website: <http://www.labor.ky.gov/workersclaims/Pages/Department-of-Workers'-Claims.aspx>
 There is useful information and forms on the KY Workers' Compensation website.

Calculating Permanent Partial Disability:

Request an Independent Medical Evaluation or have the treating physician assess an impairment rating per the 5th Edition AMA Guides. Make sure the doctor states on the report the impairment is pursuant to the 5th Edition AMA Guides.

FORMULA: AWW X 2/3 x Impairment Rating from Doctor x Factor x Return to Work multiplier = weekly wage

Steps of Calculating Benefits:

1. Calculate AWW
2. Calculating TTD
3. Minimum/Maximum TTD
4. Impairment Ratings / Factors
5. Multipliers
6. Enhancement to the Multipliers
7. How to Lump Sum the Benefits

1. Calculating Average Weekly Wage (AWW):

Use form AWW-1, KRS 342.140. Take weekly wages for a full year prior to the injury and lump into four 13 week quarters. Divide each quarter by 13. The highest weekly wage from the 13 quarters is the AWW. For annual salary, divide by 52 weeks to obtain AWW.

2. Temporary Total Disability (TTD): TTD is only owed if the Claimant has been placed off work by a doctor for more than 14 days. Once the 15th day comes to pass, TTD benefits are paid forward till MMI and also for the previous 14 days. The TTD rate is 2/3 of the employee's AWW. This is subject to minimum and maximum rates.

3. Year of Injury	Minimum TTD & PPD Rate	Maximum TTD & PPD Rate
2010	\$142.36	\$711.79
2011	\$144.40	\$721.97
2012	\$147.24	\$736.19
2013	\$150.54	\$752.69
2014	\$153.81	\$769.06
2015	\$154.72	\$773.61
2016	\$159.72	\$798.63

4. Impairment Rating	Factor used with calculations
0 to 5%	0.65
6 to 10%	0.85
11 to 15%	1.00
16 to 20%	1.00
21 to 25%	1.15
26 to 30%	1.35
31 to 35%	1.50
36% and up	1.70

5. MULTIPLIERS:
 KRS 342.730(1)(c): Add 3.0 to calculations if the Plaintiff cannot return to his pre-injury work plus any enhancement factors. Add 2.0 multiplier if employee returns to work at equal or greater wages.

6a. Enhancement	Education
0.2	Less 12 th or GED
0.4	Less 8th

6b. Enhancement	AGE
0.2	50-54
0.4	55-59
0.6	60 +

7. Lump Sum Benefit for Employer: Typical benefits are awarded for 425 weeks. If benefits are paid in lump sum, use the discounted weeks instead of 425 weeks.

**2016 lump sum for 425 weeks:
 399.9928**

***Age factor:** Benefits are only paid until an employee reaches Normal retirement age for Social Security. Minimum amount of weeks due is 104 weeks.

Potential issues under the Kentucky Workers' Compensation Statute

- ◆ **Failure to Follow Medical Advice**: KRS 342.035(3), No compensation shall be payable if the employee's death is caused by or if and insofar as the employee's disability is aggravated, caused, or continued by an unreasonable failure to submit to or follow competent surgical treatment or medical advice.

- ◆ **Notice**: Three statutes govern the notice requirement, KRS 342.185, KRS 342.190, and KRS 342.200. KRS 342.185 and KRS 342.190, which require an injured worker to give written notice of a work-related accident, including certain details regarding the accident and resulting injury, and to do so "as soon as practicable" after the accident occurs.

- ◆ **Injury as defined under the ACT**: Under KRS 342.0011, "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.

- ◆ **Statute of Limitations**: An Application for Resolution of Injury Claim (Form 101) must be filed within two years of the date of the injury, or within two years of suspended income benefits and medical treatment. Proper forms with the Department of Workers' Compensation must be filed in order to toll the statute.

- ◆ **Involuntary Intoxication**: KRS 342.610(1) holds an employer liable for compensation for a work-related injury without regard to fault, but KRS 342.610(3) will relieve the employer from liability if a worker's injury is "proximately caused primarily by voluntary intoxication as defined in KRS 501.010." Voluntary intoxication is an affirmative defense that the employer must both plead and prove.

- ◆ **Medical Benefits in Kentucky**: The employee can typically choose their doctor unless the employer designates a managed health care system. Except for situations of emergency treatment, the direction of medical treatment is under the care of one doctor who will make referrals to other medical providers as needed. The designation of the employee's doctor is submitted on a Form 113. The employee may only change the doctor one time without approval from the employer or Judge.

- ◆ **Denying Medical Treatment in compensable claims**: Utilization Review addresses reasonableness and necessity, while peer review addresses work relatedness.

- ◆ **Credits for payment of benefits**: If TTD is awarded by the Judge, the employer can receive a credit for Unemployment benefits, Short term / Long term benefits, and TTD overpayment. In order to receive credit, the employer must prove that benefits were paid and a policy existed.

- ◆ **Vocational Benefits / Right to Reopen**: Both of these Kentucky benefits can be waived in settlement with consideration. Under KRS 342.710(3), When, as a result of an injury an employee is unable to perform work for which he has previous training or experience, the employee is entitled to vocational rehabilitation services, including retraining and job placement, as may reasonably be necessary to restore the employee to suitable employment. Vocational rehabilitation shall not extend for more than 52 weeks. A claim may be reopened under KRS 342.125(1)(d) and (3) after an award if there is a worsening in impairment, to reduce a PTD award to PPD if an employee returns to work and to determine compensability of ongoing medical treatment.