Workers' Compensation: Permanent Disability Benefits YOUR LEGAL RIGHTS

You are eligible for permanent disability benefits if you have not made a complete recovery from your work-related injury/illness once your condition has stabilized. Permanent disability benefits begin with your doctor's "permanent and stationary" report (see explanation below). After your doctor writes the report, you will receive a permanent disability rating, which corresponds to a limited amount of money designed to compensate for your lowered earning capacity. The insurance company will continue to cover reasonable medical care during this time.

1.

What does "Permanent and Stationary" mean?

Permanent and Stationary is a medical-legal term used to describe a stage in the workers' compensation system. Usually it coincides with the injury's stabilization, but it does not necessarily mean that you will not continue to recover.

If you have not fully recovered after receiving temporary disability benefits, but have reached "maximum improvement," your doctor will write a Permanent and Stationary (P&S) report. This report describes your medical condition, work restrictions, and future care recommendations. Your doctor then sends this report to the claims administrator.

NOTE: You are entitled to receive a copy of your doctor's report. You can make a written request to either your doctor or your claims administrator. Read the report carefully and make sure that you agree with the doctor's conclusions. This report will affect your benefits.

2.

What if I disagree with the P&S report?

Change doctors:

If your employer has a medical network: You can change to another doctor within your employer's medical network. If you cannot reach an agreement with your new doctor, you can obtain opinions from up to two more network doctors. At that point, you can also request an independent medical review which is conducted by the State Division of Workers' Compensation.

If your employer does not have a medical network: You may switch doctors or may challenge the report via the steps below.

Challenge the decision:

1. Write to the insurance company within 30 days (20 days if you have an attorney) and let it know that you disagree with the report and state the reasons why.

2. You can also get a "second opinion" medical-legal evaluation from another doctor. For a more detailed explanation of this process, see our Fact Sheet titled Workers' Compensation: Medical Care.)

3.

What if the insurance company disagrees with the medical report?

The insurance company may also disagree with your treating doctor's medical report (e.g. the insurance company thinks you are P&S but your doctor does not) and also has the right to request a medical-legal evaluation, which is conducted by a Qualified Medical Examiner ("QME") or an Agreed Medical Examiner ("AME")

NOTE: The medical-legal report can override your treating doctor's report and is very important since this report will affect your benefits. For more information about these evaluations, see our Fact Sheet titled "Workers' Compensation: Medical Care." You can also contact the Information and Assistance Office or the Division of Workers' Compensation, which oversees this process. The DWC provides written guides describing the evaluation process. 1-800-794-6900

4.

How is my permanent disability rating determined?

Permanent disability payment amounts are based on a disability rating scale that estimates how much your injury impacts your work ability. This rating is based on the medical evaluator's medical condition report, your injury date, your age, your occupation, how much of your disability is caused by your job, and your reduced future earning capacity. The ratings are expressed in percentages. A 100% rating is a total disability rating. Ratings below 100% are called partial disability ratings.

Ratings are calculated according to the "Schedule for Rating Permanent Disabilities." To receive a copy of this schedule, contact your district Information and Assistance office or view the schedule online at the Division of Workers' Compensation home page under "Reports and Schedules."

5.

Who determines my permanent disability rating?

When your treating doctor writes the P&S report, she will rate your "impairment" or how much you have lost the normal use of the injured parts of your body. Your doctor will rate your impairment according to American Medical Association (AMA) guidelines.

6.

What if I don't agree with the permanent disability rating?

While ratings are based on a standard set of criteria, they are somewhat negotiable. If you do not agree with your rating, you have the right to dispute it.

If you do not have an attorney:

- 1. Contact the claims administrator and discuss your concerns.
- 2. If the claims administrator does not agree with you, you can request a workers' compensation judge to determine your rating.
- 3. You may also request a State Disability Rater to rate your disability and use this rating in negotiation. (Note that if you saw a QME, your rating was automatically decided by a State Disability Rater).
- 4. If you disagree with the state Disability Rater, you can request reconsideration of your rating by the Workers' Compensation Appeals Board. An Information and Assistance Officer can help you find a workers' compensation judge or request reconsideration.

If you do have an attorney:

Talk to your attorney about your concerns. She can explain the rating to you and present your concerns to a workers' compensation judge.

7.

How does my "rating" determine my actual permanent disability payments?

Permanent disability payments are set by law and are calculated according to three factors: your disability rating, your wages at the time of injury, and your date of injury.

The amount of your weekly permanent disability payments equals two-thirds of your average weekly wage at the time of your injury, limited by the minimum and maximum rates stated by the California Labor Code.

See Current Permanent Disability rates.

1. If your employer has over 50 employees and offers you regular, modified, or alternative work lasting at least 12 months, your PD benefits will be *decreased* by 15%. If your employer does not make this offer, your PD benefits will be *increased* by 15%.

- Regular work must pay the same wages and benefits of your old job and be within a reasonable commuting distance of where you lived at the time of the injury
- Modified or alternative work must pay at least 85% of the wages you were receiving at the time of the injury and be within a reasonable commuting distance of where you lived at the time of the injury.

2. Permanent disability benefits are not subject to federal or state income taxation.

8.

When do I start receiving PD payments?

- You are eligible to begin receiving permanent disability benefits as soon as a doctor (either your treating physician, a QME, or an AME) finds evidence of any permanent disability.
- If you have been receiving temporary disability benefits, the permanent disability payment must be sent within 14 days after your last temporary disability check.
- If you were not receiving temporary disability benefits, the PD payment must be sent within 14 days after your doctor deems your injury to be permanent and stationary.
- After the initial payment, PD checks are sent out every 14 days.

9.

When do PD payments end?

PD payments end when they add up to your total disability award or when you have settled your case by Compromise and Release or “Stips.”

For further information about your employment rights, contact the Workers’ Rights Clinic.

Disclaimer

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society–Employment Law Center cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.