Workers Compensation Benefit Overview – Kentucky

Major Developments: Last major legislation in 2004 (SB899), affected indemnity rates, disability rating, medical treatment, medical-legal disputes, penalties, and apportionment. 2007 legislation affects caps on TD and post-surgical treatments.

Indemnity Issues

Temporary Total Benefits	Average Weekly Wage is determined by taking the highest 13 week period of gross AWW for the 52 weeks proceeding the date of injury. Overtime hours are calculated at the regular hourly rate, not the overtime rate. TTD benefit is 2/3 of the injured worker's gross average weekly wage. Min: **$138.86** Max: **$694.30** Waiting period: 7 day waiting period which is paid once disability surpasses 14 days. Unlimited benefits Checks can be sent to the employer; however, if the injured worker submits a written request that checks be sent directly to them, checks must be sent to them.
Temporary Partial Benefits	No provisions for this benefit under the KY WC law.
Permanent Partial Benefits	Based on a whole body impairment rating pursuant to the latest edition of the American Medical Association's *Guidelines to the Evaluation of Permanent Impairment.* Min: None Max: $520.72 Benefit duration: Limited generally to 425 weeks, but if the impairment rating is 50% or greater, benefits are paid for a 520 week period. The following basic formula is used to determine the weekly benefit rate due: AWW x 66.67%= PPD rate x (AMA impairment rating)x (Factor(s)) = weekly PPD benefit due.

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	The factor is to use is determined by the following: AMA impairment ratingFactor 0-5% ..... 0.65 6-10% ..... 0.85 11-20% ..... 1.00 21-25% ..... 1.15 26-30% ..... 1.35 31-35% ..... 1.50 36% and above ..... 1.70 In addition to the factor above, one or more of the following additional factors may apply: If the injured worker does not retain the physical ability to return to the type of work performed at the time of the injury, the weekly benefit due may be multiplied by 3. If the injured worker returns to work at an equal to or greater wage and at some point there is an interruption of that employment, the weekly benefit due will be multiplied by 2 during the period of unemployment. Additional factors relating to the injured worker's education level and/or age may or may not apply in a given case. Given the complexity of factors that may or may not apply, it is strongly suggested that you consult a claim professional in the computation of PPD benefits due.
Permanent Total Benefits	PTD benefits are payable "when an employee has a complete and permanent inability to perform any type of work as a result of an injury." Permanent and total disability shall be presumed in the following instances: 1. total and permanent loss of sight in both eyes 2. loss of both feet at or above the ankle 3. loss of both hands at or above the wrist 4. loss of one foot at or above the ankle and loss of one hand at or above the wrist 5. permanent and complete paralysis of both arms, both legs, or one arm and one leg. 6. incurable insanity or imbecility, or 7. total loss of hearing Min: **$138.86** Max: **$694.30** Benefits are payable for as long as total disability continues.

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Fatality Benefits	If death occurs within 4 years of the date of the injury, as a direct result of the injury a lump sum is due to the deceased's estate. Lump Sum: **$68,198.54** The surviving spouse and certain dependents are also entitled to income benefits depending on their status. Min: **$138.86** Max: Varies depending on mix of dependents and their status. Benefit due is determined as a percentage of the deceased worker's AWW (Average weekly wage). Example: Widow or widower with no dependent children – 50% of AWW to a max of **$347.16.** Example: Widow or widower with children living in the home – 45% of AWW and 15% for each child – subject to a max of **$520.72** **Supreme Court case Feb. 2008 ruled that the termination of income benefits to the widow following the death of the injured employee in both work-related and nonwork-related death claims occurs *when the widow or widower reaches age 60*.** Benefits are payable to dependent children to age 18, or until age 22 if they maintain full-time student status and provide proof of the same.
Vocational Rehabilitation	Vocational Rehabilitation is not mandatory. Employer can be obligated to pay for the cost of retraining to include tuition, books for a 52 week period. Covered expenses can also include transportation, lodging, and meals. On a case by case basis, additional periods of vocational retraining may be awarded by an Administrative Law Judge.
Settlement Allowed	Yes, subject to review and approval by the Office of Worker's Claims. Indemnity benefits – PPD and PTD can be comminuted to a lump sum utilizing the state mandated discount rate which is updated annually. Current approved discount rate for **2009 is 3.50%.**
Cap on benefits, exceptions	PPD and PTD benefits are capped at the injured worker's regular Social Security retirement age, or two years after the date of injury, whichever occurs last. TTD and PTD benefits can be credited by any unemployment insurance benefits paid during the period of disability. These benefits may also be reduced by any disability or sickness and accident payments from a plan that is *wholly* funded by the employer.

Medical Issues

Initial Choice of Provider	Employee. If the employer is officially enrolled in managed care- employee must choose a gatekeeper physician from the approved managed care network.

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Change of Provider	Employee can change once with no referral. If they want to change a 3rd time with no referral, then the employer or the carrier must agree to the change.
Medical Fee Schedule	Yes
Managed Care	Yes – Employer can officially enroll in managed care to become a Managed Care Employer which requires their injured worker's to choose their treating physician from the managed care network available.
Utilization Review	Yes – specific regulations exist regarding the utilization review process and timeframes.
Medical Mileage Reimbursement Rate	Currently **37 cents per mile for mileage 1/1/09 thru 3/31/09.** Rate is updated quarterly.
Ability to Terminate Medical Treatment	If it is determined that all or any portion of any ongoing care is either not reasonable and necessary, or is unrelated to the work injury, then on post award cases, we can file a Motion for a Medical Fee dispute to seek official relief. We can only terminate ongoing medical by way of an award from an Administrative Law Judge.
Settlement Allowed	Yes- again subject to review and approval by the Office of Worker's Claims.
Cap on benefits, exceptions	No cap. Once PPD or PTD has been either awarded or resolved by agreement, then the injured worker has the right to reasonable and necessary medical treatment for the work injury for their lifetime.

Other Issues

Staff Counsel	Staff Counsel not allowed in Kentucky
Hearings require attorney or claim handler participation	Yes – attorney participation
Occupational Diseases	Occupational Disease claims must be filed within 3 years after diagnosis or after symptoms first appear which are sufficient to inform the employee of the disease, whichever is earlier. The maximum period to file most occupational disease claims is 5 years after the injured worker was last exposed to the occupational hazard causing the disease.
Second Injury Fund availability	Does not apply for injuries of 12/12/1996 and after

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Other Offset Opportunities	See cap on benefits under Indemnity.

State workers compensation website link:
http://www.labor.ky.gov/workersclaims

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