

# Workers Compensation Claim State Environmental Guide - Kentucky

Kentucky- <https://labor.ky.gov/comp/pages/default.aspx>

## Indemnity Issues

<p>Temporary Total benefits</p>	<p>Average Weekly Wage is determined from the highest 13-week quarter of gross AWW for the 52 weeks preceding the date of injury. Overtime hours are calculated at the regular hourly rate, not the overtime rate.</p> <p>TTD benefit is 2/3 of the injured employee's gross average weekly wage subject to the following limits for 2022 (dates of injury of 1/1/2022 through 12/31/2022).</p> <p>Min: \$195.29 Max: \$1074.12</p> <p>Waiting period: 7 day waiting period, which is paid once disability surpasses 14 days (i.e., 15-days or more of cumulative lost time).</p> <p>Checks can be sent to the employer; however, if the injured employee submits a written request that checks be sent directly to them, checks must be sent to them.</p> <p>All income benefits terminate the later of the employee reaching age 70 or 4 years after the employee's injury or last exposure.</p>										
<p>Temporary Partial Benefits</p>	<p>No provisions for this benefit under the KY WC law.</p>										
<p>Permanent Partial Benefits</p>	<p>Based on a whole-body impairment rating pursuant to the 5th edition of the American Medical Association's Guidelines to the Evaluation of Permanent Impairment.</p> <p>Min: None.</p> <p>Max: \$805.59 (dates of injury 1/1/2022 through 12/31/2022-retains capacity to RTW).</p> <p>Benefit duration: Limited generally up to 425 weeks, but if the disability rating (impairment X grid factor) is 50% or greater, benefits are paid up to a 520-week period.</p> <p>The following basic formula is used to determine the weekly benefit rate due:  <math>AWW \times 66.67\% = PPD \text{ rate (subject to maximum)} \times (\text{AMA impairment rating}) \times (\text{Factor(s)}) = \text{weekly PPD benefit due.}</math></p> <p>The factor to use is determined by the following:</p> <table data-bbox="568 1575 893 1766"> <tr> <td>AMA impairment rating</td> <td>Factor</td> </tr> <tr> <td>0-5%</td> <td>0.65</td> </tr> <tr> <td>6-10%</td> <td>0.85</td> </tr> <tr> <td>11-20%</td> <td>1.00</td> </tr> <tr> <td>26-30%</td> <td>1.35</td> </tr> </table>	AMA impairment rating	Factor	0-5%	0.65	6-10%	0.85	11-20%	1.00	26-30%	1.35
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	<p>31-35% 1.50 36% and above 1.70</p> <p>In addition to the factor above, one or more of the following additional factors may apply: If the injured employee 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 employee 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 employee'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.</p> <p>All income benefits terminate the later of the employee reaching age 70 or 4 years after the employee's injury or last exposure.</p>
<p>Permanent Total Benefits (see major developments)</p>	<p>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:</p> <ol style="list-style-type: none"> <li>1. total and permanent loss of sight in both eyes</li> <li>2. loss of both feet at or above the ankle</li> <li>3. loss of both hands at or above the wrist</li> <li>4. loss of one foot at or above the ankle and loss of one hand at or above the wrist</li> <li>5. permanent and complete paralysis of both arms, both legs, or one arm and one leg.</li> <li>6. incurable insanity or imbecility, or</li> <li>7. total loss of hearing</li> </ol> <p>Min: \$195.29 (2022 rate – dates of injury 1/1/2022 through 12/31/2022) Max: \$1074.12 (2022 rate – dates of injury 1/1/2022 through 12/31/2022)</p> <p>All income benefits terminate the later of the employee reaching age 70 or 4 years after the employee's injury or last exposure</p>
<p>Fatality Benefits</p>	<p>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: \$95,915.08(2022 rate – dates of injury 1/1/2022 through 12/31/2022)</p> <p>The surviving spouse and certain dependents are also entitled to income benefits depending on their status.</p> <p>Min: NONE Max: \$732.35 (2022 rate – dates of injury 1/1/2022 through 12/31/2022)</p> <p>Varies depending on mix of dependents and their status. Benefit due is determined as a percentage of the deceased employee's AWW (Average weekly wage; subject to the maximum).</p> <p>Example: Widow or widower with no children – 50% of AWW to a max of \$488.24 (2022 rate – dates of injury 1/1/2022 through 12/31/2022)</p> <p>Example: Widow or widower with children living in the home – 45% of AWW and 15% for each child – subject to a max of \$732.35 (2022 rate – dates of injury 1/1/2022 through 12/31/2022)</p> <p>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 non-work-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.</p>

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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 Department of Workers Claims. Indemnity benefits – PPD and PTD can be commuted to a lump sum using the state-mandated discount rate, which is updated annually. Accordingly, for the calendar year of 2022, the discount rate for lump-sum settlements of future periodic payments in weekly amounts that are \$40 or less is fixed at 1.25%. For the calendar year of 2022, the discount rate for lump-sum settlements of future periodic payments in weekly amounts greater than \$40 is fixed at .75%.
Cap on benefits, exception (see major development)	TTD, PPD and PTD benefits are terminated the later of the employee reaching age 70 or 4 years after the employee's injury or last exposure, whichever occurs last.  TTD and PTD benefits can be credited by any unemployment insurance benefits paid during the period of disability. Credit can be applied for wages earned during a period of return to modified duty which occurs prior to achieving maximum medical improvement. 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.
Change of Provider	Employee can change once with no referral. If they want to change to a 3 <sup>rd</sup> provider 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 employees to choose their treating physician from the managed care network available.
Utilization Review	Yes – specific regulations exist regarding the utilization review process and timeframes.
Treatment Guidelines	ODG Formulary has been established for Medications effective 7/1/19. ODG Treatment Guidelines adopted 1/1/2021. <a href="http://www.labor.ky.gov/comp">www.labor.ky.gov/comp</a> has links to the statute covering Treatment Guidelines 803KAR 25:260; official notice is <a href="#">here</a> .
Generic Drug Substitution	The state mandates generic substitution.
Medical Mileage Reimbursement Rate	Currently forty-nine (49) cents per mile for mileage traveled 04/01/2022 through 06/30/2022. Rate is updated quarterly.
Network Information	CorVel network is used.
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

**Medical issues**

	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 Department of Workers Claims.
Cap on Benefits, exceptions (continued next page)	<p>No cap. Once PPD or PTD has been either awarded or resolved by agreement, then the injured employee has the right to reasonable and necessary medical treatment for the work injury for their lifetime.</p> <p>KRS 342.020 is amended to limit the duration to <b>780 weeks of medical benefits</b> post-injury. This limit does not apply when the injury is total or partial amputation of an arm, hand, leg or foot; or the loss or enucleation of an eye, loss of teeth, or permanent paralysis, either total or partial. Additionally, at a point 754 weeks post-injury the DWC is required to notify each claimant of the pending deadline. Claimants can then reopen their claim and move for an extension of the 780-week time period. If they do it is their burden to prove that the treatment is still “reasonably necessary and related to the work injury or occupational disease.” Otherwise, “any future medical treatment <b>shall be deemed to be unrelated to the work injury</b> and the employer’s obligation to pay medical benefits <b>shall cease permanently</b>” at the 780-week mark.</p> <p>*Note: Locating claimants 780 weeks post-injury may be an administrative challenge for the DWC (Department of Workers’ Claim).</p>

**Other Issues**

WC Hearing Docket Speed	<p>Once application has been filed and notice has been sent of assignment to an Administrative law judge, the following time frames are evoked:</p> <ol style="list-style-type: none"> <li>1. Employer/carrier has 45 days to file a Notice of Acceptance or Denial</li> <li>2. Both parties have 60 days from the initial notice letter date to file proof. Defendant then has an additional 30 days thereafter, then plaintiff an additional 15 days.</li> <li>3. Case is then set for a BRC (Benefit Review Conference) where the parties informally discuss the case and pursue and chances of resolution/settlement. If case does not resolve, it is set for a hearing.</li> <li>4. Following the Hearing, each party can file a brief and the ALJ has 60 days to render a decision.</li> <li>5. Each party has 14 days post the decision to file a Petition for Reconsideration.</li> </ol> <p>Often, a case goes to a BRC hearing within 6 months and if needed to a Hearing for a decision within 1 year after the initial filing of the Application. Litigation associated with Medical fee disputes generally take a year to 18 months.</p>
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 employee 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.

**Other Issues**

Other Offset Opportunities	See cap on benefits under Indemnity.
EDI	Claims EDI Release 3: FROI & SROI (3/28/2011)
In-State Adjusting Required	No
License or Certification Required	Yes

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