

# **State of Indiana Short and Long Term Disability and Worker's Compensation Programs**

## **Employee Handbook**

**Governing Statute IC 5-10-8-7  
Administrative Rules 31 IAC 5-9-1 to  
5-9-31**

**Workers Compensation Statute IC  
22-3-1-1 to 22-3-12-5**

**STATE OF INDIANA EMPLOYEE HANDBOOK  
SHORT AND LONG TERM DISABILITY AND WORKER’S  
COMPENSATION PLANS**

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# Introduction

This handbook is a resource for employees to better understand the rules and benefits provided under the Disability and Worker's Compensation Programs. The information in this handbook is based upon the statute and rules that govern the Disability and Worker's Compensation Programs. The authority for these Programs is outlined in State statutes: I.C. 5-10-8-7 and I.C. 22-3-1-1 through 22-3-12-1 and Administrative Rules 31 I.A.C. 5-9-1 through 5-9-31. In the event of a dispute or conflict between the language in this handbook and the above statutes and rules, proper resolution lies with the statutes and rules, rather than the language of this handbook.

JWF Specialty is the third party administrator that oversees the administration of both the Disability and the Worker's Compensation Programs. Service issues, concerns or general questions can be directed to either entity listed below.

State Personnel Department  
402 W. Washington St. Rm W161  
Indianapolis, IN 46204  
Benefit Hotline: 317-232-1167  
Or Toll Free: 1-877-248-0007

JWF Specialty Company  
600 E. 96<sup>th</sup> St., Ste. 425  
Indianapolis, IN 46240  
Toll Free: 1-888-818-7795

## Purpose and Scope of State Disability Program

The purpose of the Disability Program is to provide income replacement and insurance premium continuation for State employees who are unable to work due to illness or non-occupational injury. The Program includes both Short Term Disability (STD) benefits and Long Term Disability (LTD) benefits. The Disability Program is provided to employees as a bridge to sustain employees financially either to a full recovery, partial recovery, or permanent disability through Social Security.

## Purpose and Scope of State Worker's Compensation Program

The State provides a Worker's Compensation Program for all employees, as required by Indiana Code 22-3-1-1 through 22-3-12-5. The purpose of the Worker's Compensation Program is to provide the statutory benefits afforded an employee that is injured in the course and scope of his or her employment. The State takes seriously the responsibility of providing high quality medical care with the goal of a full recovery and return to work.

# **Brief Overview of Benefits and Terminology**

## **Elimination Period**

Both the Disability and Worker's Compensation Programs require that an employee be unable to perform their job duties for a certain time frame prior to becoming eligible for benefits. This time frame is referred to as the elimination period. The elimination period for the Disability Program is thirty (30) consecutive calendar days of disability. The elimination period for Worker's Compensation is seven (7) days of disability, however the period does not need to be consecutive.

## **Short Term Disability (STD)**

The Short Term Disability period lasts up to six (6) months, including the elimination period, from the date the employee becomes disabled. The basic STD benefit is sixty (60) percent of the base biweekly gross wage, before taxes and insurance.

## **Long Term Disability (LTD)**

If an employee is continuously disabled six (6) months after the disability began, he or she may be eligible for Long Term Disability. No reapplication is needed, but updated medical information may be requested. For the first two years of LTD, the basic benefit is fifty (50) percent of the base biweekly gross salary, and forty (40) percent during the third and fourth year. This is the gross benefit amount, before taxes and insurance.

## **Partial Disability Job (PDJ) Program**

The Partial Disability Job (PDJ) Program returns STD and LTD recipients to work, who are **able** to perform gainful employment, but not capable of performing their own duties. Employees who are able to perform PDJ assignments are required to perform those assignments when they are available.

## **Part-Time Disability**

Employees whose recovery allows return to their original assignment on a part-time basis can temporarily receive compensation that blends regular salary for hours worked with the appropriate disability benefit for hours missed due to the disability.

## **Minimum Benefits**

Minimum Benefits are created by receipt of other income sources which are an offset to disability benefits. When an offset reduces the employee's income replacement he or she is guaranteed a minimum benefit sufficient to make the employee contribution to group medical, dental, vision and life insurance plans and the employee assistance program.

## **Worker's Compensation and State Disability Program**

Worker's Compensation is an entitlement separate from the State's Disability Program, governed by IC-22-3-1-1 through IC 22-3-12-5. However, State employees who experience a Worker's Compensation claim under Indiana law are additionally entitled to be considered for specific benefits under the State's Disability Program. These include Minimum Benefits and increased wage replacement under the Tortious Acts portion of the State Disability Program.

## **Tortious Acts**

An employee who, in the scope of State employment, is disabled by injuries resulting from the tortious (wrongful or negligent) act of another person, shall receive one hundred (100) percent of the gross base biweekly salary from the agency in lieu of the statutory Worker's Compensation benefits.

## **Special Sick Leave**

Special sick leave was a benefit provided to employees prior to the adoption of the Short and Long Term Disability Programs. Employees that are eligible for special sick leave may utilize it to supplement/replace disability payments as outlined in the Employee Option Statement. However, special sick leave can only be utilized after all other forms of leave have been exhausted.

## **Family Medical Leave Act (FMLA)**

The Family Medical Leave Act allows eligible employees to take unpaid leave for a serious health condition of either the employee or immediate family member for a period of up to twelve (12) weeks during a twelve (12) month period. For employees qualified to receive FMLA benefits, any time off work under the Disability Program or Worker's Compensation will run concurrently with FMLA.

# **Disability Program Eligibility**

State employees who have been employed on a permanent full-time basis for a continuous period of six (6) months are eligible for STD and LTD. *Note that uniformed State Police, elected officials, and employees of a few quasi-agencies do not participate in the group STD and LTD Programs.* Participation in the State Disability Program is based on contributions from both the State and the employee.

## **Medical Statements to Verify Continuous Eligibility**

To ensure continual eligibility, updated medical statements are requested as needed, even for employees whose doctor determines them to be "permanently disabled." Requests for updated medical statements may be noted on the benefit calculation letter which comes with the disability check. The State does not pay for preparation of the medical statement. The employee is required to call or visit the attending physician and ask that a current statement be sent to JWF Specialty. The information needed includes:

- Current Diagnosis
- Current Disability Status
- Expected Return to Work Date
- Doctor's Signature
- Date Signed
- Dates of Treatment
- Current Work Restrictions

Disability benefits can be terminated for failure to attend a State ordered, State paid examination or failure to provide requested medical statements.

# Short Term Disability

## Eligibility

Employees must be medically certified as being unable to perform their own occupation. Eligibility begins on the thirty-first (31<sup>st</sup>) day of disability after satisfying the thirty (30) day elimination period. Employees are responsible for submitting their portion of the disability paperwork within thirty (30) days of the date of disability. Benefits will be forfeited for each day past the thirty (30) day deadline.

## Elimination Period

Disability applications are subject to a thirty (30) day elimination period. During this period, the employee must be continuously unable to perform their own occupation for thirty (30) calendar days, beginning from the first day an employee is medically certified unable to perform their own occupation. No disability benefits are paid at any time for the first thirty (30) day elimination period.

### Leave with Pay Status

Employees can use accrued leave time during the elimination period and will be considered in a leave with pay status.

### Leave Without Pay Status

If, prior to completing the thirty (30) day elimination period, the employee has used all leave days including any special sick leave, the employee will be in a leave without pay status.

### Billing Employees for Insurance Premiums

Employees who qualified for FML, but do not have enough leave time to use during the elimination period, will be billed at home by the insurance carrier for the employee portion of insurance premiums. Once the employee pays the premiums, the agency is notified to pay the State's share. Those employees who do not qualify for FML will be billed at home for both the employee and State's share of insurance premiums.

### Holidays

If a holiday occurs during the elimination period and the employee either worked at least one day or used any accrued leave day during that week, the employee should receive holiday pay. If the employee goes out-of-pay status for the entire week in which a holiday is observed, the holiday is not paid. Once disability benefits begin, every week day is a disability day – no holidays are paid.

## Duration

The maximum length of STD is six (6) months. This is comprised of the thirty (30) day elimination period and five (5) months STD benefits.

## **Payroll**

Disability benefits will follow the same payroll schedule the employee was on prior to the disability. The first benefit payment will be received on the normal check date for the pay period in which the thirty-first (31<sup>st</sup>) day of disability falls. All deductions an employee has elected will continue while on disability. Disability payments are also subject to state and federal taxes. Disability payments will be deposited via direct deposit into the account on record with the States Auditor's Office. If the employee is paid via Visa debit card this will continue on the same card the employee is already in possession of through the State's payroll debit card system.

## **Benefit Options**

**Option 1:** This is the basic benefit as described previously. The STD Program will never pay more than sixty (60) percent.

**Option 2:** During the STD period, the employee may choose to use one (1) day of accrued leave per week to receive eighty (80) percent.

**Option 3:** This option pays the employee one hundred (100) percent of their wage by utilizing five (5) days of accrued leave per week, until the leave is exhausted.

If the employee chooses Option two (2) or three (3), when the leave is exhausted, the employee will automatically be reduced to option one (1).

## **Recurring Disability**

If an employee returns to work after receiving STD benefits and, within ninety (90) days of the return, becomes disabled again from the same condition causing the original disability, that employee will **not** be required to satisfy a new thirty (30) day elimination period. The employee can return immediately to STD. The entire period will be considered as one continuous period of disability and will not establish a new benefit period. The employee must submit a new Attending Physician's Statement or other reliable certification by a doctor of the recurrence of the disability.

## **Continued Treatment**

On occasion employees are able to return to work however are still undergoing a medical treatment regimen that requires time off work. If the treatment program is related to the original disabling condition and is of a specific time period, the employee may be entitled to disability benefits for the time missed. JWF Specialty will look at each of these situations individually to determine eligibility for continued benefits.

## **Long Term Disability**

LTD benefits are available under the same Program for employees that are unable to return to work following the STD period. The LTD Program has two distinct periods referred to as Years One (1) and Two (2) and Years Three (3) and Four (4).



## **Eligibility Years One (1) and Two (2)**

Following STD, if an employee remains medically disabled from performing their own occupation, they will be eligible for LTD.

- Employees entering LTD **must** apply for Social Security Disability (SSD). If denied, the employee **must** apply for reconsideration of the denial. If again denied, the employee **must** file an Appeal for Hearing.
- During all phases of this application process, it is the employee's responsibility to forward all correspondence received from SSD to JWF Specialty.

## **Eligibility Years Three (3) and Four (4)**

When entering the third year of LTD, the definition of eligibility changes. To be eligible for benefits in Years Three (3) and Four (4), the employee must be medically unable to perform duties of **any occupation**.

- If upon review of the medical condition it is determined that the employee no longer meets this definition of disability, JWF Specialty will notify the employee in advance of benefit termination.

## **Payroll**

Employees entering LTD are no longer required to pay the LTD payroll contribution. In addition, IRS regulations require FICA/Medicare taxes and Deferred Compensation to stop. These deductions will be automatically removed from the employee's benefit payment.

## **Benefit Options**

**Option 1:** This is the basic benefit as described previously. The LTD Program will never pay more than fifty (50) percent for LTD Years One (1) and Two (2), or forty (40) percent LTD for Years Three (3) and Four (4).

**Option 2:** During the first and second year of LTD, employees may use one (1) day of accrued leave per week to receive seventy (70) percent. During the third and fourth year of LTD, employees may use one (1) leave day a week to receive sixty (60) percent.

**Option 3:** This option pays one hundred (100) percent of the employee's wage by utilizing five (5) days of accrued leave per week, until the leave is exhausted.

Once accrued leave is exhausted under Option Two (2) or Three (3), the employee will automatically be reduced to Option One (1).

## **Legal Assistance**

Employees may seek legal assistance in their quest for Social Security Disability benefits, if they so desire. The State will not attempt to collect back pay for that portion assigned to the attorney as a contingency fee. JWF Specialty may refer an employee to a consultant for assistance in applying for and obtaining Social Security Disability. This would be at no cost to the employee. If successful, the

State would pay the fee of the consultant and then seek its share of the SSD back pay and future offsets from the employee.

### **Award of Social Security Disability**

If Social Security Disability is awarded, the employee **must** notify JWF Specialty within seven (7) calendar days of receipt of the notice of the award and send a copy of the award letter. The employee **must** also notify JWF Specialty upon receiving the first Social Security check.

The Social Security monthly benefit amount is then applied to reduce or offset future wage replacement benefits from the State Disability Fund, dollar for dollar. This is authorized by 31 IAC 5-9-22.

### **Lump Sum Social Security Awards**

Employees cannot receive both Social Security and benefits from the State Disability Program. If the award includes a lump sum for back pay, the employee **will** be required to reimburse the State Disability Fund. Employees must contact JWF Specialty immediately so the amount owed back can be calculated. **Failure to reimburse the State Disability Fund in full within fourteen (14) days will result in immediate benefit termination and legal collection actions will begin.**

Employees already receiving Social Security Retirement benefits when they begin receiving State Disability benefits, must notify JWF Specialty at the start of the claim. Employees that begin to receive Social Security Retirement while they are on the State's Disability Program must notify JWF Specialty within seven (7) days of receiving their first Social Security check.

### **Duration**

The LTD period may never exceed four (4) years and is subject to the following limitations:

- The employee must provide proof of continuing disability.
- The total maximum benefit period, including Short and Long Term benefits for mental and/or nervous disability is limited to twenty-four (24) months.
- The total maximum benefit period, including Short and Long Term benefits for drug and/or alcohol rehabilitation is limited to twenty-four (24) months.
- The maximum Long Term benefit period (following any Short Term benefits) for a disability occurring on or after an employee reaches age sixty-two (62) is limited to:

<u>Age at Disability</u>	<u>Long Term Benefit Duration</u>
62	3.50 years
63	3.00 years
64	2.50 years
65	2.00 years
66	1.75 years
67	1.50 years
68	1.25 years
69+	1.00 years

## **Recurring Disability**

An employee who returns to work after receiving LTD benefits and within six (6) months/one hundred eighty (180) days becomes disabled from the same condition that caused the original disability will **not** be required to satisfy a new elimination period. The employee may return on LTD immediately and the entire period off work will be considered as one continuous period of disability. The employee must submit a new Attending Physician's Statement or other reliable certification by a doctor of the recurrence of the disability.

## **Continued Treatment**

On occasion employees are able to return to work however are still undergoing a medical treatment regimen that requires time off work. If the treatment program is related to the original disabling condition and is of a specific time period the employee may be entitled to disability benefits for the time missed. JWF Specialty will look at each of these situations individually to determine eligibility for continued benefits.

## **Exhaustion of Benefits**

If the employee remains disabled and continues to receive benefits under the Program for the full period allowed, the employee and the agency will be notified by JWF Specialty before disability benefits are exhausted. At that time, the employee and the agency will need to determine the employee's employment status.

# **Partial Disability Program (PDJ)**

If during the STD period or during the first or second year of LTD, the employee becomes able to perform some work for which they are qualified, but are still not able to return to their regular job, they may be asked to come to work in a special, modified job under the Partial Disability Program. Partial disability jobs are not official State openings, but are temporary assignments designed to return an employee to some productive service, as a bridge to returning to work in a regular position.

## **Payroll**

Partial disability jobs will increase benefits to eighty (80) percent of the biweekly wage or minimum hourly rate of services performed. Employees working at least half-time in partial disability jobs will start to accrue leave time. Partial disability wages will be subject to FICA/Medicare taxes.

## **Participation**

When assigned PDJ, an employee must adhere to the assignment, including abiding by all Human Resource policies of the State and the agency for which the assignment is being performed. Refusal of an appropriate assignment (which adheres to the disability directives outlined by a physician) will result in termination of an employee's disability benefits and can also lead to disciplinary action under State Personnel Department policies. When working under the PDJ program, employees report directly to supervisors at the assigned agency and are not under the direction of supervisors at the originating agency. It is the responsibility of the employee to adhere to the policies of the assigning agency.

## Part-Time Disability

Employees able to return to work and perform their normal duties but are medically limited to the number of hours they work may be entitled to Part-Time Disability. Employees are paid a full base salary for hours worked and the disability rate is paid for the hours missed due to the disability. If, after an honest attempt to perform part-time work, an employee is medically unable to meet the requirements, the employee will be returned to full-time disability. Employees working at least half-time in part-time disability jobs will start to accrue leave time.

## Independent Medical Examinations

The agency, JWF Specialty or State Personnel can request, at any point during the disability claim, that the employee attend an examination or functional capacity evaluation conducted by an independent medical professional. If this is necessary, the employee will be notified in advance of the time and place for the examination. This examination will be at the State's expense. The Disability Program will not pay for medical examinations that are not expressly ordered by the State. **Failure to attend an independent medical evaluation will result in the termination of benefits.**

## Income Adjustments

Short and Long Term Disability benefits are not subject to adjustment based on increases in Social Security or pension benefits. Offsets are established at the time of the original award. Once the amount of the Social Security Retirement or Social Security Disability and/or pension benefit offsets are established, benefits remain constant, even if an employee receives a cost of living adjustment from the Social Security Administration.

General salary adjustments granted to all employees in the disabled employee's classification shall cause the disabled employee's base gross biweekly base pay to be adjusted and will result in an increase in benefits under the Disability Program.

### **Performance-Based Merit Increases and Bonuses**

Disability claimants who have not exhausted FMLA benefits will be considered for performance-based merit increases and bonuses.

Disability claimants who have exhausted FMLA benefits will not be eligible for performance-based merit increases and bonuses.

# Minimum Benefits Program

The Minimum Benefits Program is designed to pay the employee and employer portion of insurance premiums should the amount of an employee's disability check not be sufficient to cover the premiums. This occurs when one or more of the offsets (described next) reduce the disability payment to an insufficient amount. Minimum benefits will pay either all or a portion of the contributions dependent upon the funds available after the offset. The Minimum Benefits Program covers medical, dental, vision, basic, supplemental, and dependent life insurance. A few examples of items excluded from the Minimum Benefits Program include employee contributions to health savings account, flexible spending account, deferred compensation and non-State sponsored plans (i.e., cancer policies).

## Offsets

This Disability Program is designed to provide a basic level of income to disabled State employees, along with continuation of insurance coverage. Income received from any of the following sources, **must** be reported to JWF Specialty within seven (7) calendar days of the date the employee begins receiving this income. STD and LTD benefits will then be reduced from:

- Social Security (including SS Disability and SS Retirement awarded, even to widows, after the onset of disability in lieu of SSD, but not Supplemental Security Income (SSI)).
- Public Employees Retirement Fund (PERF).
- Teachers Retirement Fund.
- Any other State supported retirement fund.
- Pension Disability, if for the same condition.
- Worker's Compensation salary continuation benefits (from the State of Indiana or any other employer).
- Benefits provided from another employer's group plan.
- Remuneration (pay) for employment entered into after the disability was incurred (including any increase in pay realized after the onset of disability for an outside job that was held prior to disability).
- Veteran's Disability Benefits, **if** they are payable as a result of the same disabling condition.

Retirement means any payment received from Social Security or a pension plan based on the employee age and length of time worked, even though the employee may not have actually retired. Benefits provided by an individually purchased disability insurance policy is not an offset.

**If the employee receives one of these types of listed incomes and does not report it to JWF Specialty within seven (7) days of receiving the income, Disability Benefits will be terminated. In some cases, employment with the State can be terminated.**

# General Return to Work Guidelines

## **Releases and the Americans with Disabilities Act (ADA)**

If an employee is released to return to work and has any restrictions or is perceived as having a disability, the employee may be covered by the Americans with Disabilities Act and, therefore, the agency must consider reasonable accommodations to enable the employee to perform the essential functions of the job. Employees can learn more information on the ADA by contacting their Agency's ADA Coordinator or the State Personnel Department's Employee Relations Division.

## **Long Term Disability Return to Work Procedure**

Occasionally the original employing agency does not have a vacant position in the same classification or a similar classification available to an employee that has been medically released to return to work. In these instances the agency will need to follow layoff procedures in accordance with IC 4-15-2.2-40.

## **Returning an Employee to Same Agency**

If the employee is released to return to work, and the agency **does** have an opening that the employee is qualified for, the agency must allow the employee to return to work. If the vacant position is in different classification but has similar qualifications, duties and pay, it would be considered a transfer. Employees may consult the State Personnel Department's Employee Relations Division for information about transfers and other employment matters.

## **Return to Work in LTD Years Three (3) and Four (4)**

If an employee in the third or fourth year of Long Term Disability is released to return to work with restrictions, that employee is no longer entitled to disability benefits. When benefits are otherwise due to cease because the disability does not meet the standard for the third and fourth year, the employer shall offer the employee the next available position within thirty (30) miles of the designated work station before the onset of the disability, at the same or a lower skill level, which he or she is legally qualified to fill and physically capable of performing. The third declination of such an offer is cause for termination of employment. The agency must offer the employee three (3) different positions to meet this obligation, before terminating an employee from service. Disability benefits will terminate regardless of an employee's work status when an employee is no longer eligible as described herein.

# Worker's Compensation Benefit Description

The State provides a Worker's Compensation Program for all employees, as required by Indiana Code 22-3-1-1 through 22-3-12-5. Worker's Compensation is the employee's exclusive remedy for an injury that arises out of and occurs in the course of employment. Although employees cannot sue their employers or co-workers for injuries that are deemed compensable under Worker's Compensation, employees are guaranteed certain benefit payments within certain timeframes without having to sue.

## **Worker's Compensation benefits generally consist of:**

- Wage Replacement: Temporary Total Disability (TTD) or Temporary Partial Disability (TPD).
- One hundred (100) percent paid medical care (Necessary to treat the injury and bring the employee to Maximum Medical Improvement from that injury).
- Impairment compensation for permanent partial impairment (PPI). This compensation is often referred to as a settlement. It can be paid in a lump sum or structured. It is based on a statutory formula which was created to compensate injured workers for the partial or total loss of use of a body part or function, or compensation for amputation of a portion of the body.

Further information can be found under the "Worker's Compensation Handbook" link at the Indiana Worker's Compensation Board website: <http://www.in.gov/wcb/2332.htm>

## **Employer Choice of Medical Care**

The State delegates to JWF Specialty the authority to choose and direct an injured employee's medical care. This is a right of all employers in Indiana under the Worker's Compensation Act. The State and JWF Specialty share the same philosophy to provide the highest quality medical care to all injured employees with the ultimate goal being a full recovery from work related injuries. Treatment not authorized by JWF Specialty will not be covered under Worker's Compensation.

## **Wage Replacement Compensation Description (TTD, AWW)**

Under Worker's Compensation, an employee will receive sixty-six and two-thirds ( $66 \frac{2}{3}$ ) percent of his or her average weekly wage (AWW) as the Temporary Total Disability benefit (TTD). The average weekly wage (AWW) is calculated by determining the wage an employee earned on average per week for the past fifty-two (52) calendar weeks as of the date of the injury. AWW includes overtime and any other adjustments that are considered to be income to the employee. The payment of Temporary Total Disability (TTD) is subject to a cap or maximum payment, which varies from year to year and is based on the date of injury. All employees earning wages in excess of the Maximum AWW will receive only the Maximum TTD rate. Depending upon the specific date of injury, the Worker's Compensation Act sets forth the wage benefit. JWF Specialty will calculate the compensation owed pursuant to the guidelines in the Act.

Prior to being paid Temporary Total Disability (TTD), there is a seven (7) day waiting period that must first be met. TTD compensation is paid beginning the eighth (8<sup>th</sup>) day an injured worker is off work. If the disability continues for longer than twenty-one (21) calendar days, an employee will receive TTD for the first seven (7) calendar days of his or her disability (or reinstatement of paid leave days). The seven (7) calendar day wait may not have to be consecutive days, but only seven (7) days of actual disability from work due to injury.

The amount of TTD is not changed by any salary adjustment that occurs after the employee's date of injury. In other words, the employee is locked-in to a certain Worker's Compensation rate by his or her date of injury and that rate does not change over the period of disability due to that injury.

## **Leave Time**

Employees may use leave time to increase TTD benefits in order to receive one hundred (100) percent of regular salary. This is accomplished by using three (3) accrued leave days the first pay period, three (3) days the second and four (4) days the third, then the cycle repeats. This results in the employee being charged an average of three and one-third (3 1/3) day each pay period. This payment is taxable and the employee's share, if any, of insurance premiums is deducted.

## **Taxes**

Worker's Compensation salary continuation benefits are **not** subject to state or federal income tax, and are **not** included in the W-2 Wage and Tax Statement.

## **Insurance Deductions**

Medical, dental, vision, life insurance, Health Savings Account and Flexible Spending Account deductions are not taken out of Worker's Compensation salary continuation benefits.

## **Ending a Worker's Compensation Claim**

All claim determinations in Worker's Compensation are medically driven. The State is required to care for an injured worker through the appropriate compensation and benefits until the employee reaches maximum medical improvement (MMI), as determined by the treating physician. It simply means that an employee's condition as a result of the occupational injury or illness will no longer improve. Many employees return to work with no problems after reaching MMI. However, some badly injured employees will also suffer disability beyond the point of MMI. The State provides these injured workers the right to enter into the State's Disability Program, once all Worker's Compensation Benefits have been exhausted as long as additional time is available to the employee through the guidelines of the Program.

# **Temporary Modified Duty Program (TMD)**

It is the policy of the State of Indiana to provide meaningful work activity for all employees who temporarily become unable to perform all or part of their regular work assignments due to work related injury or illness. Temporary duty may be in a variety of formats including modified duties within the scope of an employee's current position, other available duties for which an employee may be qualified or a modified schedule of reduced work hours.

## **Assignment Process**

- **Consideration:** TMD will be available to all employees on a fair and equitable basis, with temporary assignments being based on skill and abilities.
- **Restrictions:** Authorized treating physicians will be asked to complete a TMD Physical Evaluation Form or utilize their own equivalent form to provide the agency with appropriate work restrictions for modified duty.



- **Same Day Return:** In many cases, the employee will be required to return to the agency the same day with the physician provided restrictions. The agency will then provide modified duty work within the restrictions.
- **Timeframe of Assignment:** TMD will typically be assigned for a period not to exceed ninety (90) days. Subsequent limited assignments may be approved as needed.
- **Restriction Application:** An employee's limitations/restrictions are effective twenty-four (24) hours per day. Not following these restrictions can aggravate an employee's condition and cause a delay in the recovery process. An employee who is found to be performing activities outside the treating physician's prescribed restrictions may be subject to termination of Worker's Compensation benefits and may also be subject to disciplinary action under State Personnel Policies.
- **Dispute Resolution:** Concerns about participation should be addressed with the Human Resources representative of the agency, State Personnel Department Benefits Division and JWF Specialty.

### **Scheduled TMD Assignments**

In most cases, TMD shall be offered within the employee's regular work schedule; however, restricted or altered work schedules may be required if designed reasonably and within the parameters of any restrictions and recommendations by the treating physician and claims professionals at JWF Specialty.

### **Payment of Wages**

Employees performing TMD shall be returned to pay status and paid their full hourly rate for the hours worked as an incentive for participating in the return to work program.

### **Temporary Partial Disability**

Employees working TMD assignments that involve a reduction of hours may also be entitled to Temporary Partial Disability (TPD) pursuant to IC 22-3-3-9. TPD was created by the Indiana General Assembly as an incentive for employees to return to work on a temporary basis while still partially disabled, but not yet at maximum medical improvement. TPD will be calculated by JWF Specialty, pursuant to the statutory formula.

## **Tortious Acts Benefit**

Employees that have been injured on the job by an intentional wrongful or negligent act of another person and are approved for Tortious Injury Disability Benefits will receive one hundred (100) percent of their regular weekly salary (after the seven (7) day elimination period) instead of the Worker's Compensation rate discussed previously.

- Employees injured in this matter should complete the Disability Benefits application and turn it into JWF Specialty in order to be eligible for these benefits.
- Normal deductions from the employee's pay (taxes, insurance premiums and other elected deductions) will continue.

- The maximum length that an employee can receive this benefit is one (1) year from the date of injury. After exhaustion of this benefit, if the employee remains disabled, the employee may be eligible for salary continuation under Worker's Compensation and/or LTD.
- Payment of Tortious Act Disability benefits satisfies the statutory duty under the Worker's Compensation Act.
- The employee cannot receive both the Tortious Act Disability benefit and Worker's Compensation wage replacement simultaneously.
- Examples of this type of injury would include a correctional officer or State hospital employee being directly assaulted by an offender or patient.
- Other than the rate of pay, all other Worker's Compensation statutes are applicable.

## **Subrogation**

This section applies to both the Disability Program and Worker's Compensation. If an employee's injury or disability was the result of an at-fault third party, the State has the right to recover expenses paid on the employee's behalf in relation to either the Disability or Worker's Compensation Program. These expenses include but are not limited to:

- Disability benefits paid for lost wages.
- Premiums for insurance benefits paid while unable to work.
- Worker's Compensation of Tort benefits paid for lost wages.
- Medical expense's paid in relation to a work related injury.

As the initial payer of these expenses the State holds a lien to any settlement the employee may receive from a third party. The employee is responsible to include the State in any and all settlement discussions with the at-fault party or their insurance carrier to ensure the State is reimbursed. Failure to include the State may result in the employee being responsible for the reimbursement. This applies to all payments made on behalf of the employee for both Worker's Compensation and Short and Long Term Disability Programs.

## **Disability Program Exclusions**

The Disability Program, like nearly all insurance programs, has exclusions or circumstances under which the program will not pay, even though the employee may be disabled. The exclusions under the Disability Program are practically identical to the exclusions under the Worker's Compensation program. Neither Short Term nor Long Term Disability benefits are payable for a disability resulting from the following:

- War, declared or undeclared.
- Participation in a rebellion, insurrection or riot [by the claimant].
- Intentionally self inflicted injury.
- Commission, or attempt to commit, a crime [by the claimant].
- Accident caused by [claimant's] intoxication due to alcohol or illicit drugs.

- Willful failure to follow designated safety procedures [by the claimant].
- Willful disregard of rules [by the claimant].
- Willful failure to perform a stated duty [by the claimant].

# Instructions for Submission of a Disability Claim

## Your Responsibility The Application

1. **Employee's Claim Statement:** Answer each question completely, **sign and date**. IF ALL QUESTIONS ARE NOT ANSWERED, IT IS NOT COMPLETE AND CANNOT BE PROCESSED.
2. **Employee's Authorization For Release of Information:** This **MUST** be signed and dated. Without a signature, your authorization is incomplete and will not be honored by your physician or hospital.
3. **Options Statement:** Please **complete, sign and date** this form.
4. Return the **Application** (the three forms above) to your agency or JWF Specialty.

The elimination period for disability benefits is thirty (30) consecutive calendar days. The elimination period for disability benefits from on-the-job injuries resulting from the tortious act of another person is seven (7) calendar days. The effective date for disability benefits cannot precede the date your application (the three (3) forms listed above) is made. Late application **WILL** result in a loss of benefits.

1. **Attending Physician's Statement:** Complete the top portion and deliver to your physician.

**DO NOT TAKE** the Employee's Claim Statement, Employee's Authorization for Release of Information, or Option's Statement (your application for benefits) **to your physician**. This may result in a delay or loss of your benefits.

## Physician's Responsibility

1. **Attending Physician's Statement:** After you have completed the top portion, your treating physician completes the remainder. Have your physician return the completed form to you or mail it to JWF Specialty. The impairment rating and the disability date must be on Attending Physician's Statement.

You are not eligible to receive benefits until the Attending Physician's Statement has been received by JWF Specialty to enable the determination of disability.

# The State of Indiana's Disability Program

## Questions and Answers

The State of Indiana's Disability Program is meant to provide a percentage of income should you become unable to work due to a medical condition. It is important you understand how the Program works prior to applying for benefits.

### **1. I was just hired. Can I collect disability benefits if I become disabled?**

No, you must be a full-time regular State of Indiana employee for six (6) months before you are covered under this Program. Further defined, you must be a full-time active employee, in pay status, without leave of absence for six (6) months. However, if you are injured on the job by the tortious act of another person, you are covered under this Program from the first day of employment up to one (1) year from the date of injury. Every employee is covered under Worker's Compensation.

### **2. How do I go about collecting disability benefits?**

You must submit a completed application form and then be determined as qualified to collect disability benefits. The third party claims administrator, JWF Specialty, is responsible for making this determination. Your application and Physician's Statement will be used to determine if you qualify for disability benefits. Occasionally, additional medical documentation or other information may be requested as part of reviewing your claim and determining your eligibility.

### **3. How do I obtain these forms, apply and become qualified?**

All forms may be obtained through your agency payroll or Human Resource office. Instructions on applying for disability benefits are included in this handbook. These instructions detail the forms needed and who is responsible for completing the information. Please read carefully.

***CAUTION— The employee portion of the application must be turned in within thirty (30) days from the date of disability. A delay or loss of benefits may result if you or your designated representative do not follow these instructions. Call your agency payroll or Human Resource office immediately if you have any questions.***

### **4. Can I collect Disability benefits as soon as I am unable to work?**

No, there is a period of time, referred to as the elimination period, between the date you are first unable to work and the time you can collect disability benefits. You do not collect benefits during the elimination period. You may use accrued leave (vacation, sick, personal and/or special sick leave). However, time spent during the elimination period, whether paid or unpaid, will also count as Family Medical Leave (FML), if qualified. The elimination period for disability benefits is thirty (30) consecutive calendar days absent from the date of disability.

The elimination period is seven (7) days if your disability is the result of an on the job injury caused by the tortious act of another person. Worker's Compensation also has a seven (7) day elimination period. However the days do not need to be consecutive.

Please note that your disability benefits are effective thirty-one (31) days from the date of your disability or they become effective on the date your application is received, whichever is later. However, the maximum benefit period, including the Elimination Period, is determined from the date of your disability not the date you begin to receive benefits.

#### **5. How does Family Medical Leave (FML) coincide with the Disability Program?**

Employees that are employed for at least twelve (12) months and have at least one thousand two hundred and fifty (1,250) hours of service during the twelve (12) month period prior to the leave are eligible for Family Medical Leave (FML).

The time spent during the elimination period, whether paid or unpaid, will count as FML if you are eligible for the benefit. You will receive proper notice regarding this from your agency.

If you are in an out of pay status and qualify for FML, you will be billed for your portion of your health, life, dental and vision premiums. This bill will come directly to your residence from the various carriers. Upon payment of your portion of premiums, the State will continue to make payments on its portion. If you are not eligible for FML you will be billed for both yours and the State's portion of insurance premiums.

#### **6. Can I collect disability benefits from the State and other types of pay or benefits at the same time?**

The State may reduce your disability benefit amount by some types of other income, such as Social Security and PERF Disability. You must report other income when you receive it or your disability benefits may be terminated.

#### **7. What types of benefits are available under the State's Disability Program?**

**A.** Short Term Disability (STD) benefits are available one (1) month after a disability begins (the elimination period) for a maximum of five (5) months. STD benefits equal sixty (60) percent of your biweekly wage.

**B.** If you are still disabled six (6) months after the date of disability, you may be entitled to Long Term Disability (LTD) benefits for a period of one (1) to four (4) years, depending on your date of disability, age and type of disability. For the first two years, LTD benefits equal fifty (50) percent of your biweekly wage. For the last two years, it equals forty (40) percent of your biweekly wage.

C. Tortious Disability benefits are available to an employee who is injured by the wrongful or negligent act of another person, for a maximum of one (1) year from the date of disability. If, after one (1) year, an employee is still disabled, he or she may be entitled to Worker's Compensation benefits (along with Minimum Benefits under the Disability Program) or Long Term Disability benefits. Tortious benefits equal one hundred (100) percent of your biweekly wage for a maximum of one (1) year from the date of injury.

D. Minimum Benefits are available, for a maximum of four (4) years and five (5) months from the date of disability, to employees who are receiving other forms of income for which disability benefits are being offset. Minimum Benefits pay both the employee's and the State's portion of an employee's health, dental, vision and life insurance.

**8. Can I use my accrued leave to get paid more than the disability benefit rate?**

Employees can use one (1) day of accrued leave per week to increase benefit amount by twenty (20) percent. For example, you can increase your Short Term benefit amount to eighty (80) percent by using two (2) accrued leave days per pay period. Or you may also use ten (10) days of accrued leave per pay period to receive one hundred (100) percent.

**9. If I sustain a work related injury, should I file a disability application as well as a Worker's Compensation First Report of Injury?**

Yes. If the work related injury was caused by the tortious act of another person, you will receive your wage loss benefits from the Disability Program (after the seven (7) day elimination period). Your medical bills, however, will be paid by Worker's Compensation. Therefore, both forms need to be submitted. *It is important that your disability application is received by the disability claims administrator prior to the end of the seven (7) day elimination period.*

An employee who is receiving Worker's Compensation benefits for any other type of work related injury is entitled to Minimum Benefits from the Disability Program after the thirty (30) day elimination period. Therefore, both forms should be filed.

**10. Who do I call if I have any questions regarding the State's Disability Program?**

JWF Specialty Company  
600 E. 96<sup>th</sup> St., Ste. 425  
Indianapolis, IN 46240  
Toll Free: 1-888-818-7795

State Personnel Department  
402 W. Washington St. Rm W161  
Indianapolis, IN 46204  
Benefit Hotline: 317-232-1167  
Or Toll Free: 1-877-248-0007