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# **WORKERS' COMPENSATION QUESTIONS AND ANSWERS EFFECTIVE 7-1-83**

This brochure has been prepared by the office of the Iowa Industrial Commissioner to answer some of the commonly asked questions concerning workers' compensation. For more detailed information, reference should be made to Iowa Code chapters 85 through 87, 17A and chapter 500 Iowa Administrative Code.

**WHAT IS WORKERS' COMPENSATION?** The Workers' Compensation Act is a part of the Iowa Code designed to provide certain benefits to employees who receive injuries (85) occupational disease (85A) or occupational hearing loss (85B) arising out of and in the course of their employment. Benefits are payable regardless of fault and are the exclusive remedy of the employee against the employer.

**WHO IS COVERED BY WORKERS' COMPENSATION?** Most employees who are injured in Iowa or who are hired in Iowa. Appendix A at the end of this brochure, lists the classes of Iowa employees who do not fall within the coverage of the Iowa Act.

**WHAT IS NECESSARY TO ESTABLISH A CLAIM FOR BENEFITS?** To be eligible under the Iowa Act there must be:

**An employer-employee relationship.** This means the person making claim must be under a contract of hire (express or implied) with the person or company against whom the claim is being made. Section 85.61 of the Iowa Act defines an employer and worker/employee.

**An injury.** In workers' compensation, injury is defined very broadly to include any health impairment other than the normal building up and tearing down of body tissues.

The injury must have occurred in the course of the employment. This means the employee must be engaged in activities related to the job at the time of the occurrence of the injury.

The injury must arise out of the employment. This means the employment activities must be the cause of the employee's injury.

**CAN ANYONE CHOOSE TO BE EXEMPTED FROM WORKERS' COMPENSATION COVERAGE?** After 1-1-83, the president, vice president, secretary or treasurer of a corporation, (other than family farms) may elect not to be covered under the Iowa Workers' Compensation Law. An acceptance of exclusion must be signed and witnessed by two (2) persons (not within the corporation) and filed with the Iowa Industrial Commissioner, within sixty (60) days after employment. After 1-1-84 a rejection of coverage must be attached to the corporation's workers' compensation insurance policy or, if there is no policy, refiled with the industrial commissioner.

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A corporation may voluntarily cover an officer by the purchase of workers' compensation insurance specifically covering the officer.

**WHAT BENEFITS ARE PROVIDED?** When an employee has a compensable claim the employee is entitled to one or more of the following benefits:

**All Reasonable and Necessary Medical Care** incurred to treat the injury. This includes reasonably necessary transportation expenses. Section 85.27 of the Iowa Workers' Compensation Act outlines the medical benefits.

### **WEEKLY INDEMNITY BENEFITS**

**Temporary Total Disability (TTD).** When an injury results in temporary total disability of more than three (3) days the employer shall pay the employee for injury producing TTD weekly compensation benefits until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first, as provided in sections 85.32 and 85.33.

**Temporary Partial Disability (TPD).** When it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee's disability, the employee is to be paid TPD. The TPD benefit shall be  $66\frac{2}{3}\%$  of the difference between the employee's weekly earnings *at the time* of injury, (computed in compliance with section 85.36) and the employee's actual gross weekly income from employment during the period of TPD. If an employee sustains an injury arising out of and in the course of employment while receiving TPD benefits, the rate of weekly compensation benefits shall be based on the employee's weekly earnings at the time of the injury producing TPD (§85.33[2]).

**Healing Period (HP).** When the injury produces a permanent disability the employer shall pay to the employee compensation for a healing period beginning on the date of injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first, as provided in section 85.34(1).

**Permanent Partial Disability (PPD).** When a permanent injury occurs as a result of compensable injury the employee is entitled to one of two types of PPD in addition to the healing period. The PPD shall begin at the termination of the healing period (§85.34[2]).

**Single Schedule Member.** Appendix B sets out a list of body members (i.e. arm, leg, etc) along with a number of weeks for each. This represents the number of weeks of PPD to be paid for 100% loss of use of each body member. If the doctor's functional impairment rating is less than 100% the doctor's percentage is multiplied by the number of weeks in the schedule

to determine the PPD for the partial member loss. For example 50% loss of use of an arm is equal to 50% x 250 weeks or 125 weeks of PPD. The benefits for each scheduled member are set out in section 85.34(2).

**Body As A Whole Disabilities.** When an injury produces a permanent disability which extends beyond a scheduled member into the trunk (or affects the trunk) or head the employee is entitled to a percentage of 500 weeks of PPD based on the percentage of industrial disability caused by the injury. Industrial disability considers not only the doctor's rating of functional impairment but also the employee's age, education, training and the employee's inability, because of the injury, to engage in employment for which the employee is fitted.

**Permanent Total Disability.** As set out in section 85.34(3) if the employee is unable to return to gainful employment because of a compensable injury, other than a scheduled permanent partial disability, the employee is entitled to permanent total disability benefits as long as the employee remains permanently totally disabled.

**Death Benefits** are payable to the dependents of the employee in the event of a compensable injury resulting in the employee's death. Benefits are first payable to the surviving spouse for life or until remarriage. Dependent children are entitled to the benefit until they reach age 18, or age 25 if they are actually dependant. Full time students in an accredited educational institution are considered actually dependant. Others may qualify if there is a showing of actual dependency. Upon remarriage, if there are no dependent children, the spouse is entitled to a two (2) year lump sum settlement. Burial expenses, up to \$1,000, are paid in addition to the above benefits. Death benefits are set out in section 85.31 of the Iowa Workers' Compensation Act. Burial expense can be found in section 85.28.

**Retraining Benefit.** As set out in section 85.70 of the Act, an employee who has a permanent partial or permanent total disability may be entitled to a retraining benefit of \$20 per week for a period of 13 weeks. An additional 13 weeks may be paid, if approved by the industrial commissioner.

**WHAT ASSISTANCE IS AVAILABLE IF AN EMPLOYEE IS UNABLE TO RETURN TO WORK WITH THE EMPLOYER?** Should your injury be such that you are unable to return to a job with your former employer you may wish to contact the

Iowa Rehabilitation Education and Services Branch  
Phone 1-800-532-1486 (Toll free) Ext. 4150  
In Des Moines area call 281-4150

This agency is not a part of the Iowa Industrial Commissioner's Office but is a state agency which may be able to help you find work within your capabilities.

**WHEN ARE PAYMENTS MADE?** The Workers' Compensation Act, section 85.30 requires the first payment of weekly compensation benefits to be made on the 11th day after the injury. Thereafter payments are to be made weekly. The

employee is entitled to interest at the rate of 10% on any payment not made when due.

**WHO PAYS BENEFITS?** The employer, or its insurance carrier, has the responsibility for payment of all benefits under the Iowa Workers' Compensation Act.

**HOW IS INSURANCE PROVIDED?** Sections 85.3 and 87.1 of the Iowa Code require all employers, subject to the Act, to insure their liability for workers' compensation unless they are relieved from this requirement by the Insurance Department of Iowa. Employers who are relieved from insurance become self-insured and must provide all benefits required, as per section 87.11 of the Iowa Workers' Compensation Act.

**WHO PAYS WORKERS' COMPENSATION INSURANCE PREMIUMS?** The employer is required to pay all insurance premiums for workers' compensation. It is unlawful for the employer to make any deduction from the employee's earnings for the purpose of paying such insurance premiums. Section 85.54 states it is a simple misdemeanor for an employer to withhold from wages for the purpose of paying any such premium.

**HOW ARE WORKERS' COMPENSATION RATES COMPUTED?** The weekly rate of compensation depends on the employee's average weekly earnings, the number of exemptions and the maximum allowable rate (\$518 for PPD benefits and \$563 for all other weekly benefits). Weekly compensation benefits are based upon a seven (7) day calendar week. The employee is entitled to 80% of the average weekly spendable earnings (subject to the maximum allowable rate). Spendable earnings are the employee's gross earnings less the deductions for federal and state income tax and social security as if the employee claimed the maximum number of exemptions to which the employee is entitled. Appendix C at the end of this brochure contains additional information on compensation rate calculation.

**WHO CHOOSES THE TREATING PHYSICIAN?** Section 85.27 states the employer has a duty to provide medical care reasonably suited to treat the employee's injury. The employer also has the right to select the medical care to be furnished the employee. If the employee has reason to be dissatisfied with the care offered the employee should discuss the problem with the employer or insurance carrier. If the problem cannot be resolved, the employee, through appropriate contested case proceedings, may ask the industrial commissioner to order other medical care. Under section 85.39 of the Iowa Act, if the employer-retained physician has given a rating of permanent disability, and the employee does not agree with the rating, the employee does have a right to an examination, for purposes of disability rating, by a doctor of his/her choice at the employer's expense. Forms for exercising this right are available from the Iowa Industrial Commissioner.

## **HOW ARE DISPUTES IN WORKERS' COMPENSATION RESOLVED?**

The majority of disputes in workers' compensation claims are resolved by discussion between the employer (or insurance carrier) and the employee. Where such agreement cannot be reached, either party may initiate a contested case proceeding before the Iowa Industrial Commissioner, following established procedures. After hearing before a deputy industrial commissioner, a written decision will be issued to resolve the matter. If one of the parties is dissatisfied with the decision, section 86.24 of the Iowa Workers' Compensation Act gives the party the right to appeal to the industrial commissioner. Under certain conditions the industrial commissioner's decision may be appealed to the district court. District court decisions may be appealed to the appellate courts.

## **SHOULD AN EMPLOYEE BE REPRESENTED BY AN ATTORNEY?**

The decision to seek representation of an attorney can only be made by the employee. The employee may represent self at all stages of the handling of a claim. If it becomes necessary to file a contested case proceeding, however, the employee is encouraged to carefully consider the need for legal counsel. Legal advice will only be available through an employee's own attorney. If the employee chooses to represent self, the employee assumes the sole burden of proceeding and any risk associated with the hearing process. Most likely the employer or insurance carrier will be represented by an attorney knowledgeable of the law.

**HOW ARE CLAIMS REPORTED?** There are numerous reports required of the employer and the insurance carrier. One of these reports is the employer's first report of injury. Section 86.11 states that this report must be filed with the industrial commissioner when an employee alleges an injury, arising out of and in the course of the employment, which results in time loss from work of more than three (3) days, permanent injury or death. The report is to be filed within four (4) days of notice or knowledge of such alleged injury. Forms for reporting of injuries, as well as other forms required in the handling of workers' compensation claims, are available at the Iowa Industrial Commissioner's office.

**ARE SETTLEMENTS ALLOWED?** Lump sum settlements in workers' compensation are the exception and not the rule. The Act does, however, make provision for certain types of lump sum settlements all of which must be approved by the industrial commissioner. The types of settlements are:

**Compromise Settlements.** When there is a valid issue as to the compensability of a claim, or a dispute other than the nature and extent of the employee's disability, a compromise settlement as set out in section 85.35 and rule 500-6.1(85, 86) is possible to resolve the issues. When approved, a compromise settlement terminates the employee's future rights to any benefits under the Compensation Act for the settled injury.

**Agreement for Settlement.** When the dispute is regarding the amount of compensation to be paid, or other related matters, the employee and employer or its insurance carrier may agree to

the amount and extent of compensation payments and file it with the industrial commissioner. This agreement may later be reviewed if conditions warrant.

### **MAY PAYMENTS BE ADVANCED?**

**Commutations.** A commutation is a present payment, in a lump sum, of future remaining benefits, which are discounted at the rate of 10%. These commutations are approved by the industrial commissioner only when it is shown to be in the employee's best interest and when all other requirements of the law are met. The 10% discount table is found under rule 500-6.3(2). Commutations are of two types:

**Full Commutation.** A full commutation is a lump sum payment of all remaining future benefits. When approved, a full commutation terminates all the employee's future rights under the compensation act for the settled injury, as stated in section 85.45 of the Iowa Workers' Compensation Act and rule 500-6.2 (85, 86).

**Partial Commutation.** A partial commutation is a lump sum payment of a portion of all remaining benefits as set out in sections 85.48 of the Iowa Workers' Compensation Act and rule 500-6.2 (85, 86). It does not extinguish the employee's future rights.

### **WHEN MUST A CLAIM BE MADE?**

**Limitations.** The Compensation Act places a number of time limitations within which certain actions must be taken. These are found in sections 85.23 and 85.26(1)(2) of the Act. They are as follows:

**Notice of Injury.** The Act provides that the employer must have notice or knowledge of an alleged injury within ninety (90) days of its occurrence. This ninety (90) day period begins to run when the employer knew, or should have known, that the employee sustained an injury which arose out of and in the course of the employment. If the employer does not have notice or knowledge of such injury within ninety (90) days the employee may not be able to recover workers' compensation benefits (§85.23).

**Two Year Statute of Limitations.** If weekly compensation benefits have not been paid the employee must file an application for arbitration within two (2) years from the date of the occurrence of the injury should the employee feel entitled to additional benefits. If the arbitration action is not filed within the two (2) year period the employee may not be able to recover workers' compensation benefits (§85.26[1]).

**Three Year Statute of Limitations.** If weekly compensation benefits have been paid the employee has a period of three (3) years after the last payment of weekly benefits in which to initiate an action for review-reopening should the employee feel entitled to additional weekly benefits. If not filed within the three (3) year period the employee may not be able to recover additional weekly benefits. This statute of limitation does not apply to medical expenses reasonably necessary to treat the compensable injury (§85.26[2]).

**ARE WAIVERS PERMITTED?** Section 85.55 of the Iowa Workers' Compensation Act and rule 3.1(5) prohibit the employee from waiving any rights to benefits under the Act with one exception. If the employee has a physical defect which increases the employee's risk of injury, the employee may agree with the employer to waive compensation benefits for any injury caused directly or indirectly by the defect. All waivers must be approved by the industrial commissioner to be effective.

### **WHAT IF THERE IS A PRIOR DISABILITY?**

**Second Injury Fund.** If an employee has a permanent partial disability of one major body member (excluding fingers and toes) and sustains a permanent partial disability, as a result of a compensable injury, to a second major body member, the employee may be entitled to benefits from the second injury fund. The benefit is limited to the value of that permanent disability which exceeds the value of the two affected members separately. The benefits are not payable until after the employer, or insurance carrier, has completed payment of benefits for the second permanent partial disability.

The second injury fund is administered by the treasurer of the state. An employee who feels entitled to benefits from this fund should contact the treasurer's office. More information on the second injury fund can be found in sections 85.63, 85.64, 85.65, 85.66, 85.67, 85.68 and 85.69 of the Iowa Workers' Compensation Act.

**HOW IS INFORMATION OBTAINED?** Any employee, employer or insurance carrier making or defending a claim for benefits under the Act agrees to the release of all information to which they have access concerning the employee's physical or mental condition relative to the claim and waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon request, as per section 85.27.

Free and open communication between the employee and the employer (or insurance carrier) is encouraged. The employee should be able to learn the reasons for any action taken, as well as the nature of the evidence supporting the action, from the employer or insurance carrier.

The Iowa Industrial Commissioner cannot represent the interest of any party to a claim. The commissioner can provide information as to the provisions of the Workers' Compensation Act as well as point out procedures the parties may undertake to resolve their disputes. To obtain information write or call the Iowa Industrial Commissioner's Office, 507 - 10th Street, 3rd Floor Colony Building, Des Moines, Iowa 50319. Phone (515) 281-5934. The office is open for inquiry during the hours of 8:00 A.M. to 4:30 P.M. Monday through Friday, state holidays excepted.

**WHAT IS OCCUPATIONAL DISEASE?** Pursuant to chapter 85A, occupational diseases shall be those diseases which arise out of and in the course of employment. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed

to the hazards of such disease, shall be liable therefor. The employer is to receive written notice of an occupational disease claim within ninety (90) days after the first distinct manifestation of the disease.

**WHAT IS OCCUPATIONAL HEARING LOSS?** Pursuant to chapter 85B, occupational hearing loss is the permanent sensorineural loss of hearing in one or both ears in excess of twenty-five decibels caused by prolonged exposure to excessive noise levels. Compensation is payable for a maximum of one hundred seventy-five weeks for total loss of hearing. Compensation is not payable to an employee who refuses to submit for reasonable periodic physical and audiometric examinations or fails or refuses to use employer-provided protective hearing devices. A claim for occupational hearing loss may be filed six months after separation from the employment where the employee was exposed to excessive noise levels. The employer is not responsible for previous hearing loss. The date of injury shall be the date of the occurrence of any one of the following events:

- (1) Transfer from excessive noise level employment by an employer,
- (2) Retirement,
- (3) Termination of the employer/employee relationship.

Payment of compensation for occupational hearing losses and occupational diseases discharges the employer from further obligation.

## **APPENDIX A COVERED EMPLOYMENT IN IOWA WORKERS' COMPENSATION**

The Iowa Workers' Compensation Act may apply to all employees (with exceptions as below) who are either injured in Iowa, working under contract of hire made in Iowa or whose employment is principally localized in Iowa. Excluded from coverage under section 85.1 of the Iowa Act are:

1. Domestic and casual employees who earn less than \$200 from their employer during the 13 consecutive weeks prior to injury.
2. Agricultural employees whose employer has a cash payroll of less than \$2,500 in the calendar year preceding the injury.
3. The spouse of a sole proprietor employer or partner engaged in agricultural as well as the parents, brothers, sisters, children, stepchildren and their spouses of either the employer or the spouse of the employer.
4. Exchange labor in agricultural employment.
5. The president, vice president, secretary, and treasurer of a family farm corporation and their spouses, and the parents, brothers, sisters, children, stepchildren and their spouses of either the officers or their spouses.
6. Policemen and firemen who are entitled to benefits under any firemen's pension fund or policemen's pension fund established by Iowa code chapters 410 and 411.

7. The president, vice president, secretary, and treasurer of a corporation other than a family farm corporation, not to exceed four officers per corporation, if such an officer knowingly and voluntarily rejects workers' compensation coverage.
8. Employees who are entitled to benefits under any rule of liability or method of compensation, for employees, established by the congress of the United States.

Except for number 8, the employer may voluntarily elect to provide benefits by purchase of a valid workers' compensation policy covering such employees.

## APPENDIX B SCHEDULE OF WEEKS OF BENEFIT FOR THE BODY MEMBERS

As found in section 85.34(2):

	Weeks
Loss of thumb .....	60
Loss of first finger .....	35
Loss of second finger .....	30
Loss of third finger .....	25
Loss of fourth finger .....	20
Loss of hand .....	190
Loss of arm .....	250
Loss of great toe .....	40
Loss of any other toe .....	15
Loss of foot .....	150
Loss of leg .....	220
Loss of eye .....	140
Loss of hearing in one ear .....	50
Loss of hearing in both ears .....	175
Permanent disfigurement, face or head .....	150

The above schedule of weeks represent 100% loss of the body member. If the permanent partial disability rating is less than 100% the percentage rated should be multiplied by the number of weeks shown. For example a 20% loss of function of a thumb would be computed as 20% of 60 weeks or 12 weeks of compensation. The permanent partial disability benefit is in addition to the employee's healing period benefit.

## APPENDIX C

Exemptions for workers' compensation rate computation purposes are defined the same as for federal income tax.

Overtime hours at the straight time rate are included in determining gross weekly earnings.

Payments such as irregular bonuses, premium pay and/or expense reimbursements are not included in average gross weekly earnings.

Average gross weekly earnings include extra benefits such as tips, rent, food, etc.

Section 85.36 of the law provides various methods for determining an employee's average gross weekly earnings:

If the employee's earnings are the same each pay period, the earnings must be converted to weekly earnings. For example, semi-monthly earnings would be multiplied by 24 (the number of pay periods in a year) and divided by 52 (the number of weeks in a year) to arrive at the weekly earnings.

If the employee's earnings vary each pay period (i.e., irregular hours of work or payment on commission) the weekly earnings are to be computed by averaging the employee's total earnings during the last completed 13 week period prior to the injury. If the employee has worked less than 13 weeks for the employer, the weekly earnings are to be computed by taking what the employee would have earned during the prior 13 weeks had the employee worked when work was available to other employees in a similar occupation.

If the employee's earnings are less than a regular full time employee in a comparable job (i.e., part time employment) the average gross weekly earnings are to be computed by taking 1/50th of the total earnings from all employment during the 12 months prior to the injury.

If by computing an employee's gross weekly wage under any one of the subsections of 85.36, you find that the employee's gross weekly wage is less than 35% (\$98) of the statewide average weekly wage, the employee is entitled to a weekly benefit amount based on 35% of the statewide average weekly wage OR the employee's *spendable* weekly earnings, whichever is less.

Volunteer fire fighters or reserve peace officers receive an amount equal to the compensation the volunteer fire fighter or reserve peace officer would be paid if injured in the normal course of the volunteer fire fighter's or reserve peace officer's regular employment or an amount equal to 140% (\$393.85) of the statewide average weekly wage, whichever is greater.

If there is a dispute as to the rate of compensation, all parties are encouraged to attempt to resolve the issue between themselves. If this cannot be done, the dispute may be brought before the Iowa Industrial Commissioner through appropriate contested case proceedings.

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