



WORKERS COMPENSATION PAYMENT POLICY

- I. TITLE: Payment of Lost Wages Under the Workers Compensation Act – State Employees
- II. AUTHORITY: 19 Del. C 2302
Various Industrial Accident Board Decision and Case Laws
- III. POLICY STATEMENT:
- The State of Delaware has established a self-insured program that provides workers’ compensation benefit that pays according to the Title 19 Chapter 23.
 - The Insurance Coverage Office is responsible for overseeing this program that is administrated by a third party administrator (TPA)
 - This document provides guidance regarding the payment of workers’ compensation wages for a state employee who sustains injuries while in the course and scope of their employment.
- IV. APPLICABILITY: All state agencies, school districts, and higher education employees.
- V. DEFINITIONS:
- The Insurance Coverage Office (ICO) – Executive
 - Injured Worker – Full-time or part-time/casual seasonal employee employed by a State of Delaware agency, school district, and higher education.
 - Workers’ Compensation Benefits – All employers in Delaware are required to carry this coverage. It is an insurance which provides payments in accordance to Title 19 Chapter 23 of the Delaware Code.
- VI. PROCEDURE: Calculation of Workers’ Compensation Wages
- A workers’ compensation injury must be reported to the TPA within 24 hours. The First Report of Injury form is submitted by the Injured Worker’s employing Human Resource (HR) Department via the TPA website. http://pmacompanies.com/generic_reportclaim.html
 - Once the claim is submitted via email the TPA claims processing office will immediately send a confirmation of receipt which will include the claim number that has been assigned to the claim. Please remember to include your email address in the block “SEND EMAIL COPY TO ORIGINATOR” in order to obtain a copy of what was submitted electronically. A hard copy of the First Report of Injury form will also be sent to the HR Department.

- If the First Report of Injury notes that an employee is missing time from work, the TPA will send a Wage and Salary Verification Letter and Form to the HR Department Contact.
- The HR Representative for the employing organization must complete the Wage & Salary Verification form and return it to the TPA. Copies of any and all disability notes should also be sent to the TPA.
- The Injured Workers will be charged sick or annual leave until the TPA determines if the claim is a compensable.
- § 2321 Minimum duration of incapacity.
Permanent injury relating to hearing or vision loss, surgical, medical and hospital services, medicines and supplies, and funeral benefits shall be paid from the first day of injury. Beginning with the fourth day of incapacity, all compensation otherwise provided by law shall be paid. If the incapacity extends to 7 days or more, including the day of injury, the employee shall receive all compensation otherwise provided by law from the first day of injury.
- The HR Department will receive the first check and agreements to compensation unless the Injured Worker is represented by an attorney. The HR Department will also receive the receipt for compensation paid once an employee returns to work. (Examples of these documents can be review through the Department of Labor's website: (agreements) [Agreement as to Compensation Paid.pdf \(delaware.gov\)](#) (Receipt of compensation paid) [Receipt of Compensation.pdf \(delaware.gov\)](#))
- The TPA will provide an indemnity register via email every two weeks to the Human Resources contact of the employing organization.
- The HR Department will recoup the lost wage payments from the employee through payroll deductions. To help you with this Leave Paying Procedure, Job Aids and Worksheets are available at <https://reps.dhr.delaware.gov/>
- For an Injured Worker the lost wage benefits are calculated as follows:
§2302 Wages; definition and computation; valuation of board and lodging.
(a) "Average weekly wage" means the weekly wage earned by the employee at the time of the employee's injury at the job in which the employee was injured, including overtime pay, gratuities and regularly paid bonuses (other than an employer's gratuity or holiday bonuses) but excluding all fringe or other in-kind employment benefits. The term "average weekly wage" shall include the reasonable value of board, rent, housing or lodging received from the employer, which shall be fixed and determined from the facts in each particular case.
(b) The average weekly wage shall be determined by computing the total wages paid to the employee during the 26 weeks immediately preceding the date of injury and dividing by 26, provided that:
(1) If the employee worked less than 26 weeks, but at least 13 weeks, in the employment in which the employee was injured, the average weekly wage shall be based upon the total wage earned by the

employee in the employment in which the employee was injured, divided by the total number of weeks actually worked in that employment;

(2) If an employee sustains a compensable injury before completing that employee's first 13 weeks, the average weekly wage shall be calculated as follows:

a. If the contract was based on hours worked, by determining the number of hours for each week contracted for by the employee multiplied by the employee's hourly rate;

b. If the contract was based on a weekly wage, by determining the weekly salary contracted for by the employee; or

c. If the contract was based on a monthly salary, by multiplying the monthly salary by 12 and dividing that figure by 52; and

d. If the hourly rate of earnings of the employee cannot be ascertained, or if the pay has not been designated for the work required, the average weekly wage, for the purpose of calculating compensation, shall be taken to be the average weekly wage for similar services performed by other employees in like employment for the past 26 weeks.

(3) In any event, the weekly compensation allowed shall not exceed the maximum or be less than the minimum provided by law.

- To determine what the maximum and minimum weekly compensation is allow please see the Department of Labor's website. [Workers Compensation Rate Chart.pdf \(delaware.gov\)](#)
- Once a weekly compensation rate is established by the TPA, this rate will stay the same for the life of the claim.
- An attorney or an employee can request for benefits to be paid under both the PIP and Workers' Compensation claims if an automobile is involved. The most common request is for the Workers' Compensation claim to pay all the medical bills and 66 2/3 of the wages while PIP pays the difference between both wage benefits.

Questions regarding this procedure should be directed to the attention of the Insurance Coverage Office, which can be reached Monday through Friday, 8:00 am to 4:30 pm at (302) 739-3651 or by email at inscov@delaware.gov