



Disability Benefits in North Carolina

Disability benefits are the weekly checks paid to an injured worker who is "disabled." A worker is disabled when he has been written out of work by his doctor or his employer cannot accommodate the work restrictions assigned by his doctor.

Durham on the Job Injury Attorney Answers Commonly Asked Disability Benefits Questions

What are the Types of Disability Benefits in North Carolina?

There are four types of disability benefits according to North Carolina law. The type of disability benefits you qualify for depends on the expected length of your disability and the extent of the disability. The length of your disability is categorized as temporary or permanent and the extent of the disability is total or partial.

Temporary Total Disability (TTD)

Temporary total disability benefits are paid during the healing period after an accident or disease that prevents the employee from completing their essential job duties. After a seven-day waiting period, a disabled worker is paid weekly benefits of $66\frac{2}{3}$ percent of his or her average weekly wage. Subject to some limitations discussed below by a Durham on the job injury attorney, these benefits can continue for as long as an injured worker remains out of work because of his injuries.

The criteria for receiving TTD and other workers' compensation disability benefits are spelled out in [North Carolina's workers' compensation laws](#). It is important to understand that the burden is on the person filing the claim to demonstrate that they are an employee as defined by the law.

Temporary Partial Disability Benefits (TPD)

Temporary partial disability or TPD benefits are paid when an injured worker has returned to work at a lower wage than he earned before the injury. The injured worker is entitled to $66\frac{2}{3}$ percent of the difference between his pre-injury average weekly wage and the amount he earns upon returning to work.

A worker injured before June 24, 2011 (the date on which the 2011 workers' comp "reform" bill became law) can receive TPD benefits for up to 300 weeks after the date of injury. A worker injured on or after June 24, 2011 can receive TPD benefits for up to 500 weeks after the date of injury.

Permanent Total Disability Benefits (PTD)

Permanent total disability benefits are available to NC employees who meet strict criteria. PTD benefits are limited and are paid to employees who are unable to ever work again. PTD cases most commonly include cases where the disabled person has suffered the loss of both hands, arms, foot, legs, eyes or other combination of these body parts; experienced severe paralysis or spinal cord injury; experienced severe brain and head injuries; sustained second or third-degree burns that cover 33% or more of the total body surface.

Permanent Partial Disability Benefits (PPD)

Permanent partial disability benefits are paid to employees who have reached the end of the scheduled healing period, but continue to experience disabilities and impairments. In these cases, injured workers are assigned a "permanent partial impairment rating" by their doctors after the work-related injury has healed. The rating is stated as

a percentage of disability – a 25 percent rating to the back, for example – and is meant to reflect the amount of permanent damage to the injured body part. Based on the rating assigned by his doctor, the injured worker may be entitled to a lump sum payment of benefits. These benefits are sometimes called permanent partial disability, or PPD benefits.

At some point, the worker may be asked to make an election between wage-loss benefits and rating benefits. Under North Carolina law, workers are entitled to their more favorable remedy, or the benefits that pay the most money.

What Constitutes An Employee Under North Carolina's Workers' Compensation Law?

Generally speaking, any person engaged in employment is an employee for purposes of the NC disability laws. While that might sound simple, it can actually be quite complicated to determine if what you do and how you do it is considered employment. For instance, if you are an independent contractor, you might just assume that the law does not cover you. Your assumption could be wrong and you could be missing out on benefits you are entitled to. If you are a contractor or subcontractor, you might want to talk to a North Carolina job injury attorney about your right to TTD and possibly other types of disability benefits.

In addition, you may be surprised to learn that part-time, temporary, seasonal, and even unlawfully employed persons fall under the workers' compensation law definition of "employee."

Some workers, even though they are employees, are exempt from receiving TTD in North Carolina.

Unless they choose coverage and meet certain requirements, sole proprietors, business partners, and members of a limited liability company (LLC) are not considered employees. In addition, the North Carolina Workers Compensation Act specifically exempts the following from being covered even if they are technically employees:

- Casual employees who do not work regular hours and can leave a job without notice
- Domestic workers
- Farm workers where there are less than 10 employees on staff
- Federal government employees
- Employees of the railroad

How Is My Average Weekly Wage Calculated?

Your North Carolina on the job injury attorney can help you determine the amount of benefits owed. A worker's "average weekly wage" is usually calculated by determining his total pre-tax wages – including overtime, bonuses, and payments in lieu of wages (housing and meals, for example) – during the 52-week period prior to the date of injury. That sum is then divided by 52.

If the worker has been employed with the employer for fewer than 52 weeks, the number of weeks the employee actually worked is used. However, if that time period is so short that using it would be unfair to either the employee or the employer, the average weekly wage of a comparable employee can be used. If no comparable employee is available, a wage is determined that is fair to both the employee and the employer.

Once the average weekly wage is determined, it is multiplied by 66-2/3 percent to determine the weekly benefits payable to an injured worker.

Is There A Waiting Period For Receiving Disability Benefits?

There is a seven-day waiting period before a worker is entitled to receive disability benefits. The seven days do not have to be consecutive. Often, employers will allow the injured worker to use vacation and sick time for the seven-day period so that the worker is not without pay. If the injured worker remains out of work for more than 21 days, he or she will then be entitled to compensation for the seven-day waiting period, and the insurance company must issue a check for that week.

How Long Do Disability Benefits Last?

Disability benefits last for as long as an injured worker is "disabled" as a result of a work-related injury. The injured worker is entitled to disability benefits so long as he is written out of work by his doctor or he is on light-duty restrictions that his employer cannot accommodate. If the employer cannot accommodate the worker's restrictions, the worker does have a duty to make a reasonable effort to obtain another job.

Workers injured before June 24, 2011 (the date on which the 2011 workers' comp "reform" bill became law) can receive benefits indefinitely, even for the rest of their lives if they are never able to return to work. Workers injured on June 24, 2011 or after can receive benefits for up to 500 weeks after the date of injury. An injured worker can, however, petition the Commission for permanent disability, which would allow benefits to continue beyond the 500-week period.

Could My Benefits Stop Before I Am Ready To Go Back To Work?

Under North Carolina law, there are only two circumstances under which the insurance company is allowed to stop your payments:

1. **Returning to work.** The insurance company can automatically stop your checks if you return to work, even if it's just for a single day. There is no requirement that they seek approval for this action.
2. **The North Carolina Industrial Commission (NCIC) allows it.** The NCIC is the government entity that decides workers' compensation cases. If the insurance company thinks that your benefits are no longer necessary, they can ask the NCIC for permission to stop paying. You have the right to oppose their request by appearing in front of the NCIC.

Can I Appeal A Denial Of My TTD Claim With A North Carolina Job Injury Attorney?

In North Carolina, 75 percent of all disability claims are initially turned down. This is more than the national average, which is why consulting with a Durham on the job injury attorney is a good idea to help you position yourself to receive the benefits you deserve from the outset of the process.

If you have been denied TTD benefits, you have the right to appeal the decision. You do this by first requesting a hearing before the NCIC. Your case will be heard and decided by a commissioner. If you are not happy with the outcome of that initial hearing, you can appeal to a panel of the Industrial Commission. If you are still not satisfied with the results and there is a factual or legal matter in dispute, you can then file an appeal with the North Carolina Court of Appeals. In rare instances, a disability eligibility or amount dispute could be taken to the North Carolina Supreme Court.

It is always best to build a strong case for receiving your TTD benefits at the outset, which is why meeting with a [Durham on the job injury attorney](#) is important. We also have offices in [Raleigh](#) and Wilmington.