

# Hamberger & Weiss LLP

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## Deadlines

**FROI-00:** *Employer's Report of Injury* - Within 10 days of accident.

**FROI/SROI-04:** *Notice of Controversy* - Later of 18<sup>th</sup> day after disability or 10 days from employer's knowledge. No later than 25 days from Notice of Indexing.

**SROI-IP:** *Notice of Carrier's Action on Claim* - Later of 18<sup>th</sup> day of disability or 10 days from employer's knowledge.

**PH-16.2:** *Pre-Hearing Conference Statement* - At least 10 days before pre-hearing conference.

**SROI-S:** *Notice Payment Has Been Stopped or Modified* - Within 16 days of suspension or modification of indemnity benefits.

**Awards:** Payable within 10 days of Notice of Decision.

**Application for Board Review (ABR):** Within 30 days of Notice of Decision.

**Rebuttal to ABR:** Within 30 days of ABR.

## AWW (C-240)

Average daily wage (annual wages ÷ days worked) multiplied by 260 (5 day worker), 300 (6 day), or 200 (part-time/seasonal) and divided by 52

## Maximum & Minimum Rates of Compensation

D/A On or After	Max Total	Max Partial	Min Rate
7/1/22	1125.46	1125.46	150
7/1/21	1063.05	1063.05	150
7/1/20	966.78	966.78	150
7/1/19	934.11	934.11	150
7/1/18	904.74	904.74	150
7/1/17	870.61	870.61	150
7/1/16	864.32	864.32	150
7/1/15	844.29	844.29	150
7/1/14	808.65	808.65	150
7/1/13*	803.21	803.21	150
5/1/13	--	--	150
7/1/12*	792.07	792.07	100
7/1/11*	772.96	772.96	
7/1/10*	739.83	739.83	100
7/1/09	600	600	100
7/1/08	550	550	100
7/1/07	500	500	100
7/1/92	400	400	40
7/1/91	350	350	40
7/1/90	340	340	30/20

\*Adjusted annually to 2/3 of State AWW

## Calculation of Indemnity Benefits (All Subject to Min/Max)

**Temporary Disability** - (66 2/3% of AWW), multiplied by percentage based on degree of disability.

### **Permanent Disability:**

- **SLU** - After MMI, percentage of weeks for body part, payable at TT Rate. (See SLU table below)
  - **Protracted Healing Period** - number of weeks of TT exceeding the normal healing period. Added to SLU.
  - **Occupational Loss of Hearing** - see Form C-72.1 for calculation.
- **Classification of PPD** - after MMI.
  - For date of accident before 3/13/07 - same as temporary disability.
  - For date of accident on or after 3/13/07 - based upon loss of wage earning capacity (LWEC) and considers physical impairment, functional ability and vocational factors. PPDs are limited in number of weeks of benefits. (See PPD Caps below)
- **Serious Head or Facial Disfigurement** - up to \$20,000.

### Schedule Loss of Use (SLU)

Body Part	Weeks	PHP
Arm	312	32
Hand	244	32
Thumb	75	24
1 <sup>st</sup> Finger	46	18
2 <sup>nd</sup> Finger	30	12
3 <sup>rd</sup> Finger	25	8
4 <sup>th</sup> Finger	15	8
Leg	288	40
Foot	205	32
Great Toe	38	12
Other Toes	16	8
Eye	160	20
Ear (one)	60	25
Ears (binaural)	150	25

### PPD Caps: D/A On or After 3/13/07

% Loss of Earning Capacity	Max Benefits Weeks (yrs)
0-15%	225 (4.33)
16-30%	250 (4.81)
31-40%	275 (5.29)
41-50%	300 (5.77)
51-60%	350 (6.23)
61-70%	375 (7.21)
71-75%	400 (7.69)
76-80%	425 (8.17)
81-85%	450 (8.65)
86-90%	475 (9.13)
91-95%	500 (9.62)
96-99%	525 (10.10)

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## Carrier Liability

**Accidental Injury:** Carrier on the risk on the D/A.

**Occupational Disease:** Carrier on risk on Date of Disablement (D/D). If employer is no longer in business on D/D, then carrier on risk when claimant last worked for employer.

**Dust Disease:** Carrier on the risk when claimant last exposed to injurious dust hazard. Special Fund reimbursement available for D/D before 7/1/07. (§15(8)(ee))

**Occupational Hearing Loss:** Carrier on the risk on D/D (by statute, three months after removal from noise exposure).

**Death Benefits:** If there is an underlying disability claim, carrier on the risk for the disability claim is liable for the death claim. If there is no disability claim, the carrier on the risk on the date of death is liable.

**Apportionment in Occupational Disease Claims (§44):** Liability is on the last employer where claimant is employed in the type of work or exposure causing the disease, but if OD is contracted in a prior employment, apportionment is based on time worked for each employer.

**Apportionment in Hearing Loss Claims (§49-ee):** Available if pre-employment audiogram shows occupational hearing loss and prompt notice sent to prior employer with audiogram results or if prior employer had actual knowledge of loss. If established, apportionment is based on percentage of loss pre-existing the last employment.

## Common Defenses

**Accidental injury (§2):** Did not arise out of or in the course of employment.

**Occupational Disease (§3):** Is not caused by a distinctive feature of employment.

**Late Notice (§§18, 45):** Claimant's failure to notify employer within 30 days (accident) or two years (OD).

**Late Claim Filing (§28):** If claim is filed more than two years after the D/A, D/D or death.

**Causal Relationship:** There is no prima facie medical evidence or there is a medical opinion that the condition is not caused by the accident or occupational disease.

**Voluntary Removal from the Labor Market:** Where claimant is partially disabled and fails to seek work within his restrictions.

**Fraud (§114-a):** Material misrepresentation for purpose of obtaining lost wage benefits under §15.

## Settlements/Stipulations

**C-300.5 Stipulation:** Parties may stipulate to findings and awards. Must be approved by the Law Judge. Board retains jurisdiction to review.

**Section 32 Settlements:** Parties may settle all or part of a claim (medical and/or indemnity). Requires Law Judge approval. Once final, terms are not subject to appeal to WCB or courts.

## Third Party Actions §29

**Third-Party Actions:** Carrier's prior consent (or judicial order) is needed for settlement of a third-party action. Carrier has a lien and offset against the proceeds of the third-party action. Where injury results from MVA, carrier's lien/offset is eliminated in most circumstances for payments made in lieu of first party benefits, but loss transfer may be available under limited circumstances to recover those payments. (Ins. Law §5105.) Consult counsel before granting consent to ensure proper lien repayment and preservation of offset.

## Special Funds

**§25-a (Reopened Case Fund):** Special Fund assumes liability of the claim if (1) seven years have passed from the date of accident, (2) three years have passed since the last payment of compensation, and (3) a "true closing" has occurred. Legislation bars applications for §25-a relief on or after 1/1/14.

**§15(8) (Second Injury Fund):** Permits reimbursement after initial retention period for claims with D/A, D/D or death before 7/1/07 on the condition that all evidence has been submitted to the Board by 7/1/10. Second Injury Fund closed to new cases as of 7/1/07.

## Medical Treatment Issues

**Medical Treatment Guidelines (MTG):** Between 12/1/10 and 5/2/22, 16 MTG became applicable to treatment of various injuries, illnesses, conditions. The carrier is not liable for treatment that deviates from the MTG in the absence of carrier approval, a decision granting a variance, or Order of the Chair.

**MTG Variance Prior Authorization Request (PAR) (12 NYCRR §324):** Without IME, Carrier Physician or record review, denial within 15 days if treatment already done, substantially similar request still pending, substantially similar request denied without new documentation, case closed, disallowed, canceled, controverted, medical resolved by 32, offset per WCL §29, claimant fails to appear for IME. Denial for burden of proof not met must be by Carrier's Physician. With IME or record review, notice of intent within five business days, denial within 30 days.

**Objection to Medical Bills:** For Valuation/Fee Schedule disputes, file C-8.4. Where liability for payment is disputed, file C-8.1. Effective 11/1/21 C-8.4 and C-8.1 objections must be filed at the same time or waive the one filed later. Effective 7/1/22: C-8.1 Part A eliminated, objection based on treatment not for established site or condition eliminated and moved to new RFA-2, must use updated forms.

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