

STATE OF WISCONSIN



Department of Workforce Development

Delay Penalties: How to Avoid Them

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Agenda

- Types of Delay Penalties
- Delay Penalties on Temporary Disability
- Delay: PPD Payment Requirements
- Intermittent Periods of Temporary Disability
- Rate Escalation
- PPD and IMEs
- Surcharges vs. Delay Penalties
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Types of Delay Penalties



- Delay penalty for late payment of Temporary Disability benefits.
- Delay penalty for late payment of Permanent Partial Disability (PPD) benefits.

Delay: Temporary Disability (TD)

- §102.22 Wis. Stats. – delays for late TTD payments.
- The Division may assess a 10% delay penalty if the employer or their insurer inexcusably delays in making the first TD payment.
- Delay inquiry is sent if:
 - First TD payment is made more than 14 days after employee leaves work as a result of an injury, and;
 - Amount due is \$500 or greater.



Inexcusable Delay: Temporary Disability

- If the first TD payment is made more than 30 days after the date the employee leaves work because of a work injury, and the first payment is \$500 or more, §102.22 states that the 10% penalty shall be assessed.
- May incur penalty for delay of any length of time in making any other indemnity payment that is due an injured employee.



Excusing TD Delay - Employer

- Employee did not notify employer of injury, or
- Employer pays sickness, accident insurance, and/or salary until compensability is determined, or
- Employer's first claim or first delay (Note: we do check our records for employer's claim history).



Voluntary Notice for Employers

May 2024: WCD released Notice to Injured Workers and Employers (Form WKC-19606-P).

- Voluntary for employers to post – not mandatory.
- Tells employers and employees what to do in the event of a work injury.
- Gives contact information for organization that is handling this employer's worker's compensation claims.
- Available in English, Spanish, and Hmong.



Excusing TD Delay – Insurance Company

- Insurance investigation.
- Only considered for whether delay will be excused if the investigation is concluded within six weeks, **and**
- Within 14 days of receiving notice of injury, you have mailed a letter to injured worker notifying them of your investigation.



Temporary Disability and Investigations

IMPORTANT NOTE:

- WCD granting you extra time to **investigate** a claim **will not** excuse a delay penalty.
- Investigating a claim is different from reporting a claim.
- The extended time given for investigating the claim may avoid the assessment of a surcharge for late reporting (§102.35(1) Wis. Stats).



Delay: PPD Payment Requirements

§102.32(6)(e):

PPD for an injury, including payments based on minimum PPD ratings by rule, shall continue on a monthly basis and shall accrue and be payable between intermittent periods of TD.

NOTE: PPD is due and payable on a claim whenever you have a 30-day period of disability when no TD is being paid.

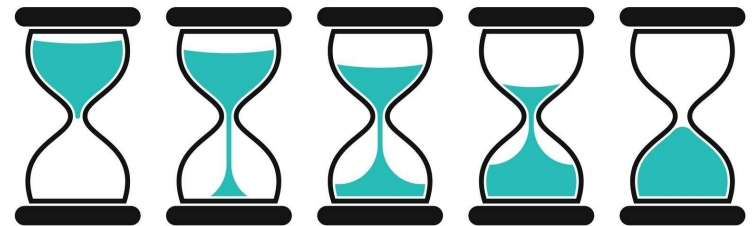


Delay: PPD and Statutory Minimums

§102.32(6)(b): PPD due for an injury based upon statutory minimums shall begin on the earliest of:

- Within 30 days after the end of the employee's healing period, or
- On the date compensation for TD ends.

If it's a surgery with a statutory minimum PPD rating, no need to wait for DWC worksheet.



Delay: Amputations

- Be sure to carefully review the operative and emergency room notes: is there an amount of statutory PPD that you can issue before you receive a final medical report?
- Medical records may include information that supports a statutory minimum rating.
- Do not wait for Division worksheet.



Delay: PPD But Not Statutory Minimum

§102.32(6)(c):

For an injury that results in PPD, **but the extent of PPD cannot be determined without a medical report,*** PPD shall begin within 30 days after receipt of a medical report that provides a basis for a PPD rating.

* So PPD is not a statutory minimum.



Delay: Intermittent Periods of TD

There may be several intermittent periods of temporary disability in the same claim if the injured worker has been able to return to work between periods of treatment that took them off work.

IMPORTANT NOTE: Whether or not the PPD is a statutory minimum, you still need to pay the due and accrued PPD from the date TD ended. If you do not know the PPD until the very end of the claim, your first PPD payment must include the due and accrued PPD.



Intermittent Periods of Disability

- An injured worker had a meniscectomy on June 1 and was off work through July 12.
- On July 12, went back to work and worked several weeks. Knee kept getting worse.
- On December 28, injured worker had a total knee replacement.
- Returned to work June 25.
- When does PPD start to accrue?



Intermittent Periods of Disability (cont.)

We know that figuring out when and how much PPD to pay when an injured worker has had multiple periods of disability is really confusing! We get confused, too!

What you should do.

Call one of the Delay Specialists! We'll walk through it with you. That way, we'll both understand the claim and will help you to avoid or minimize a delay penalty!



Rate Escalation



- Intermittent periods of disability often have escalated TD rates.
- Rate escalation will apply when **both** of these conditions have been met:
 1. Two (2) or more years have elapsed since the date of injury, **and**
 2. The injured worker has returned to work for at least ten (10) days before resuming Temporary Disability.



Rate Escalation (cont.)

- If both of the conditions have been met – at least two (2) years since the date of injury and at least ten (10) days back at work - **then**
- The TD rate for the later period of disability will be escalated in the same proportion as the maximum TTD rate at the time of the injury to the current maximum TTD rate.
- Escalated TD rates can be the source of delay penalties.



Rate Escalation (cont.)

- Be sure to look at DWD correspondence if you have a new period of disability!
- If the TD rate has escalated since the last period of disability, pay the updated rate.
- Ignoring updated TD rates can lead you into delay penalties.
- Please call us if you have questions about the new rate.



PPD and Independent Medical Exams

The 30/90 day rule (first half):

- If you dispute the treating doctor's rating in the final medical report and you want to get an IME, DWD 80.52 states that within 30 days of receiving the treating doctor's final medical report you must:
 - Schedule the IME, and
 - Advise the injured worker of the IME.



PPD and Independent Medical Exams (cont.)

The 30/90 day rule (second half)

- If you have not received the IME report within 90 days after requesting the IME, to avoid a delay penalty, you must:
 - Pay the due and accrued PPD based on the **treating doctor's** final medical report.



Surcharge vs. Delay Penalty

- Surcharges are imposed for late reporting to the **state**.
- Delay penalties are imposed for inexcusably late payment to the **injured worker**.
- Delayed payments may be excused, but extensions granted for late reporting do not apply to delay penalties for late payments.



Surcharge vs. Delay Penalty (cont.)

- Surcharges are authorized for late reporting of any reports that have a due date: final medical reports and wage reports.
- Surcharges: \$100 for each late report.
- Surcharges are paid to Work Injury Supplemental Benefit Fund.
- An extension may be granted to avoid surcharges.



Tips and Strategies

You can prevent most delay inquiries and penalties by:

- Paying right away what you can determine.
- Not making token/good faith payments.
- Timely reviewing and acting on correspondence from WCD.
- Updating your WKC-13 when you pay, change, or stop any types of payments.
- Contacting the DWD/WCD/DRS if you have any questions.





Questions?

Delay Specialists

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