

STATE OF WISCONSIN



Department of Workforce Development

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# Delay Penalties: How to Avoid Them

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Dispute Resolution Specialists

# Topics

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- Definition and types of delay penalties
  - Temporary disability
  - Permanent disability
  - Other
- Intermittent periods of temporary disability
- Rate escalation
- IMEs, PPD, and delays: 30/90 rule
- Surcharges vs. delay penalties
- Delay tips and strategies



# Definition

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- A delay penalty is a monetary sanction paid directly to the injured worker because benefits that had accrued and were due to the injured worker were paid late.
  - Temporary disability
  - Permanent disability
  - May be assessed against insurance carrier and/or employer
  - Not limited to first payments
  - Cannot use an overpayment to pay for a delay penalty
  - An extension granted for sending reports to the state does not have **anything** to do with delay penalties and doesn't protect you from them



# Amount of Delay Penalty



- The delay penalty due to the injured worker is 10% of the amount that was due and accrued and late at time of payment.
- Example:
  - \$1,206.85 was paid late.
  - \$120.68 must be paid to the injured worker.

# Delay: First Temporary Disability Payment

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- §102.22 Wis. Stats. – delays for late first TD payments
  - May be imposed after 14 days
  - Must be imposed after 30 days
- Autogenerated delay inquiry is sent if
  - First TD payment is made more than 14 days after employee leaves work as a result of an injury.
  - Amount due is \$500 or greater.



# Delay: Any Other Payment

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- §102.22(1) Wis. Stats. includes the following:
- If the employer or their insurer inexcusably delays for **any length of time** in making **any other payment** that is due an injured employee, the payments as to which the delay is found may be increased by 10 percent.



# What to Send Us

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- The date you received notice of the injury from the employer.
- The date you spoke with the injured employee.
- A copy of the letter introducing yourself to the injured worker.
- A copy of the investigation letter mailed to the injured worker by the 14<sup>th</sup> day from when you learned of the injury.



# Investigation Letters

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- If you write a letter to the injured worker explaining why you need more time to investigate, you will receive an additional 4 weeks (for a total of 6 weeks) to investigate the claim.
  - The investigation letter must include what information you need to complete the investigation, how the injured worker can help you get that information, and the injured worker's appeal rights.
  - The letter must be sent **after** the initial investigation and by the 14<sup>th</sup> day from your company's notification of the claim.
  - Six weeks is considered a reasonable time to complete an investigation at the beginning of a claim.



# What Does Not Excuse a Delay

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- Someone else reported it late
- The injured worker didn't sign the release forms
- We're waiting for an Independent Medical Exam or Medical Record Review report
- The claim was just transferred to me
- I was on vacation
- The claim was with a different insurance company
- They have a lawyer, but WCD has no hearing application



# Employer-caused Delays

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- If an employer causes a delay, the penalty is assessed against the employer. However, the claim will remain open until the delay is paid. If the employer goes out of business, the insurance carrier has secondary liability.
  - Late reporting of injury
  - Expecting the injured worker to report the injury instead of fulfilling their responsibilities as employers
  - Late reporting of wages
  - Not reporting lost time
  - Murky offers of light duty
    - Work offers need to be in writing to establish the date offered.



# Excusing Employer Delays

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- Employee did not notify employer of injury in a timely manner.
- Employer pays sickness, accident insurance, and/or salary until compensability is determined.
- The delay is on the employer's first ever worker's compensation claim or first delay. We will check our records to verify this status and may excuse the delay after an educational discussion with the employer.



# Voluntary Notice for Employers

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- In 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.



# Delay: PPD Payment Requirements

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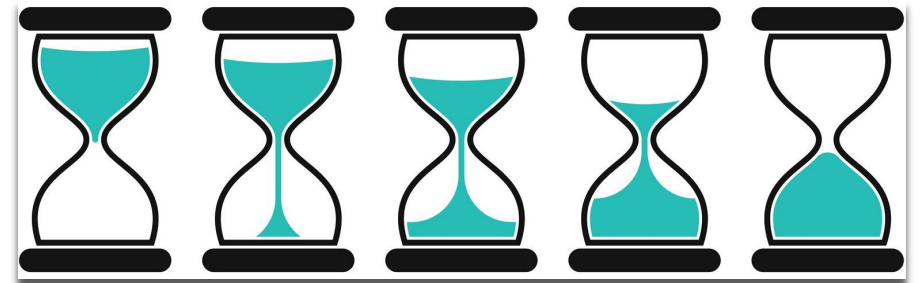
- §102.32(6)(e) Wis Stats.:
- PPD for an injury, including payments based on minimum PPD ratings by rule, shall continue on a monthly basis and shall accrue and be payable between intermittent periods of TD.
- **NOTE:** PPD is due and payable on a claim whenever you have a 30-day period of disability when no TD is being paid.



# Delay: PPD and Statutory Minimums

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- §102.32(6)(b) Wis. Stats.: 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 WCD worksheet.



# Delay: Amputations

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- 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 WCD worksheet.



# Delay: PPD But Not Statutory Minimum

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- §102.32(6)(c) Wis. Stats.:
- 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.
  - Non-statutory PPD is due within 30 days of receiving the rating.
  - End of healing is not necessary when the rating is anticipatory.



# Delay: Intermittent Periods of TD

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- 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.



# Delay: Intermittent Periods of TD

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- **IMPORTANT:** 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

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- 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.)

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- 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 should you 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

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



# Rate Escalation (cont.)

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- If both 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.)

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- Be sure to look at WCD 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 Delays and Independent Medical Exams

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- If you wish to get an IME to dispute the treating doctor's PPD rating without risking a penalty, you must follow the 30/90 rule.
- Wis. Admin. Code DWD 80.52 states that within 30 days of receiving the treating doctor's final medical report you must:
  - Schedule the IME.
  - Advise the injured worker of the IME.



# PPD Delays and Independent Medical Exams

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- Second, to avoid a delay penalty, you must receive and act on the IME report within 90 days after scheduling the IME exam.
  - Your position letter based on the IME must be in the mail by day 90.
  - Any PPD indicated by the IME that is due and accrued must be paid immediately.



# PPD Delays and Independent Medical Exams

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- If the IME is not back within the 90 days, the accrued PPD based on the **treating practitioner's** final medical report is due.
- Best practice: If you know some PPD will be owed, pay it.



# Surcharge vs. Delay Penalty

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- Surcharges are imposed for late reporting **to WCD**.
- 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.)

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- 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

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- 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 WCD if you have any questions.





# Questions?

## **Delay Specialists**

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