

COMPACT REFERENCE GUIDE
FOR MARYLAND, VIRGINIA & THE DISTRICT OF COLUMBIA

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	MARYLAND	VIRGINIA	DISTRICT of COLUMBIA
DEFINITION OF ACCIDENTAL INJURY/ OCCUPATIONAL DISEASE	“Unusual activity” not required; only the development of symptoms caused by a work activity. Occupational disease: six requirements in statute; cannot just be <u>aggravated</u> by work - must be <u>caused</u> by work	A/I must be caused by a sudden, identifiable event resulting in a sudden, obvious change in the body. Can <u>not</u> occur over time; must be relatively quick or sudden. OD: must be <u>caused by</u> , not just <u>aggravated by</u> conditions at work. (CTS and hearing loss can be OD if caused by work duties; other conditions must first qualify as a disease, and most can't.)	No real distinction between A/I and OD. Virtually any change in the body precipitated by employment duties. Includes simply experiencing pain. Note also that if <u>any</u> benefits paid in another jurisdiction for same injury, claim is barred in D.C.
NOTICE OF INJURY TO BE GIVEN BY CLAIMANT	60 days (30 days in death cases). Indemnity should not be paid until actual claim is filed.	30 days - no comp benefits payable prior to receiving notice (no medical treatment received prior to notice is payable at all)	30 days - strictly enforced (i.e., may bar claim) unless legitimate excuse given
STATUTE OF LIMITATIONS FOR FILING CLAIM	2 years from date of injury or knowledge of work relationship to file claim. 18 months from date of death for separate dependents' claim. Statute tolled by failure to file Employer's First Report, unless employer did not know of injury.	2 years from date of injury or knowledge. Failure to file Employer's First Report tolls statute.	1 year from date of injury or knowledge of work relationship to file claim. Year does not begin until employer files First Report <u>and sends claimant, by certified mail</u> , a copy of Employer First Report and claimant's list of “rights.”
WAITING PERIOD	3 days unless more than 14 days lost	7 days unless more than 21 days lost	3 days unless more than 14 days lost
EMPLOYER'S FIRST REPORT	10 days after occurrence and knowledge of injury	10 days after occurrence and knowledge of injury	10 days after occurrence and knowledge of injury
TIME TO CONTEST	Before Consideration Date listed on Notice of Claim (21 days after claim is filed with Commission)	When receive order from Commission requesting employer's position	14 days after employer's knowledge of injury file notice of controversion (10% penalty if not)
AWW & COMPENSATION RATE CALCULATIONS	14 weeks pre-injury gross wages. No stacking of wages from other concurrent employments. TT comp rate = 2/3 AWW. Permanency comp rate hinges on year of injury and number of weeks awarded. Break points are 75 and 250 weeks of permanency.	52 weeks pre-injury gross wages. Can only stack concurrent wages from <u>similar</u> employment. Dissimilar employment cannot stack. TT and scheduled injury comp rate = 2/3 AWW. Comp rate for wage loss is 2/3 wage loss.	26 weeks pre-injury gross wages. (For injuries pre-4/16/99, use 13 weeks). Wage stacking of <u>any</u> concurrent employment is permitted. TT and scheduled permanency comp rate = 2/3 AWW. <u>Also note</u> that number of weeks payable for scheduled injuries in D.C. after 4/16/99 is reduced by 25% by 1999 Amendments. “Other Cases” comp rate is 2/3 of wage loss.

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CONTEST AWW	60 days from automatic award - must file wage statement w/Comm.	On receipt of Commission Order requesting employer's position	May contest anytime up until an order is entered. Credit for overpayment if applicable
PAYMENT OF COMP Under Award/Order	15 days <u>from award date</u> over 15 days 20% penalty over 30 days 40% penalty	34 days from date of Award or 20% penalty	10 days after <u>receipt</u> of Order by carrier or employer attorney (whichever earlier)
Voluntary	May not pay indemnity, absent claim being filed with Commission	May pay voluntarily but file Memorandum of Agreement	Within 14 days of notice of injury (10% penalty if not paid or controverted within 14 days)
TERMINATION OF TT	C-06 to WCC and claimant (mandatory) -usually occurs at MMI unless vocational rehabilitation starts	Must file Employer's Application for Hearing or Termination of Wage Loss Award (formerly Agreed Statement of Fact and Supplemental Memorandum of Agreement)	If payments are voluntary, file Notice of Controversion & Notice of Last Payment (may not terminate TT under Order - must file for Modification of Order first, or penalties may apply)
TEMPORARY PARTIAL DISABILITY	½ of difference between AWW and post injury wage earning capacity, not to exceed 50% of State AWW	2/3 of difference between AWW before injury and wages able to earn thereafter not to exceed 100% of AWW of Commonwealth - not to exceed 500 weeks	2/3 of difference between AWW before injury and wages able to earn thereafter for maximum of five years
PAYMENT OF MEDS Time	"Promptly" or within 45 days if ordered	Reasonable	Reasonable
Amount	Fee Schedule	Reasonable in geo. area (peer review if contest need or cost) none payable prior to notice of injury	Reasonable and necessary Utilization review <u>mandatory</u> if wish to contest reasonableness of charges or need for services. U.R. can be retroactive, concurrent or retroactive
MODIFICATION OF AWARDS/WORSENING OF CONDITION	Claimant may reopen for increase of PPD or for TT within 5 years of last comp payment.	Within 24 months of last day for which benefits were paid to reopen lost time or wage loss claim; within 36 months for PPD for scheduled permanency benefits.	May reopen within 1 year from last payment of benefits <u>under an award or order</u> ; may reopen "wage loss" claim within 3 years of last payment of comp under an order or within 3 years of order rejecting claim. No time limit on re-open if no award.
SURVIVAL OF PPD AWARD	PPD Award survives death -payable to dependents according to formula	PPD Award survives death if death unrelated to injury - if death is due to compensable cause and dependents awarded compensation, the right to unpaid compensation terminates.	PPD Award survives death if scheduled injury; if wage loss, benefits terminate. If death from compensable cause, survivors mfile for death benefit

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<p>SECOND INJURY FUND Payment of Assessment</p> <p>Requirements to bring claim against</p>	<p>30 days from receipt of assessment (mailed to you after award)</p> <p>PPD rating must be at least 250 weeks (125 due to pre-existing and 125 due to current injury)</p>	<p>Annual Assessment</p> <p>PPD rating must be at least 20% due to pre-existing condition and at least 20% due to current injury; applies only to arm, hand, leg, foot, eye, finger, toe</p>	<p>Annual Assessment</p> <p>For injuries prior to 4/16/99 must be a substantial contribution by pre-existing disability to the current disability, pre-existing disability must be documented in medical records. For injuries after 4/16/99 second injury fund relief is not available.</p>
DISFIGUREMENT	Maximum of 156 weeks - focuses on exposed areas of the body; cannot claim disfigurement for same body part which is subject of clam for compensation	Not to exceed 60 weeks - must result from injury not otherwise compensated - must be <u>marked</u> disfigurement which impairs the future occupational opportunities of employee.	Maximum \$7,500, maximum for injuries prior to 3/6/91 was \$3,500.
ATTORNEY'S FEES	Fees payable by claimant at amount set by Commission in order. Commission can order carrier to pay attorney's fees for frivolous issues or egregious conduct.	Claimant pays fees unless employer unreasonably defends.	Carrier pays attorney's fees if: matter went to an informal conference, carrier has failed to pay amount recommended by informal conference, and claimant goes to hearing and obtains amounts exceeding those paid voluntarily by carrier. If no informal conference, or if carrier pays benefits recommended by informal conference, claimant pays attorney's fees. Fees capped at 20% of benefits gained for client.
EMPLOYEE CHOICE OF AND CHANGE OF PHYSICIANS	Employee may choose and change whenever he wants.	Employer must provide a panel of three physicians (none from the same office) from which claimant selects. The panel must be given in a timely manner and must be geographically and speciality appropriate. If employee changes, new physician becomes treating for opinion preference, but carrier does not have to pay for treatment.	Employee may choose a treating physician. Emergency treatment is not choice of physician. Once chosen, claimant must get carrier or OWC approval to change.
DEATH BENEFITS	Funeral up to \$5,000. Level of comp benefits depends on partial or total dependency. Dependency does not hinge on blood or marriage, but on fact of dependency. Death must occur within 7 years after injury	Funeral up to \$10,000 plus transportation of deceased up to \$1,000. Level of death benefits depends on partial or total dependency. Death must occur within 9 years of injury. Dependency does not require blood relation. Parents can qualify as total dependents if destitute and no other total dependents exist	Funeral up to \$5,000. Widow and children receive up to 66 2/3 % AWW. Widow and dependent children only; not just any dependent.

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DEFENSES BASED ON EMPLOYEE CONDUCT	Deviation from employment duties, personal mission willful misconduct horseplay injuries caused by drugs or alcohol attempt to injure self or another	Same as D.C. and Maryland; must notify claimant in advance if plan to use misconduct defense. Additional defense in Virginia: Violation of employer safety rule if rule known to claimant and enforced by employer.	Same as Maryland, but stricter requirements of showing
VOCATIONAL REHABILITATION	Yes. Several strict state requirements; no voc rehab for illegal aliens. Failure to cooperate can suspend benefits.	Yes. Failure to cooperate can suspend benefits. No voc rehab for illegal aliens.	Yes. Failure to cooperate can suspend benefits. Undecided whether voc rehab for illegal aliens
EXCLUSIVITY/TORT IMMUNITY	Claimant may sue third party who caused injury, may be another subcontractor, a co-employee, but not principal contractor or higher subcontractor who would be statutory employer. May sue employer if injury intentional or if comp insurance not obtained.	No suits against employer or co-employees. Liberal definition of statutory employer, which is also protected from tort suit.	Employee may sue third party who has caused injury. May <u>not</u> sue direct employer, but <u>may</u> sue higher subcontractors, other subcontractors, and prime contractor; may not sue co-employees of same employer.
THIRD PARTY ACTIONS	Claimant, employer or insurer can sue responsible third parties. Carrier can also intervene to protect comp lien. Co-employees can be sued. Claimant must obtain carrier approval for settlement or else comp is reduced or eliminated. Lien is repaid "off the top" of <u>net</u> proceeds, after deduction of attorney's fees. Lien subject to 1/3 reduction for attorney's fees.	Claimant, employer or insurer can sue responsible third parties. No suits against co-workers of same employer, no suits against higher subs or prime contractor, as these are statutory employers; can sue other same-level subcontractors and their employees.	Claimant, employer or insurer can sue responsible third parties. Co-employees may not be sued, unless intentionally injured claimant. Lien is repaid <u>in full</u> (without deduction of attorney's fees for recovery of lien, unless prior agreement otherwise), off the top of recovery, after deducting claimant's attorney's fees for claimant's portion or recovery. Claimant only has 6 months to sue after entry of comp order, after which right to sue passes to employer/insurer. Employer/insurer can sue at any time.
PAYMENTS ON FILES WHERE THIRD PARTY CLAIMS HAVE BEEN SETTLED	If carrier has approved settlement, settlement funds reimburse lien, and claimant's net above reimbursement of lien is credited against future liability for comp and medicals, until credit is exhausted. If carrier has not approved settlement, and carrier can demonstrate that settlement amount was too small, carrier may claim credit up to appropriate hypothetical settlement amount, after which comp resumes. (Difficult to prove). Always try to obtain F+F settlement of comp claim in exchange for any lien compromise.	Complicated formula. Carrier pays a percentage of each new amount due (whether comp or medical payment, percentage based on ratio of claimant's attorney's fees to entire gross settlement). This percentage of each subsequent comp payment or medical bill is paid to claimant until his entire attorney's fee has been reimbursed. Always try to obtain F+F settlement of comp claim in exchange for any lien compromise.	Claimant must obtain <u>written</u> carrier approval for any settlement. Failure to do so voids future benefits. If approval is obtained, carrier may claim credit against future comp liability for all monies paid to claimant, until exhausted, after which, comp resumes. Always try to obtain F+F settlement of comp claim in exchange for any lien compromise.

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STATUS OF EXECUTIVE OFFICERS, PARTNERS AND SOLE PROPRIETORS	Officers of corporation are covered unless elected non-coverage. Partners and sole proprietors may elect to deem themselves "employees" for coverage purposes, but must notify in writing Commission and carrier of this election before injury.	Corporate officers covered unless opt out. Sole proprietors and partners must elect pre-injury to be covered by notifying carrier, otherwise are excluded from coverage.	Owners and officers of corporations are covered if performing typical employee functions, drawing salary from corporation. If corporation is alter-ego for owner, coverage may be denied. No case law on coverage of sole proprietor or partner. Probable coverage if drew salary and performed employee functions.

The general rules above are riddled with exceptions, most of which favor the claimant. These general guidelines cannot automatically be applied to every situation, and are meant to be the beginning of the inquiry rather than the end of it. Since there are many exceptions to these, they should not be used as a substitute for reading the statute or consulting with someone before making an irreversible decision, and should not be considered legal advice. Note that different language from jurisdiction to jurisdiction does not necessarily connote a different meaning; chart wording is sometimes taken from the individual statutes and different wording may mean the same thing.