



# MASSACHUSETTS DEPARTMENT OF INDUSTRIAL ACCIDENTS

## The Injured Workers Guide to Workers' Compensation



**More information can be found at [mass.gov/dia](https://mass.gov/dia).**

**This guide will provide an overview of the Massachusetts Workers' Compensation system and a detailed explanation of benefits that an employee may be eligible for, if they are injured at work.**

**This brochure is available in Spanish, Portuguese, French, Chinese, Vietnamese, Haitian Creole, Cape Verdean Creole, Arabic, and Khmer, at: [mass.gov/dia-multilingual-services](https://mass.gov/dia-multilingual-services).**

The information contained in this brochure is general in nature and is not intended as a substitute for legal advice. Changes in the law or the specific facts of your case may result in legal interpretations that may be different than what is presented in this guide.

**Most workers are covered by workers' compensation insurance, regardless of their job, work hours, work status, immigration status or how they are paid.**



Scan the QR code for detailed information about the Workers' Compensation process and DIA or visit:  
**[mass.gov/workers-compensation-for-injured-workers](https://mass.gov/workers-compensation-for-injured-workers).**

## What should I do if I am injured at work?

- ✓ Report the injury/illness to your Employer. If the injury or illness results in lost time from work or at least five full or partial days, your Employer must file an [Employer's First Report of Injury or Fatality \(Form 101\)](#). Your Employer will send copies to the DIA, the Employer's Workers' Compensation Insurance Company, and you.
- ✓ Your Employer must submit the *Form 101* within seven days (not including Sundays and legal holidays) from the fifth day of lost time.
- ✓ It is against Massachusetts law for your Employer to fire you for filing a *Workers' Compensation Claim*.
- ✓ **Important:** If your Employer does not send *Form 101* to the Insurer within 30 days of your injury, you can report the injury by writing to the insurance company yourself or complete the *DIA's Employee's Claim Form (Form 110)* and send the Insurer a copy of the completed form. You can access *Form 110* at [mass.gov/doc/form-110-employee-claim](http://mass.gov/doc/form-110-employee-claim).
- ✓ Once the Insurance Company receives the form from your Employer, the company has 14 days to investigate the claim and determine whether to pay benefits or not.

**\*\*Your Employer is required to have a poster displayed in the workplace with the name and address of its Workers' Compensation Insurer and Policy Information. If your Employer does not have this poster displayed or will not**

provide the name of its Insurance Company, contact the DIA at **(617) 727-4900** for assistance.

### What happens if the insurer pays my claim?

- ✓ When the Insurer agrees to pay the claim, it will send an ***Insurer's Notification of Payment (Form 103)***.
- ✓ In most instances, you should start receiving a check within 3-4 weeks after your injury or illness. You will receive compensation for any lost wages after the first five full or partial calendar days. You will not receive compensation for the first five days of incapacity, unless you are disabled from work for 21 calendar days or more. The first 180 days after your injury is considered the Pay-Without-Prejudice (PWOP) Period. The Insurer may pay benefits for up to 180 days without accepting liability on your case. Paying you during this Period **does not** mean liability has been accepted by the Insurer. During the PWOP Period, the Insurer may stop or reduce your payments by giving you a seven-days-written-notice via an ***Insurer's Notification of Termination or Modification of Weekly Compensation During Payment Without-Prejudice Period (Form 106)***. The Insurer must provide the reasons for taking this action. If the Insurer continues to pay beyond the PWOP Period, permission from the Judge will be needed to stop or reduce your benefits.
- ✓ If you receive a *Form 106* that notifies you of a modification or termination of benefits, you may want to consult an attorney to discuss your rights and

responsibilities before giving consent or signing any other document(s).

### What happens if my claim is denied?

- ✓ If the Insurer denies your claim, it must notify you in writing by sending via certified mail an ***Insurer's Notification of Denial (Form 104)***. The form must include the reasons for the denial and how to appeal the Decision. If you have questions, contact the Insurer's claim representative, their phone number should be listed on the form. If you have hired an attorney, the attorney should call the claim representative about the denial on your behalf. The claim representative cannot speak with you about your claim once you have retained an attorney.
- ✓ If your claim is denied, you have the right to file an **[Employee's Claim Form \(Form 110\)](#)** with the DIA. If you choose this option, consultation with an attorney is recommended. *Form 110* is found at **[mass.gov/doc/form-110-employee-claim](http://mass.gov/doc/form-110-employee-claim)**.
- ✓ The *Form 110* must have medical documentation attached that supports your claim. This can include medical reports (do not attach x-rays, MRI's, etc.) that demonstrate how your injury or illness is causally related to your work. Submit the form and reports to the DIA at the address printed on the top of *Form 110*.
- ✓ You must also send a copy of the completed *Form 110* to the Insurer.
- ✓ Please keep a copy for your records.

- ✓ Once the DIA receives the *Form 110* and medical documentation, your case will be scheduled for a Conciliation in approximately 14 days. You will be notified in writing of the date, time and location of this meeting.
- ✓ A Conciliation is the beginning of the dispute resolution process.

*Do not send the Form 110 to the DIA unless you have received an **Insurer's Notification of Denial Form (Form 104)** or it's been 30 or more calendar days from your injury or illness date and you have not heard from the Insurer.*

### **Do I need an Attorney?**

- ✓ The Workers' Compensation law is complex. If your claim is denied, it is strongly advised that you seek legal representation so that your rights and interests are protected.
- ✓ The Massachusetts Bar Association can refer you to an attorney who handles workers' compensation cases.
- ✓ Massachusetts Bar Association Attorney Referral Service, call **(617) 654-0400** in the Boston area or toll-free at **(866) 627-7577**, or visit [massbar.org](https://massbar.org), and click on the ***Need a Lawyer?*** tab.
- ✓ DIA employees are not permitted to make attorney referrals on your behalf.

## Dispute Resolution:

### Conciliation:

- ✓ The first stage of the Dispute Resolution process is initiated when the DIA receives either of the following forms: ***Employee's Claim Form (Form 110)***, which is filed by an injured employee or their legal counsel against the Workers' Compensation Insurance carrier or, an ***Insurer's Complaint for Modification or Discontinuance Form (Form 108)***.
- ✓ At the Conciliation, an effort is made to reach a voluntary agreement between you and the Insurer. If a voluntary agreement cannot be reached, the status of your claim remains the same, and your case is scheduled for Conference before a DIA Judge.

### Conference:

- ✓ An informal legal proceeding before an Administrative Judge.
- ✓ Usually, this will take place between 8-12 weeks from the date of the Conciliation. The Judge learns about the case from presentations by both parties and the submission of documents, such as *Medical Reports*, *Wage Statements* and *Affidavits* from witnesses. Witnesses are not called.
- ✓ The following information should be presented: (A) you were disabled; (B) the injury or illness was work related; and (C) any disputed medical bills were for necessary treatment. After the Conference the Judge issues a decision, either ordering the Insurer to pay your benefits or denying your claim.

- ✓ The *Conference Order* can be appealed by either party by submitting an *Appeal of a Conference Proceeding Form (Form 121)*. Download *Form 121* at [mass.gov/doc/form-121-appeal-of-a-conference-order](https://mass.gov/doc/form-121-appeal-of-a-conference-order). You have 14 days to appeal. There is a fee to appeal the *Conference Order* if your appeal is based on a medical issue. This fee pays for you to be evaluated by an impartial Medical Physician. This fee may be waived if you can prove you cannot afford to pay the fee by filing an *Affidavit of Indigence and Request for Waiver of Section 11A (2) Fees Form (Form 136)*. You can download *Form 136* at [mass.gov/doc/form-136-affidavit-of-indigence-and-request-for-waiver-of-ss-11a2-fees/](https://mass.gov/doc/form-136-affidavit-of-indigence-and-request-for-waiver-of-ss-11a2-fees/).
- ✓ If either party appeals the *Conference Order*, a formal hearing before the same Judge will be scheduled.

### **Mediation:**

- ✓ Typically take place before the case is tried at an evidentiary hearing.
- ✓ Both the injured worker and the Insurer may voluntarily agree to participate in a mediation that is presided over by a different Administrative Judge than the one the case is currently assigned to. If the parties agree on the mediation, both attorneys must prepare a short summary of their argument for the Administrative Judge who then speaks candidly with all parties about settlement in an effort to avoid a tumultuous hearing over entitlement to benefits.
- ✓ Allows the parties to participate in a process that guides them toward settlement rather than one that

forces them to go through a contentious hearing where the risks may include a finding that the worker's claim for benefits is not compensable. More often than not, a successful mediation results in a favorable result for the injured worker and, at the same time, yields a result that is fair for the Insurer. For DIA Mediation process information, visit: [mass.gov/info-details/mediations](https://mass.gov/info-details/mediations).

### Hearings:

- ✓ Is a formal legal proceeding. It is usually held before the same Judge who presided at the Conference.
- ✓ *Massachusetts Rules of Evidence* will apply, and sworn testimony is taken.
- ✓ Witnesses are called and cross-examined by the opposing party.
- ✓ The Judge will render a *Hearing Decision* in which you will either be awarded benefits or not. The decision can be appealed to the Reviewing Board by either party by submitting an *Appeal to Reviewing Board Form (Form 112)*. This appeal can only be made if the party contends that the Judge made an error of law in issuing their decision or during the Hearing. The *Appeal* must be received within 30 days from the date of the *Hearing Decision*. There is an appeal fee equal to 30 percent of the *State Average Weekly Wage* in place at the time of the *Appeal*. The fee may be waived by filing an *Affidavit in Support of Request for Waiver of Filing Fee Under Sec. 11C Form (Form 112A)*.



Found at [mass.gov/doc/form-112a-affidavit-in-support-of-request-for-waiver-of-filing-fee-under-ss-11c](https://www.mass.gov/doc/form-112a-affidavit-in-support-of-request-for-waiver-of-filing-fee-under-ss-11c).

### **Industrial Accidents Reviewing Board:**

- ✓ If one or both of the parties wishes to appeal the *Hearing Decision*, that appeal is heard and decided by the Reviewing Board.
- ✓ This board is comprised of six Administrative Law Judges, three of whom will examine the Hearing Decision and evidence.
- ✓ The Reviewing Board can reverse or uphold the decision of the Administrative Judge or can determine that more work needs to be done, and remand (send back) the case back to the Administrative Judge for further finding.
- ✓ Either party may appeal *Reviewing Board Decision* to the Court of Appeals within 30 days of the Reviewing Board Decision. If one or both of the parties wishes to appeal the *Reviewing Board Decision*, the appeal is heard by the Massachusetts Court of Appeals.

### **Benefits overview:**

#### **Temporary Total Disability (TTD)/Section 34:**

- ✓ You may be eligible, if you have missed more than 5 full or partial days of work due to the injury/illness. This benefit is calculated at 60% of your gross (pre-tax/pre-benefits) average weekly wage. The average weekly wage (AWW) includes overtime, and bonuses for 52 weeks prior to your date of injury. If you have not been employed with the Employer for a full 52 weeks prior

to the date of injury, divide the total gross earnings by the number of weeks of employment in the prior year to determine the average weekly wage. Multiply the AWW by 60%.

*Sample calculation:  $\$800.00 \times .60 = \$480.00$*

- ✓ The weekly benefit amount cannot exceed the State Average Weekly Wage (SAWW) at the time of your injury. TTD benefits cannot exceed 156 weeks/3 years. Compensation begins on the 6th day of disability unless you have been out of work for more than 21 days. The days of disability do not need to be consecutive.

### **Temporary Partial Disability (TPD)/Section 35:**

- ✓ You may be eligible if you are still working but lose partial earning capacity due to the injury/illness. The maximum compensation cannot exceed more than 75% of the weekly benefit paid under Temporary Total Disability (TTD).

*Sample calculation:  $\$440.00 \text{ per week (TTD)} \times .75 = \$330.00$*

- ✓ Total Partial Disability benefits cannot exceed 260 weeks/5 years.

***The combination of TTD and TPD cannot exceed 364 weeks/7 years.***

### **Permanent Total Disability (PTD)/Section 34A:**

- ✓ You may be eligible if you are permanently and totally disabled from performing any type of work due to the work injury/illness. The benefit is calculated at two-

thirds (2/3) of your AWW before the injury, up to a maximum of the SAWW.

- ✓ You may also be eligible for an annual Cost-Of-Living Adjustment (COLA). The benefits continue as long as you are disabled from performing any type of work.

### **Medical Benefits/Section 13 and Section 30:**

- ✓ You may be eligible for benefits if the work-related injury/ illness requires medical attention. Medical care must be reasonable, necessary, and causally-related to the work injury/illness.
- ✓ Prescription medication and mileage reimbursement for travel to and from medical appointments may also be covered as well.
- ✓ Your Employer may designate care for your first Doctor/hospital after the injury/illness. After the initial treatment, you have the right to choose your own medical provider. The Insurer has the right to send you to a Doctor of its choice for an independent evaluation of your injury/illness/incapacity.

### **Utilization Review/Treatment Requests:**

- ✓ After the first 12 weeks of the injury, workers' compensation Insurers are required to undertake utilization review for all medical services that are provided to you.
- ✓ Your Employer's Workers' Compensation Insurance Company will provide the name and phone number to the appropriate utilization review agent.

- ✓ Utilization review ensures that you receive quality medical care, and that the treatment is reasonable, necessary, and appropriate.

### **Loss of Function-Disfigurement/Section 36:**

- ✓ You may be eligible if a work-related injury or illness results in a permanent loss of function of a specific body part, or if you suffer scarring or disfigurement on your face, neck, or hands.
- ✓ This is a one-time payment and would be in addition to benefits for lost wages or mileage reimbursement. The amount paid depends on the location and severity of the scarring, disfigurement or loss of function.

### **Survivor-Dependent Benefits/Section 31:**

- ✓ The benefits are paid to the spouse or child of an employee who has died as the result of a work-related injury/illness.
- ✓ The surviving spouse may be eligible for a weekly benefit equal to two-thirds (2/3) of the deceased worker's average weekly wage, up to the maximum of the SAWW in place at the time of their injury/illness. The surviving spouse may be eligible for yearly cost of living adjustments (COLA) beginning two years after the date of the injury or illness. If the spouse remarries, \$60 a week is paid to each eligible dependent(s) child.
- ✓ The total weekly amount paid to dependent children cannot exceed the amount that would be paid to the surviving spouse. The benefits may continue for as long as they remain dependent (as determined by a

Judge) and do not remarry. A child is eligible only if under age 18, a full-time student, or unable to work because of physical or mental disabilities.

### **Burial Expenses/Section 33:**

- ✓ The Insurer shall pay reasonable burial expenses, not exceeding 8 times the AWW in Massachusetts as determined pursuant subsection (a) of section 29 of c. 151A.

### **Can benefits be reduced or stopped?**

Your benefits may be stopped and/or reduced for several reasons; examples are:

- ✓ An Administrative Judge, Reviewing Board, higher Court, *Arbitrator Order*, or *Decision*.
- ✓ You have returned to work. The Insurer must resume benefits if you have to leave work again due to the same injury within 28 days of returning, provided that the Insurer has accepted or has been assigned liability for your injury.
- ✓ The Insurer has been given a medical report by your treating doctor or an impartial Medical Examiner stating that you can return to work, and your Employer has reported in writing that a suitable position is available for you that your Doctor has approved.
- ✓ You are requested to attend an evaluation by a DIA Vocational Rehabilitation Review Officer, and you fail to attend, or you refuse to cooperate with the terms of Vocational Rehabilitation Services.

- ✓ You are asked to go to the Insurer's Doctor for evaluation, and you fail to attend.
- ✓ You are imprisoned after conviction for either a misdemeanor or felony.

### **What is a *Lump Sum Settlement*?**

- ✓ A *Lump Sum Settlement* is a legal contract between you, and the Insurer, (or in some cases your Employer). A *Lump Sum Settlement* is a one-time payment usually replacing your weekly compensation checks. Be sure when accepting a settlement that you are clearly understand your rights, and what you may be giving up when considering whether the settlement is in your own best interest.
- ✓ Again, this is a critical time to seek legal advice. A *Lump Sum Settlement* is not guaranteed. You and the insurance company must agree to it, and it must be approved by an Administrative Judge at the DIA. In receiving a lump sum settlement, you may also be eligible for Vocational Rehabilitation Services. You should discuss the terms of the settlement agreement with your attorney or the Administrative Judge prior to signing any agreement. Download a *Lump Sum Brochure* at [mass.gov/info-details/lump-sum-brochures](https://mass.gov/info-details/lump-sum-brochures).

### **Vocational Rehabilitation Services**

- ✓ The goal of vocational rehabilitation (VR) is to return you to work earning as close as possible to what you were earning prior to your injury.

- ✓ Vocational Rehabilitation Services cover non-medical services that may assist in returning to a suitable job. Depending on your situation, services may include evaluation of your capabilities, vocational testing, and training, counseling or guidance, workplace modifications, formal retraining, and job placement assistance.
- ✓ If you receive a notice to meet with one of our Rehabilitation Review Officers (RRO), you **must** attend this meeting. If you fail to come to this meeting, your benefits can be discontinued. This meeting is to determine if you are suitable for services designed to help you return to work.
- ✓ If you fail to take part in a rehabilitation program after being found suitable, your weekly benefits be reduced by the insurance company with the DIA's permission.
- ✓ For OEVR information, visit: [mass.gov/office-of-education-and-vocational-rehabilitation](https://mass.gov/office-of-education-and-vocational-rehabilitation) or call **(857) 321-7303**. For a *OEVR Brochure*, visit: [mass.gov/info-details/vocational-rehabilitation-brochures](https://mass.gov/info-details/vocational-rehabilitation-brochures).
- ✓ Since the pandemic, mandatory meetings are held over the phone. In some instances, the mandatory meeting will be held either in person or by video conference in Webex or Teams. An injured worker can also refer themselves to the *OEVR Post Lump Sum Brochure*, visit: [mass.gov/doc/lump-sum-brochure-english](https://mass.gov/doc/lump-sum-brochure-english). For brochures in other languages, visit: [mass.gov/dia-multilingual-services](https://mass.gov/dia-multilingual-services).

## How to verify your employer's coverage:

- ✓ The DIA provides a free, web-based “Proof of Coverage” (POC) Tool that can help verify whether your Employer has a current *Workers’ Compensation Policy*.
- ✓ To access the POC tool, visit [mapoc.org](http://mapoc.org). If after checking the POC Tool, you believe that an Employer is not providing coverage, call the Office of Investigations at **(857) 321-7313** or toll-free at **1-(877)-MASSAFE (627-7233)**. Visit [mass.gov/dia](http://mass.gov/dia). Call the TDD (teletype for the Deaf and Hard-of-Hearing only): **(800) 224-6196**.

**\*\*If you suspect that your Employer does not have insurance coverage, call our Office of Investigations at (857) 321-7406.**

## Public Information Office:

Public Information Office Staff is available to help guide you through the process. It is important that you keep any documents your Employer or it’s Insurer sends you. Also, keep a copy of any forms you have filled out and submitted.

**Call the Public Information Office at (617) 727-4900 or email [info2@mass.gov](mailto:info2@mass.gov).**

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