

WISCONSIN



DWD

Flow of a Claim with Wisconsin Highlights

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Agenda

- Flow of a Claim – Including Reporting
- Surcharges
- Delays
- Independent Medical Examinations (IMEs)
- What Injured Workers Call Us About
- Throughout the Life of a Claim



Flow of a Worker's Compensation Claim

What's the very first thing to happen in a worker's compensation claim?

A work injury!

Then what?



Worker Is Injured

- Injured worker is responsible to tell employer about injury
 - Within 30 days of incident, or
 - Within 30 days of when injured worker knows it is a problem.
(Some try to tough it out – does not disqualify them).
- Employer is responsible to report injury to insurance company (not just the agent!) within 7 days. (**Report:** WKC-12)



Worker Is Injured

EXCEPTION!

Fatalities: Within one day, the employer must contact Division by phone to report as much information as they have, even if it's not complete yet. The employer also needs to submit the WKC-12 to the insurance company.



Worker Is Injured (cont.)

- Employer is responsible to tell injured workers that they can treat with provider of their choice. (102.42(2)(a), Wis. Stats.)
- Injured worker is responsible for seeking treatment and providing any restriction notes to employer and insurance company as soon as possible.



Insurance Company Receives Report

Adjuster starts claim investigation

- Make necessary contacts
 - Remember, injured worker may not have ever had a worker's compensation claim and will be counting on you for explanation. How the claim starts will determine its tone for the future.
- Collect medical records



Insurance Company Receives Report (cont.)

In addition to working with the injured worker, the employer, and the medical providers, you also need to send information to the DWC.

- Report – on a specific form or in a specific electronic format that DWC has deemed acceptable for sending the required information
- Notice – sender gets to submit the information in a way that suits the situation, their own needs, and DWC's requirements



Insurance Company Receives Report (cont.)

Within **14 days** of the date of injury or the last day worked, adjuster must either:

- Accept claim and pay benefits,

OR

- Deny, with a written letter (**notice**) to injured worker explaining why claim is denied and giving information on how to remedy that reason, if applicable,

OR

- Send a written letter (**notice**) explaining that the claim is under investigation, again explaining why and giving recourse if the claim is subsequently denied.



Insurance Company Receives Report (cont.)

On or before the 14th day after an accident or first day of disability from occupational disease, submit the WKC-12 – First **Report** of Injury to DWC

- Report electronically through the Pending Reports application on our website - not on paper!
- BUT don't send medical only (less than 3 days of lost time) or denials



Insurance Company Accepts Claim

- Injured worker treats with provider of choice.
- Required **reports** to Division within 30 days of injury or 30 days of when injury was required to be reported:
 - WKC-13 (payment to date information; date final medical report is expected), and
 - WKC-13A1 (wage information) if wage is less than maximum wage.
- Insurance company pays TTD/TPD in a timely manner. (TTD is 2/3 of AWW, up to maximum. 2023 maximum TTD rate is \$1,247.00.)



Insurance Company Accepts Claim (cont.)

- Injured worker returns to work.
 - If there are restrictions, make sure employer follows them.
 - If injured worker returns to work without restrictions, claim continues until they are released from care.
- If you are stopping benefits or changing them to a different type (i.e., TTD to TPD), you must **report** the status change to DWC. (WKC-13)



Insurance Company Denies Claim

- If you determine that the claim is not compensable, within 14 days of the accident or the first day of disability from an occupational disease, send a denial letter (**notice**) to the injured worker.
- Denial letter must include:
 - Basis for denial.
 - How to contest the denial.
 - Appeal rights.



Insurance Company Denies Claim (cont.)

- If you have accepted liability for the claim but later find that for some reason it is not compensable, within 7 days of your decision you must send your denial letter to both the injured worker and the DWC.
- Denial letter must include:
 - Basis for denial.
 - How to contest the denial.
 - Appeal rights.



Insurance Company Investigates Claim

- Investigation – Independent Medical Exam (IME), Medical Records Review (MRR), recorded statements.
- 6 weeks is considered sufficient to complete investigation.
 - Keep injured worker updated – this is a very uncertain time for them with no income and not knowing what is going on with medical care.
- You can ask for extension of time to investigate.
 - Only helps you to avoid late reporting surcharges
 - Extension does not apply to delayed payment penalties!



Insurance Company Investigates Claim (cont.)

- Why is investigation taking so long?
 - Voluntary authorization for records release is voluntary - don't sit around waiting for it! IW is not actually required to sign it. You already have the right to the records because HIPAA doesn't apply to worker's compensation (102.13(2)(a), Wis. Stats.)
 - No records from treating doc yet – let IW know so they can help
 - Need recorded statements from co-workers – ask IW for help.
- Let IW be your ally to get them out the other side of the claim as quickly as possible.



Insurance Company Requests IME or MRR

Insurance company may request an Independent Medical Examination (IME) or Medical Records Review (MRR) at any time.

- IME must be scheduled at a location no further than 100 miles from injured worker's home.
- Do your best to give the injured worker adequate time to plan for the IME.
- All expenses must be paid ahead of time:
 - Mileage.
 - **Full** wage for any lost work time if injured worker is working.



Insurance Company Requests IME (cont.)

Notify injured worker of IME by **letter**, not email or phone call. Letter must include:

- **Proposed** date, time, and place of exam, and IME doctor's name and specialty,
- How to change **proposed** date, time, and place of IME,
- Injured worker's **rights**



Insurance Company Requests IME (cont.)

Specific injured worker's **rights** to be included in letter:

- To have their own doctor at IME,
- To have translator at exam,
- To have observer of their choice at exam, and
- To a copy of the IME report as soon as it is received, without having to request it.



Insurance Company Requests IME (cont.)

- If insurance company requests multiple exams for the same injury, they must use the same doctor for all IMEs that cover similar issues.
- If IME doctor's rating is higher than treating doctor's, you can take the position that the treating doctor's rating is correct.
 - Injured worker can file a hearing application for the IME doctor's rating.



End of Healing

- Return to Work is **not** the same as End of Healing.
- IME or MRR opening End of Healing will not automatically close the claim.
- If injury qualifies for a statutory minimum rating, PPD benefit payments start within 30 days of return to work without restrictions **or** End of Healing, whichever occurs first. **Report** any changes in benefit type (TTD to TPD; TPD to TTD, TD to PPD) within 30 days of the change



End of Healing (cont.)

- Statutory minimums? Get all narrative operative reports. (You have already started paying PPD within 30 days after RTW if it's a statutory minimum.)
- Amputation? Obtain X-rays if needed. Tell us sooner rather than later about **all** amputations.



Final Medical Report

Receive Final Medical Report (FMR)

- If not challenging rating, and it doesn't qualify for a statutory minimum rating, begin PPD payments within 30 days of report date.
- If challenging rating, give notice of request for IME within 30 days
- If IME report is not received within 90 days of notice of request, start paying PPD rating per treating doctor's final medical report.



Closing Claim

- Send medical documentation – WKC-16, WKC-16B - to DWD with WKC-13 when you start paying PPD.
- **Wait** patiently for your worksheet – duplicate copies slow us down. The worksheet is a courtesy. If you know what the rating is, start paying PPD benefits. You do not need to wait for the worksheet before starting payments.
- Pay PPD in a dependable, timely manner until all benefits due are paid.
- Close claim and send final WKC-13.



Reopening the Claim

- Reopen claim if the injury resurfaces before statute of limitations has run. Statute of limitations starts on day last indemnity benefit was **scheduled** to be paid.
- Traumatic injury sustained on or after 3/2/16:
 - 6-year statute of limitations
- Occupational disease or injury or a traumatic injury sustained before 3/2/16:
 - 12-year statute of limitations
- Remember to file a WKC-13 to reopen the claim.



Litigation

- Litigation only begins when Hearing Application is actually filed with DWC.
- If injured worker retains an attorney but does not file Hearing Application, claim is **not** litigated.
- If you have an attorney but the injured worker has not filed a Hearing Application, claim is **not** litigated
- As long as the claim is not litigated, you still need to keep up your reporting.



Surcharges and Delay Penalties



Surcharges

Pay attention to Wisconsin's worker's compensation reporting requirements.

- Section 102.35(1), Wis. Stats. authorizes assessment of surcharges for late reporting of any reports that have a due date – Final Medical Reports and Wage Reports
- Paid to Work Injury Supplemental Benefit Fund
- Surcharge = \$100 for each offense



Avoiding Surcharges

- You enter the date you expect to send us the final medical report
 - These are “Due By” dates, not “Due On” dates
- If you won’t have the report to us in time, you can extend the due date three (3) times before you are locked out
 - Medical expected dates are the only ones you can extend yourself; contact us directly to extend due date on other required reports
- Locked out? Contact us via email or through the pending reports and ask to have the expected date extended



Surcharge Assessments

- If the required report has not been received by the due date, the surcharge letter will go out the very next day.
- Once a year, an invoice with all your company's surcharges for the year will be sent out.
- Pay the surcharges from the annual invoice – not when you receive the surcharge letter.



Surcharge Waivers

If you get a surcharge letter but know that you already faxed in the medical report:

You must do two things. Don't skip either of them.

1. Go into the claim and extend the due date – don't just fax in the report again.
2. Bring the claim to our attention – we need to look at each one individually.



How Do I Know if You Got My Report?

Announcements are posted here!

WC Insurer Pending Reports

****Upcoming Worker's Compensation Training****

Wisconsin Worker's Compensation Division Fall Workshop is scheduled for Tuesday, November 14th. For more information on this free online workshop, visit the [training information page](#). Click here to [register now](#).

Continue using the Pending Reports Internet application to submit required WC reports. If you must fax claim-related documents, please use our newly developed fax cover sheet; use of this cover sheet will help reduce processing time of such documents. Note: The Division continues to require documents related to litigated claims, perm total claims, fatalities and Supplemental Benefit Reimbursement Requests be mailed to the Division. The fax cover sheet is found at <http://dwd.wisconsin.gov/dwd/forms/wkc/wkc-17843-e.htm>.

Today, **11/09/2023**, the WC Division is processing incoming mail received on **11/08/2023**. Information submitted via this application is updated real-time. If you mailed or faxed information to the WC Division prior to 11/08/2023 the receipt of that information has been logged into the claim. Sometimes information processing may require a series of steps by multiple Division personnel. Therefore, it may take 2-3 weeks before a final disposition is recorded to the claim. During that time please DO NOT re-send information previously submitted.

The WC Division is processing wage-related information received on **10/23/2023**. Status of wage investigations reflect only the information received prior to 10/23/2023.

You'll see today's date and the date of the incoming mail that is being processed.

Wage information processing is shown here, too!



How Do I Know if You Got My Report?

- Is the date you sent your report before or after the date that is being worked? (In the example on the previous slide, the date being worked is 11/8/23.)
 - If you sent your report **before** that date (for example, on 10/24/23), contact WCD to see if it has been processed.
 - If you sent your report **after** that date (for example, on 11/10/23), wait until the date that is shown in Pending Reports has passed.



Best Ways to Let WCD Know

- Fax a letter to 608-260-2503 to explain the situation
- Email any questions to Kathy Almeida at Kathrene.Almeida@dwd.wisconsin.gov
 - But **fax** any attachments to us – don't email them!
- Kathy Almeida's work schedule:

Monday – Friday, 6:00 a.m. – 2:00 p.m.



Surcharge vs. Delay Penalty

- Surcharges are imposed when you are late reporting to the **state**.
- Delay Penalties are imposed when you are late paying the **injured worker**.
- An extension can be granted to avoid Surcharges.
- Delayed payments may be excused, but extensions granted for late reporting do not apply to delay penalties.
- Correct reporting to the state is important, but the injured worker's financial stability is more important.



Delays

Delay penalties are

- Not the same as surcharges
- Assessed when TTD or PPD payments to the injured worker are inexcusably late
- 10% of the benefit that is paid inexcusably late
- Paid directly to the injured worker

What does it take to get a delay penalty excused?



Excusable Delays

Delay penalties can be excused if:

- Employee did not notify employer of injury, or
- Insurance investigation (**only if less than six weeks and only if investigation letter has been sent**), or
- Employer pays sickness, accident insurance, and/or salary until compensability is determined, or
- Employer's first claim or first delay (**Note**: we may query our records).



Temporary Disability and Investigations

IMPORTANT NOTE:

- WCD granting you extra time to investigate a claim will not excuse a delay penalty.
- Waiting for an IME or MRR report does **not** excuse a delay penalty.
- The extended time given for investigating the claim may avoid the assessment of a surcharge for late reporting.

(102.35(1), Wis. Stats.)



Permanent Disability

- PPD is payable monthly
- Is the injury subject to a statutory minimum? If yes, start paying PPD benefits on the earlier of:
 - Within 30 days after the end of the employee's healing period, or
 - On the date compensation for TD ends
- Not a statutory minimum? Start paying PPD benefits within 30 days after you get the final medical report.



Permanent Disability

- You must pay all due and accrued PPD from the date TD ended
- Intermittent periods of disability? PPD accrues while the injured worker is not getting TD but is not yet at end of healing.
- Challenging the rating? You have 30 days after receipt of the WKC-16 to **schedule** an IME and **tell the injured worker** about the exam. If the IME report is not received within 90 days of the **day you scheduled** the appointment, start paying the treating doctor's rating.



Avoiding Delay Inquiries and Penalties

- Pay right away what you can determine you owe.
- Don't make token payments.
- Update your WKC-13 when you pay or change any types of payments.
- Contact the DWD/WCD/DRS if you have any questions.



What Injured Workers Call Us About

- Benefit payments are inconsistently paid and often late.
 - This complaint applies to both TTD and PPD payments
 - This is the injured worker's income; late payments make it harder for them to budget and manage their finances
 - Don't put yourself into a position to incur a delay penalty!



What Injured Workers Call Us About (cont.)

- Make sure the employer follows restrictions or you risk an aggravated injury. Work culture frequently pressures workers to overextend themselves.
- If the employer offers work to accommodate temporary restrictions, it must be work that
 - Benefits the employer, and
 - Is not unduly burdensome on the injured worker.



What Injured Workers Call Us About (cont.)

- If injured worker is back at work but has not yet reached end of healing, they often have more physical therapy or doctor appointments.
- Injured workers are encouraged to make their follow up appointments after work hours, but sometimes that is not possible.



What Injured Workers Call Us About (cont.)

- If injured worker must make medical appointments during work hours, they are eligible for TPD for the time they are gone.
 - Advise employers of this requirement
 - Disciplinary action for going to WC medical appointments can have undesired consequences



What Injured Workers Call Us About (cont.)

- Being told they must treat with a specific provider or at the on-site clinic.
 - Employer's clinic is not the injured worker's official choice of provider. Injured worker does not have to stay with clinic you sent them to.
- If injured worker's doctor makes a referral to a specialist, the specialist isn't considered a second opinion
 - All providers in the chain of referrals count as the original choice of provider



Throughout Life of Claim

- Keep DWD updated.
- If we call or email you, please respond as quickly as you can. We're trying to help you close your claim. If you don't respond to our informal contacts, we'll have to send you a letter which takes more time!
- Frequently, the adjuster's perspective on a claim situation helps us to understand what is really going on.
- Stay in contact with injured worker. We get many calls from people who just want information, but they become angry because they can't reach a person.



Throughout Life of Claim (cont.)

- You are the professional. For most injured workers, this is the first and only time they will deal with worker's compensation. They are hurt. They are scared. They worry about paying their bills. They feel lost because they don't understand the system.
- If you have a problem, call us sooner rather than later.
- If you have questions, call us sooner rather than later.
- Include our claim number!



Questions?

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