

**STATE OF WISCONSIN**  
**DWD**  
 Department of Workforce Development

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**Delay Penalties: How to Avoid Them**

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 Dispute Resolution Specialists

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Agenda

- Types of Delay Penalties
- Delay Penalties on Temporary Disability
- Surcharges vs Delay Penalties
- PPD Payment Requirements
- PPD and IMEs
- Delay Tips and Strategies
- Case Study

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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

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### 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:
  - 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



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### Inexcusable Delay: Temporary Disability

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



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### 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)



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### 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



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### 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)



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### Surcharge vs. Delay Penalty

- 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.



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### 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.



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### Delay: PPD

**§ 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.



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### Delay: PPD and Statutory Minimums

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

- 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.



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### Delay: Amputations

- Be sure to 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?
- Do not wait for Division worksheet.



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### 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.



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### Delay: Intermittent Periods of TD

**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.

There may be several intermittent periods of temporary disability.



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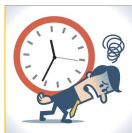
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### Intermittent Periods of Disability

- 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?



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### Intermittent Periods of Disability

- 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 to 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!



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### 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 injured worker of IME.



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### 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.



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### 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.
- Updating your WKC-13 when you pay, change, or stop any types of payments.
- Contacting the DWD/WCD/DRS if you have any questions.



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### Case Study: The Story of Oliver



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### Timeline for Oliver's Claim

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TTD	April 7, 2022 - May 25, 2022 Left knee meniscectomy, ACL	7 weeks
<b>Back at work</b> <b>May 26, 2022 - June 15, 2022</b>		<b>3 weeks</b>
TTD	June 16, 2022 - July 13, 2022 Left wrist surgery	4 weeks
<b>Back at work</b> <b>July 14, 2022 - February 1, 2023</b>		<b>29 weeks</b>


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### Timeline for Oliver's Claim (cont.)

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TTD	February 2, 2023 - June 21, 2023 Left total knee replacement	20 weeks
<b>Back at work</b> <b>June 22, 2023</b>		
Final medical report sent	March 7, 2024	


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### Oliver's Claim

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- Average weekly wage:      \$1,200.00
- TTD rate:                      \$800.00/week
- PPD rate:                      \$362.00/week  
(maximum for date of injury)


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### Case Study Questions

1. What delay issues do you see in this story?
2. What PPD is due to Oliver? When?
3. Is the insurance company subject to any delay penalties? Why, and if so, how much should they be?



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### Case Study Answers

1. What delay issues do you see in this story?



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### Case Study Answers

1. What delay issues do you see in this story?
  - TTD delay
  - First day of lost time was April 7, 2022.
  - Surgery date was May 10, 2022.
  - No explanation sent to Oliver for why he was not being paid benefits. TTD or explanation letter must be sent within 14 days of losing time.



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### Case Study Answers

1. What delay issues do you see in this story?

TTD delay (continued)

- First TTD payment (\$800) not made until May 13, 2022: more than 30 days after date of injury and payment was more than \$500
- 5 weeks and 2 days of TTD were due as of date of first TTD payment (5.333 weeks x \$800 = \$4,266.40)
- First TTD payment was not for full amount due, so 10% penalty assessed

10% of \$4,266.40 = \$426.64

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### Case Study Answers

1. What delay issues do you see in this story?

PPD delay

- Delayed payment of PPD for statutory minimum ratings
- Adjuster Annie should have been aware of the statutory minimums for knee surgeries and DOES NOT have to wait for treating doctor's rating to begin paying PPD on them.



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### Case Study Answers

1. What delay issues do you see in this story?

PPD delay (continued)

- First PPD payment to be made within 30 days of May 26, 2022, Oliver's first day back at work
- Intermittent periods of disability when PPD is due (or, looked at a different way, times when Oliver should be paid PPD because he is working and not being paid TTD)



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### Case Study Answers

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1. What delay issues do you see in this story?

PPD delay (continued)

- 3 weeks of PPD payable for the time Oliver is back at work until he starts losing time again, on June 16, 2022
- Second PPD payment to be made within 30 days of July 14, 2022, Oliver's first day back at work after his wrist (second) surgery


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### Case Study Answers

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1. What delay issues do you see in this story?

PPD delay (continued)

- PPD continues for knee and wrist surgeries
- Number of weeks of PPD remaining to be paid after Oliver's wrist surgery: 83.1


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### Case Study Answers

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1. What delay issues do you see in this story?

PPD Delay (continued)

Back at work	May 26, 2022 - June 15, 2022	3 weeks
Back at work	July 14, 2022 - February 1, 2023	29 weeks
Back at work	June 22, 2023	
Annie reviews DWC worksheet	June 6, 2024	


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### Case Study Answers

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2. What PPD is due to Oliver? When?


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### Case Study Answers

Body part	Surgery	Statutory minimum rating	Non-statutory minimum rating	Weeks of benefits	Dollar value @ \$362.00/week
Left knee	Meniscectomy	5% PPD		21.25	\$ 7,692.50
	ACL repair	10% PPD		42.5	\$15,385.00
	Additional element of disability - pain		3%	12.75	\$ 4,615.50
	Total knee replacement	50% PPD		212.5	\$76,925.00
Left wrist	Tendon repair		2%	8	\$ 2,896.00
Multiplier	Multiple body parts rated		(.2 x 8 weeks)	1.6	\$ 579.20


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### Case Study Answers

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2. What PPD is due to Oliver? When?

- Stack the statutory minimums for knee surgeries: 65% (276.25 weeks)
  - Meniscectomy 5%
  - ACL repair 10%
  - Total Knee Replacement 50%
- 3% (for pain) **not included after first surgery** because it is not a statutory minimum
- L wrist: 2% (8 weeks)
- Multiplier (20% of lowest number of weeks = 1.6 weeks)


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**Case Study Answers**

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2. What PPD is due to Oliver? When?

- **Total number of weeks of PPD benefits: 285.85**
- **285.85 weeks of benefits x \$362.00/week = \$103,477.70**

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**Case Study Answers**

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3. Is the insurance company subject to any delay penalties? Why, and if so, how much should they be?

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**Case Study Answers**

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3. Is the insurance company subject to any delay penalties? Why, and if so, how much should they be?

- Yes, the insurance company is subject to PPD delay penalties because Annie hasn't paid any PPD at all until June 6, 2024.
- PPD is due for the times when Oliver was not receiving TTD benefits.

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### Case Study Answers

3. Is the insurance company subject to any delay penalties? Why, and if so, how much should they be?
- Times when Oliver was eligible for PPD benefits because he was not receiving TTD:

May 26, 2022 – June 15, 2022	3 weeks	\$1,086.00
July 14, 2022 – February 1, 2023	29 weeks	\$10,498.00
June 22, 2023 – March 7, 2024	37 weeks	\$13,394.00
March 8, 2024 – June 6, 2024	13 weeks	\$4,076.00



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### Case Study Answers

3. Is the insurance company subject to any delay penalties? Why, and if so, how much should they be?
- Total PPD due by the time of first PPD check: \$29,054.00
  - **10% of first PPD check = \$2,905.40 delay penalty**



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### Trick Question

Question: When will the statute of limitations on Oliver's knee claim run?

Answer: It won't, because there is no statute of limitations when the injured worker has a total knee replacement. (See § 102.17(4)(b) and footnote 113.)



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**Questions?**

**Delay Specialists**

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Jason Przybylo – (608) 405-4147  
Gail Wickman – (608) 261-4895  
Karee Williams – (608) 267-1362

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