

WISCONSIN



DWD

Delay Penalties: How to Avoid Them

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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



Types of Delay Penalties



- Delay penalty for late payment of Temporary Disability benefits
- Delay penalty for late payment of Permanent Partial Disability (PPD) benefits



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



Inexcusable Delay: Temporary Disability

- First TD payment is made more than 30 days after the date the employee leaves work as a result of an injury
- Can incur penalty for delay of any length of time in making any other payment that is due an injured employee



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 will query our records)



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



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)



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 offense
- Surcharges are paid to Work Injury Supplemental Benefit Fund
- An extension may be granted to avoid surcharges.



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.



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.

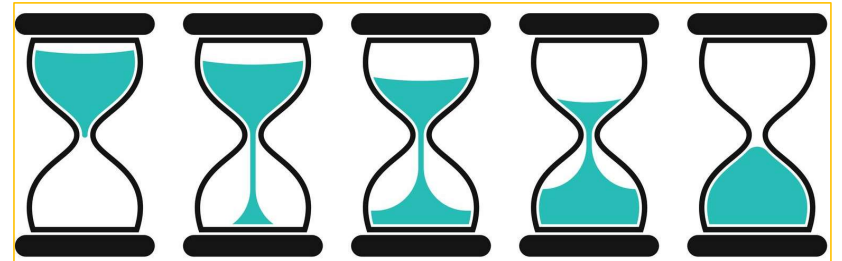


Delay: PPD and Statutory Minimums

§ 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.



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.



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.



Delay: PPD But Not Statutory Minimum

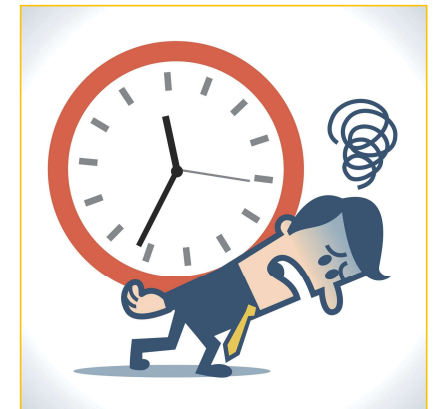
IMPORTANT NOTE: Whether or not the PPD is a statutory minimum, you still need to pay the due and accrued PPD from the date TD ended.

There may be several intermittent periods of disability.



Intermittent Periods of Disability

- An injured worker had a meniscectomy and was off work June 1 through July 12.
- On July 12, went back to work and worked several weeks. Knee kept getting worse.
- On September 28, injured worker had a total knee replacement.
- Returned to work February 25.
- When does PPD start to accrue?



PPD and Independent Medical Exams

The 30/90 day rule: 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 you must:

- Schedule the IME within 30 days of receiving the treating doctor's final medical report, and
- Advise injured worker of IME.

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.



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.



Case Study: The Story of Oliver



Timeline for Oliver's Claim

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



Timeline for Oliver's Claim (cont.)

TTD February 2, 2023 - June 14, 2023 19 weeks
Left total knee replacement

Back at work June 15, 2023

Final medical March 7, 2024
report sent

Oliver's average weekly wage is \$1,200.00, so his TTD rate is \$800.00/week and his weekly PPD rate is the \$362.00, the maximum for the date of his injury.



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?



Case Study Answers

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



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.



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
 - First TTD payment was more than \$500
 - 5 weeks and 2 days of TTD due as of date of first TTD payment
 - $(5.333 \text{ weeks} \times \$800 = \$4,266.40)$
 - First TTD payment was not for full amount due, so 10% penalty assessed
 - $10\% \text{ of } \$4,266.40 = \426.64



Case Study Answers

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

PPD Delay

- Delayed payment of PPD for statutory minimum ratings

Annie should have been aware of the statutory minimums for the knee surgeries and DOES NOT have to wait for a Dr.'s rating to begin paying PPD on them.



Case Study Answers

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

PPD Delay

- First PPD payment to be made within 30 days of May 27, 2022, Oliver's first day back at work
- Intermittent periods of disability when PPD is due (or, looked at a different way, times between when Oliver is off work and being paid TTD so he should be paid PPD)
- 3 weeks of PPD payable for the time Oliver is back at work until he starts losing time again, on June 15, 2022



Case Study Answers

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

PPD Delay

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



Case Study Answers

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

PPD Delay

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 15, 2023	
Annie reviews DWC worksheet	June 6, 2024	



Case Study Answers

2. What PPD is due to Oliver? When?



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



Case Study Answers

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)



Case Study Answers

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**



Case Study Answers

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



Case Study Answers

3. Is the insurance company subject to any delay penalties? Why, and if so, how much should they be?
- Yes, because Annie hasn't paid any PPD at all until June 6, 2024.
 - PPD is due for the times when Oliver's was not receiving TTD benefits.



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 15, 2023 – March 7, 2024	38 weeks	\$13,756.00
March 8, 2024 – June 6, 2024	13 weeks	\$4,076.00

Total PPD due by issue date of first PPD check: \$30,046.00



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: \$30,046.00

10% of first PPD check = \$3,004.60 delay penalty



Trick Question

Question: When will the statute of limitations on Oliver's 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.)





Questions?

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