

**WORKERS' COMPENSATION IN MISSISSIPPI – EVERYTHING THAT YOU WANTED TO KNOW BUT MAYBE  
WISH THAT YOU HADN'T ASKED**

I. WHAT EXACTLY IS WORKERS' COMPENSATION?

A. Trade off between Employers and Employees

1. Codified in MCA SEC 71-3-1 et. Sec. (1972, as Amended)
  2. Exclusive remedy for a work related Injury
    - a. Exception
      - i. Where the Act does not provide a remedy
        - *Miller v. McRae's*, 444 So.2d 368 (1984) – employee falsely imprisoned by co-worker
        - *Franklin Furniture v. Tedford*, 18 So.3d 215 (Miss. 2009) – where the acts of an employer are “substantially certain” to cause injury to employees
  3. Injured workers receive benefits, not damages
    - a. Benefits are limited
      - i. Medical care
      - ii. Indemnity
  4. Fault of either party is not a defense or does it enhance the claim
  5. No compensation for common law damages
    - a. No pain and suffering
    - b. No lost wages
    - c. No award for past, present and future medical bills
    - d. No loss of enjoyment of life
    - e. No punitive damages
      - i. Exceptions
        - Penalties and interest on past due indemnity
        - Commission has power to assess sanctions
- Penalty for misrepresentation - M.C.A. Sec. 71-3-69

- \$5000.00 for knowingly false or misleading statements for the purposes of obtaining or denying benefits.

Civil and criminal penalties for failure to secure payment for compensation (coverage) – M.C.A. Sec. 71-3-83

B. Starts with a work related injury

1. Injury defined M.C.A. Sec. 71-3-3(b)

“Injury” means accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event or events, if contributed to or aggravated or accelerated by the employment in a significant manner.

- a. Industrial accidents
- b. Industrial disease
  - i. Repetitive motion injuries.
    - Dependent upon medical causation option
    - Carpal tunnel syndrome
    - Last injurious exposure. Injury occurs over an extensive period of time with several employers. The last employer is responsible for the claim. *Thyer Mfg. Co. v. Mooney*, 173 So.2d 652 (Miss. 1965).
- c. Includes aggravation, exacerbation or acceleration of pre-existing condition
  - i. Claim relies upon medical proof of causation
- d. Mental injuries
  - i. Without physical injury, the “mental-mental” injury, the Claimant must prove by clear and convincing evidence that the mental injury resulted from more than the ordinary incidents of employment and that there was an untoward event or occurrence that contributed to the mental or emotional injury. *Brown & Root Construction v. Duckworth*, 475 So.2d 813 (Miss. 1985) (claimant was not given a promised promotion and suffered psychological injury); *Mid-Delta Home Health, Inc. v. Robertson*, 749 So.2d 379 (Miss. App. 1999) (overworked and harassed employee suffers emotional disorder); *Smith and Sanders, Inc. v. Peery*, 473 So.2d 423 (Miss. 1985) (mental injury resulting from

being laid off due to economic downturn not a compensable injury).

- ii. Mental injury stemming from physical injury does not require heightened proof, i.e., pain related depression or anxiety.
- e. Death (M.C.A. SEC. 71-3-3)
  - i. not wrongful death
  - ii. Death beneficiaries: surviving spouse, surviving children (until 21 or 23 if in college)
  - iii. Small death benefit (\$1000.00), small funeral benefit (\$5000.00) and then maximum of 450 weeks of relative percentage of pre-injury AWW (capped at rate by the year of death)
    - Re-marriage of surviving prior to 450 weeks cuts off benefits
- f. Hernias (M.C.A. Sec. 71-3-23)
  - i. The least amount of benefits under the Act and the most strictly applied statute.
  - ii. Proof:
    - Hernia immediately followed sudden effort;
    - Severe pain in the area of the hernia;
    - No prior descent or protrusion before this hernia;
    - Hernia was immediately noticed and reported to employer within reasonable time; and
    - Medical treatment obtained within 5 days
  - iii. Benefits:
    - Reasonable and necessary medical care; and
    - Maximum of 26 weeks of disability when surgery, or 13 weeks when claimant opts not to have surgery
- g. Facial disfigurement (M.C.A. Sec. 71-3-17(c)(24))
  - i. Scar must be present 1 year post injury
  - ii. Commission may award up to \$5000.00

PRACTICE TIP: Pre-existing condition? Ask why is the person symptomatic? What has changed post injury/accident? Person's baseline pre-accident is the benchmark.

QUESTION: Claimant has a history of degenerative joint disease in the right knee treated in the past with over the counter medications. Claimant falls at work and tears right meniscus to the extent that a right knee replacement is now ordered by treating orthopedist. Is the knee replacement covered or not?

ANSWER: Depends upon medical proof. If medical proof is that the fall at work accelerated the degenerative condition to the extent that the Knee replacement is needed, then yes.

c. In the course and scope of employment

1. "Positional Risk Test" Injury would not have occurred but for the fact that the employment placed the claimant in a position where he/she was injured. *Wiggins v. Knox Glass, Inc.*, 219 So.2d 154 (Miss. 1969).
2. Does not have to occur during work hours or at the Employer's place of business. *Mississippi Research & Development Center v. Dependents of Shults*, 287 So.2d 273 (Miss. 1973). Claimant died from heart attack in his kitchen at home. Medical proof showed that workplace stress contributed to the heart attack.
3. Injury must have some relationship to work.
4. "Coming and going rule". Generally, injuries occurring while employees are coming to and going from work are not covered. *King v. Norrell Services, Inc.*, 820 So.2d 692 (Miss. Ct. App. 2000). There are fact specific exceptions:
  - a. Employer furnishes means of travel (i.e. company car/truck);
  - b. Employee performs duty connected to work at home (i.e. work from home);
  - c. Employee injured due to hazardous route to work necessarily used by employee;
  - d. Employer furnishes hazardous route;

- e. Injury results from hazardous parking lot furnished by employer;
- f. Location of injury is in so close proximity of Employer's premises so as to be part of employment location;
- g. Employee is on special mission for employer or accommodating employer in an emergency situation.

QUESTION: Co-workers get in a fight over a property boundary dispute. One suffers a broken arm. Covered or not?

ANSWER: Not covered. Cause of altercation bears no relationship to work.

QUESTION: Claimant passes out at work due to not taking high blood pressure medication, falls and breaks arm. Covered or not?

ANSWER: Not covered and covered. Without any relationship to work, high blood pressure not covered. Broken arm, because it happened at work, is covered.

QUESTION: Claimant is walking into work from the parking lot. Claimant steps in a pothole and breaks ankle. Covered or not?

ANSWER: Covered. Coming and going rule. An injury that occurred while the Claimant is travelling on a dangerous parking lot furnished by Employer.

#### D. Affirmative Defenses

1. Intoxication (Miss. Code Ann. Sec. 71-3-7 (1972, as Amended).
  - a. Employers may require post injury drug/alcohol test
  - b. If positive, Claimant bears burden of proving that intoxication did not cause injury
  - c. Refusal of drug/alcohol screen may be raised as defense.
2. Willful intent to injury self or other (Miss. Code Ann. Sec. 71-3-7 (1972 Amended)
  - a. Often seen in physical altercation between co-workers
    - i. Who was the aggressor?
3. Outside of Course and Scope

#### E. The Parties

1. Claimant
  - a. Employee

- i. Excludes independent contractors
- ii. Excludes volunteers
- iii. Includes undocumented/illegal aliens

2. Employer

- a. 5 or more employees
  - includes full and part time employees
- b. Covered under the act
  - for example farms are excluded

QUESTION: Claimant is a United Way volunteer who is in an auto accident on the way to a fundraising event. Covered or not?

ANSWER: Not Covered.

QUESTION: Employer, a hardware store, sells lumber and offers to customers a “contract” individual to install. Employee, who owns a yard maintenance business, builds fences for a hardware store on the side. Hardware store provides employee with the assignments, pays him to work on every second Saturday from 8:00 a.m. until 6:00 p.m., provides all material and tools. Employee shoots his foot with a nail gun while on assignment for the hardware store. Covered or not?

ANSWER: Covered. Hardware store offers fence building service, gives assignments, controls scheduling, work hours, provides tools and materials to the injured worker. What the injured worker did is in furtherance of the employer’s business.

3. Carrier

- i. Insurance company
- ii. Self-insured
  - must be given that status by the Commission
  - status can be revoked

PRACTICE TIP: [WWW.MWCC.GOV](http://WWW.MWCC.GOV) has a proof of coverage search engine. Make sure to put in the correct date of injury as the carrier may change

4. Mississippi Workers’ Compensation Commission

- a. Established by Statute (M.C.A. Sec. 71-3-85)
- b. Chairman and Commissioners
  - i. Chairman Mark Formby

- ii. Commissioner Beth Harkins (claimant's rep)
  - iii. Commission Mark Henry (employer and carrier's rep)
- c. Administrative Law Judges
  - i. Hon. Denise Turner Lott
  - ii. Hon. Linda Thompson
  - iii. Hon. Cindy Wilson
  - iv. Hon. Tammy Harthcock
  - v. Hon. Trey Arnold
  - vii. Hon. Alan Goodman
  - viii. Hon. Jennifer Fields Nicaud
- d. Staff

## II. BENEFITS

- A. Core goal is to return the injured worker to work
  - 1. Provide no cost medical care
  - 2. Provide disability payments during recovery and return to work
- B. Medical Care (M.C.A. Sec. 71-3-15)
  - 1. Reasonable, necessary and Related
  - 2. Choice of physician (M.C.A. Sec. 71-3-15(1), MWCC General Rule 9)
    - a. Employer to tender physician
    - b. Claimant accepts tender or selects his/or own
      - i. Competent physician **and** any specialists to whom he/she is referred.
    - c. Chain of referral.
      - i. Each referral doctor becomes a link in the chain
    - d. Injured worker must stay within referral chain
      - i. Cannot see whoever or unilaterally change doctors without medical order or agreement
      - ii. For WC to pay medical, must treat within chain

- can prove that treatment outside of chain was reasonable, necessary and related.

- e. Change of physician
  - i. Referral to named physician
  - ii. Referral to generic physician (i.e. practice area)
    - Claimant's choice?
  - iii. Insufficient care from treating physician (MWCC Gen. Rule. 9)
    - Nothing more to offer
    - No improvement

PRACTICE TIP: Lack of rapport between physician and patient/poor bedside manner is typically not sufficient grounds to force change of physician.

- 3. Medical reimbursement rate set forth under the Mississippi Workers' Compensation Fee Schedule M.C.A. Sec. 71-3-15(3)
  - a. Set forth by the MWCC
  - b. Reimbursement rates
  - c. Treatment allowable under the schedule
    - i. Experimental treatment excluded
    - ii. If not in fee schedule, still possible for claimant to get it
  - d. Reimbursement for medical mileage
  - e. Utilization Review – Pre-cert
    - i. Mandated for most treatment
    - ii. Independent review by medical professional to determine if recommended treatment is reasonable, necessary and related
    - iii. Non-cert not determinative of issue
- 4. Employer's Medical Examination (MWCC Gen. Rule 9)
  - a. Unilateral choice of Employer and Carrier
  - b. Not a treating physician
  - c. Claimant must attend



- i. Failure to attend can result in suspension of benefits

PRACTICE TIPS:

More than one EME? In practice, yes. Changes in circumstances and treatment may result in multiple EMEs.

- d. Conflict of interest for EME doctor to have either treated the Claimant or be in same clinic where Claimant has treated (AMA Guideline).
- e. Timing issues – Employer and Carrier should seek Employer’s Medical Evaluation within 45 days of motion to compel being filed.

5. Independent Medical Evaluation

- a. Commission has authority to order.
  - i. Conflicting medical opinions
  - ii. reasonable, necessary and related procedure
  - iii. Unanswered medical questions
    - Diagnosis, causation, treatment, maximum medical improvement, impairment, work restrictions.
  - iv. Any good reason
- b. Often mutually agreed upon physician
- c. Paid for by Employer and Carrier

PRACTICE TIP: No *ex parte* communication with IME doctor. Counsel jointly submit medical records for review. Questions to doctor are provided in IME order.

6. Maximum Medical Improvement

- a. Medical opinion - Plateau in physical recovery
- b. Does not close claim
  - i. Palliative care

7. Medical mileage reimbursement

- a. Submitted by Claimant
- b. Reasonable roundtrip mileage
- c. Doctor, therapy, pharmacy – anything medical

- d. Rate set by Commission
- e. Employer and Carrier to reimburse within reasonable time
  - I. 30 days after submission

PRACTICE TIP: Mileage must be reasonable. Claimant's inaccurate submission of mileage may be subject to prosecution by Attorney for insurance fraud.

- 9. Denial of medical treatment
  - a. Claimant has right to file a motion to compel
  - b. Often results in EME

PRACTICE TIPS: Attach medical records to motion to compel. Scheduling of EME, if desired, needs to occur within 45 days of the filing of a motion to compel medical care.

- 10. Failure to comply with medical care
  - a. If unreasonable it is a ground to suspend indemnity (MWCC Gen. Rule 9)
- 11. Commission provides fee dispute service (MWCC Gen. R. 12)
  - a. In accepted claim, claimant is not responsible to pay for authorized medical care

#### B. Indemnity (M.C.A. Sec. 71-3-17)

- 1. Rate of compensation
  - a. 2/3 of pre-injury average weekly wage computed from prior to the date of injury (M.C.A. Sec. 71-3-31)
    - i. Capped at state law maximum for the year of injury (M.C.A. Sec. 71-3-13)
      - [www.mwcc.state.ms.us/faq/rates.asp](http://www.mwcc.state.ms.us/faq/rates.asp)
    - ii. Based upon wage for job where injury occurred
      - if claimant worked more than one job, cannot combine salaries
    - iii. Total maximum of 450 weeks (M.C.A. Sec. 71-3-17)

QUESTION: Claimant is hired as a stocker earning \$8.50 per hour on 5/1/21 on an "as needed basis" with no set hours per week depending upon need. Claimant is injured on 5/2/21 after working a total of 12 hours. How do you calculate the pre-injury average weekly wage?

ANSWER: The claimant is a “short time employee.” The average weekly wage would be computed based upon an exemplar employee or the average of exemplar employees.

QUESTION: Claimant is medically disabled in an accepted claim. Prior to injury Claimant’s child support payments were withheld from his/her paycheck. Is child support withheld from workers’ compensation disability payments?

ANSWER: Yes, liens are enforceable. M.C.A. Sec. 71-3-129. If the Employer/Carrier have received a child support order. If the claim is settled, or an award given, any order for back owed child support is required to be either fully or partially satisfied based upon the amount of the award/settlement.

2. Temporary Total Disability – TTD (M.C.A. Sec. 71-3-17 (b))

- a. Medically disabled for more than 5 days (unless period of disability last more than 14 days).
  - i. Off work
  - ii. Under restrictions that are not accommodated.
  - Accommodated position does not have to be the job that the claimant was hired to perform.
  - iii. TTD is ongoing until the claimant returns to work in some capacity or is placed at maximum medical improvement (“MMI”).
- b. Beginning the 14<sup>th</sup> day of disability and payable (placed in the mail) every 14 days of disability. (M.C.A. Sec. 71-3-37(2))
- c. Late payment subject to 10% penalty (M.C.A. Sec. 71-3-37 (5))

PRACTICE TIP: All parties need to know the claimant’s work status at every doctor’s appointment.

PRACTICE TIP: Doctors should be asked to provide specific restrictions (i.e. no lifting over 10lbs, no use of right arm, etc.) as opposed to generic restrictions such as “light duty.” Generic restrictions leave too much for the parties to interpret.

PRACTICE TIP: Claimants who do not attempt to return to work when given temporary work restrictions risk termination for “no call, no show.”

QUESTION: Claimant is injured on 5/1/21. Claimant sees doctor on 5/3/21 and is restricted from working for 10 days. Claimant is released to return to work full duty on 5/13/21, but decides not to return to work until

5/21/21. How many days of temporary total disability is the Claimant owed?

ANSWER: 5 days. Disability did not start until 5/3/21. First 5 days are the “grace period). Was not medically disabled for more than 14 days and medical disability ended on 5/14/21, not 5/21/21 when claimant returned to work.

3. Temporary Partial Disability (TPD) (M.C.A. 71-3-21)

- i. Claimant sustains a partial disability before reaching MMI.
- ii.  $\frac{2}{3}$  of the different between the pre-injury AWW and the post injury, pre-MMI, AWW

QUESTION: Claimant’s pre-injury average weekly wage is \$500.00. Employer accommodates Claimant’s temporary work restrictions, but for fewer hours per week resulting in post-injury, pre-MMI wage of \$200.00 per week. What is the amount of TPD owed?

ANSWER:  $\$500.00 - \$200.00 \times \frac{2}{3} = \$200.10$  TPD owed.

PRACTICE TIP: Often the adjuster will not know if TPD is due unless he/she is notified of the temporary wage loss.

4. Permanent Partial Disability (PPD) (M.C.A. Sec. 71-3-17(c))

- a. Post MMI, but claimant has some level of disability
- b. Scheduled member claim

Body part	Max Weeks PPD	Body Part	Max weeks PPD
Arm	200	Third finger	20
Leg	175	Toe other than great toe	10
Hand	150	Fourth finger	15
Foot	125	Testicle (1)	50
Eye	100	Testicle (2)	150
Thumb	60	Female Breast (1)	50
First finger	35	Female breast (2)	150
Great Toe	30	Loss of hearing (one ear)	40
Second finger	30	Loss of hearing (both ears)	150

- i. Based in part upon medical impairment rating under the AMA Guidelines to Evaluation of Permanent Impairment. Medical impairment is

a baseline for award of PPD benefits in scheduled member claim.

- ii. Commission can award more PPD benefits based upon the greater of (1) the functional or medical impairment or (2) the industrial loss of use of the scheduled member. *Ard v. Marshall Durbin Companies, Inc.*, 818 So. 2<sup>nd</sup> 1240 (Miss. 1940). Question is, does the schedule member injury prohibit the claimant for performing the substantial acts of his or her usual employment?
- iii. Payable bi-monthly, but can be paid lump sum subject to discount to present day value upon application to the Commission. See MWCC Gen. Rule 13; Form B-19

QUESTION: Claimant has a 10% permanent partial impairment rating to the right upper extremity and permanent restrictions of no lifting over 10lbs. The Claimant is a 30 year old construction worker whose job required him to carry loads of 75lbs on a daily basis. The pre-injury AWW is \$800/wk and the injury occurred in 2020. The Employer notifies the Claimant that the restrictions cannot be accommodated. What amount of PPD is owed?

ANSWER: The Claimant's compensation rate is \$504.42 per week, because  $66 \frac{2}{3}$  of the pre-injury AWW is \$533.60, which exceeds the maximum weekly compensation rate for a 2020 injury. The Claimant would receive a baseline of 20 weeks of PPD. However, the Commission could award up to 200 weeks (the maximum number of weeks of PPD allowable under the schedule for an injury to the upper extremity).

QUESTION: Claimant's second finger was amputated at the second knuckle. What is owed in PPD?

ANSWER: 30 weeks. Loss of more than one phalange of the same finger is the same as the loss of the whole finger. M.C.A. Sec. 71-3-17(c)(18)

- c. Body as a whole injury (M.C.A. Sec. 71-3-17(c)(25))
  - i. Head, neck back or heart injured in work related accident
  - ii.  $66 \frac{2}{3}$ % of Claimant's loss of wage earning capacity capped at 450 weeks.
  - iii. Existence of permanent work restrictions

- iv. Not limited to body as a whole impairment rating
- v. Subjective determination. Loss of wage earning capacity factors include:
  - Claimant's age
  - Claimant's level of education
  - Claimant's training
  - Claimant's work experience
  - Claimant's transferrable skills
  - Claimant's permanent work restrictions and future medical care
  - Employer's accommodation or lack of accommodation of permanent work restrictions.
  - Claimant's actual post-MMI wage earnings and work history
  - Claimant's post-injury work search
  - Any expert vocational opinions
- v. Awards are typically brought to present day value and paid lump sum.

**QUESTION:** Claimant injured her neck while working for a chicken plant as a tender cutter for 23 years. She is 62 years old and has a 10<sup>th</sup> grade education. She earned a pre-injury AWW of \$600.00. At MMI, she received an impairment rating of 10% to the body as whole and permanent restrictions of no repetitive reaching. The Employer did not accommodate the Claimant's restriction. The Claimant applied for numerous jobs, but was not hired. The Employer and Carrier hired a vocational rehabilitation expert which found the Claimant could obtain a job earning \$9.00/hr. However, the Claimant was only able to find a job earning \$7.25/hr for 40 hours per week. What amount of PPD could the Claimant receive from the Commission.

**ANSWER:** Unlike PPD for a scheduled member, an award for PPD based upon a body as a whole injury is based upon the subjective evidence as viewed by the trier of fact. The Commission could afford 45 weeks of \$400.20 (10% x 450 x (\$600.00 x 66 2/3), or 450 weeks of \$160.08 (\$600.00 - (\$9.00 x 40) x 66 2/3), or 450 weeks of 450 weeks of \$206.77 (\$600.00 - (\$7.25 x 40) x 66 2/3), or any combination of Pre-injury AWW – Post

injury wage x  $66 \frac{2}{3}$  for 450 weeks. The Commission could also find the Claimant permanent and totally disabled.

**QUESTION:** Claimant is an auto mechanic who injured his back working for an auto repair shop. Prior to injury he earned an average of \$700/wk. He is 35 years old, has a 12<sup>th</sup> grade education, an auto repair certificate, holds a CDL and has worked in the past as a delivery driver for 3 years and a mechanic for the past 12 years. He received a permanent impairment rating of 2% to the body as a whole and has permanent restrictions of no lifting over 75lbs. The employer has brought him back to work, as a customer sales specialist (he greets customers, processes paperwork, makes coffee and keeps the reception area tidy). His is paid \$700/wk post injury and has done this job for 2 months. At hearing, proof was presented showing that the other customer care specialists at the facility earn \$400.00 per week and that is the reasonable wage for that type of employer in that region. Further, the vocational proof at hearing showed that the claimant, if he was not working for the employer, has lost access to 20% of the equivalent earning jobs in the labor market due to his permanent work restrictions. What PPD, if any, would the claimant receive?

**ANSWER:** Again, the Commission has broad discretion when viewing the evidence and issues awards. However, the Commission could award the Claimant nothing in PPD, because he is working earning his pre-injury AWW (unlikely given the facts). The Commission could award 9 weeks of \$466.99 (2% of 450 weeks), or the Commission could provide an award based upon loss of access to the labor market. In other words, the commission could award 450 weeks of \$93.38 based upon the claimant having 20% loss of wage earning capacity due to a loss of access to the labor market.

**PRACTICE TIPS:** Claimant should return to work if accommodation is offered.

If not accommodated, Claimant is obligated to prove permanent wage loss through diligent work search.

5. Permanent Total Disability (P&T) (M.C.A. Sec. 71-3-17(a)
  - a. Remainder of 450 weeks disability, credited
  - b. Factors
    - i. Claimant is unable to obtain employment due to permanent work restrictions

- ii. Due to permanent work restrictions, the Claimant can only earn wages significant less than the pre-injury AWW resulting in entitlement to the yearly max compensation rate

EXAMPLE: The Claimant earned a pre-injury AWW of \$1500.00. He/she sustained an injury to the back in 2020 which resulted in permanent work restrictions. The Claimant proves at hearing that after diligent work search, he/she is only able to secure employment earning \$600.00/wk. The post MMI wage loss is \$900.00 per week. 2/3 of \$900.00 is \$600.30. The max compensation rate for 2020 is \$504.43, meaning that the Claimant would be entitled permanent disability benefits in the amount of \$504.43 for the remainder of 450 weeks which is the maximum of the remaining disability benefits. Hence, the Claimant would be permanent and total based upon his/her permanent wage loss.

- iii. Due the severity of a scheduled member injury, the Claimant is unable to return to the workforce.

EXAMPLE: The Claimant is a 60 year old carpenter with a 9<sup>th</sup> grade education and a prior work history of 40 years as a carpenter. He/she was involved in a work related accident resulting in the amputation of his dominant right arm at the elbow. The Claimant has a 100% loss of industrial use to the right arm and proves at hearing that after a diligent work search he/she is unable to obtain employment.

- iv. Awarded as x dollars in benefits for the remainder of 450 weeks

PRACTICE TIP: Typically, awards for permanent partial and permanent total disability are lump summed, rather than remitted very 14 days. See MWCC Gen. Rule 13. When an award is lump summed, it is brought to present day value resulting in a discount being applied based upon the Claimant's age. Official lump sum calculations are issued by the Commission. However, the Commission provides a calculator on its website, [www.mwcc.gov](http://www.mwcc.gov), which will generate a lump sum amount for any type of award.

### III. HOW IT ALL WORKS – OR HOW IT SHOULD WORK – OR HOW IT WORKS, SOMETIMES



- A. Work related injury occurs or is diagnosed
- B. Claim reported by injured worker to employer
  - 1. Initial medical care provided if emergency, then drug/alcohol test
  - 2. Drug/alcohol test if not emergency, then medical provided
- B. Claim opened
  - 1. First Report of Injury filed (Form IAIABC IA-1)
  - 2. Investigation by claims adjuster
    - a. Recorded statement taken
    - b. Medical authorizations signed
    - c. Choice of physician signed by injured worker
    - d. Pharmacy card issued
- C. Claim accepted or denied
  - 1. Accepted
    - a. Treatment is provided
    - b. If injured worker is temporarily disabled, TTD paid (Form B-18 filed)
    - c. If injured worker is not temporarily disabled, he/she works and treats
    - d. Possible legal action
      - i. Petition to controvert filed (form B-5,11)
      - ii. Motions to compel medical treatment
      - iii. Motions to compel indemnity
      - iv. Discovery (MWCC Proc. Rule 7, 9)
    - e. Maximum Medical Improvement
      - i. Injured worker returns to work (Form B-18 filed)
        - This is not a settlement and it does not close claim
        - Injured worker continues to treat as necessary
      - ii. Settlement (MWCC Proc. Rule 15, M.C.A. Sec. 71-3-29)
        - Before Commission or ALJ
        - Complete settlement - 9(i)
        - Conditional payment of indemnity – 13(j)

- \*\*medical benefits left open subject to filing of B-31
  - Standard for approval
    - \*\* settlement terms accurately reported
    - \*\* completely understood by claimant
    - \*\* in the best interests of the claimant
  - Unrepresented claimants
    - \*\* employer carrier must be represented in presenting settlement before Commission
    - \*\*presentation before judge or commissioner
  - Represented claimants
    - \*\* Claimant's attorneys fees capped at 25% (M.C.A. Sec. 71-3-63)
  - Medicare's future interest must be protected
  - Child support liens must be at least partially satisfied
- iii. Hearing on the merits – may or may not close claim (MWCC Proc. Rule 7)
- Relaxed rules of evidence (MWCC Proc. Rule 8, 9)
- iv. Appeal
- Full Commission review (MCWW Proc. Rule 10)
    - \*\* request must be filed within 20 days of order
      - Oral argument or based upon briefs
      - Oral argument not automatically on the record
  - Mississippi Court of Appeals (MWCC Proc. Rule 11)
    - \*\*Notice of appeal must be filed within 30 days of Full Commission decision.
- f. Notice of Final Payment Served and Filed (Form B-31)
- i. Tells Commission that benefits are no longer being provided.
  - ii. When property served starts running of one (1) year statute of limitations.

**PRACTICE TIP:** The Act provides a dual statute of limitations. In medical only claims, where no indemnity has been paid to the injured work (including wages in lieu of disability), the statute of limitations is two (2) years from the date of injury regardless as to whether or not the injured worker has been medically released. The two (2) year statute of limitations is tolled by the filing of a petition to controvert with the Commission. Where indemnity has been paid (including wages in lieu of indemnity), the statute of limitations is open ended. A one (1) year statute of limitations commences upon the proper filing a form B-31, Notice of Final Payment. The injured worker can toll the one (1) year statute of limitations by either filing a petition to controvert or reopening the claim by receiving an additional medical or indemnity benefit within the one year of the filing of the B-31. To commence the running of another one (1) year statute of limitations, the Employer and Carrier must properly file another B-31. Hence, an injured worker can ostensibly receive medical care for life by receiving medical benefits at least once a year.

2. Claim denied
  - a. Some Employer and Carriers file a Notice of Controversion (Form B-52)
    - i. Notifies Injured worker and Commission that benefits are denied and why
  - b. Petition to Controvert filed (Form B-5,11)
    - i. Notice pleading
    - ii. Served by Commission upon Employer and Carrier
  - c. Answer filed (Form B-5,22)
    - i. To be filed 23 days after service
  - d. Administrative law judge assigned
    - i. Initial discovery and deadline to file prehearing statement issued. (MWCC Proc. Rule 7)
  - e. Discovery conducted (MWCC Proc. Rule 7)
  - f. Prehearing statements filed (MWCC Proc. Rule 5)
    - i. contested issues
    - ii. stipulations
    - iii. names of lay witnesses that may be called
    - iv. names of expert witnesses that may be called
    - v. Statement regarding the status of settlement negotiations

- vi. Statement regarding MMI
- vii. Statement regarding statement of discovery (completed)
- viii. Any other statements that will be of assistance
  - listing of exhibits
  - work search
  - post injury AWW
- g. Compensability hearing (MWCC Proc. Rule 7)
  - i. issue is whether or not injured worker suffered a compensable injury for which benefits are owed
  - ii. Can be a full hearing on the merits if the injured worker proves compensability and has been placed at MMI.
- h. If Compensability is proven, claim is then accepted (see above)

### III GENERAL RESOURCES

- A. [WWW.MWCC.MS.GOV](http://WWW.MWCC.MS.GOV)
- B. Mississippi Workers' Compensation Educational Association
  - 1. [WWW.MWCEA.ORG](http://WWW.MWCEA.ORG)
    - a. MWCEA CLAIMS GUIDE
- C. Mississippi Bar Foundation
  - 1. [WWW.MSBAR.ORG](http://WWW.MSBAR.ORG)
    - a. Kids' Chance of Mississippi
      - i. Provides college scholarships to children of workers killed or suffering a catastrophic injury as the result of a work related accident

[WWW.MSBAR.ORG/PROGRAMS-AFFILIATES/MS-BAR-FOUNDATIONIOLTA/KIDS-CHANCE/](http://WWW.MSBAR.ORG/PROGRAMS-AFFILIATES/MS-BAR-FOUNDATIONIOLTA/KIDS-CHANCE/)

# FORMS

# MWCC - WORKERS' COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL ZIP)		CARRIER/ADMINISTRATOR CLAIM NUMBER		REPORT PURPOSE CODE
		JURISDICTION	JURISDICTION CLAIM NUMBER	
		INSURED REPORT NUMBER		
SIC CODE	EMPLOYER FEIN	EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)		LOCATION # PHONE #

## CARRIER/CLAIMS ADMINISTRATOR

CARRIER (NAME, ADDRESS & PHONE NO)	POLICY PERIOD  TO	CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO)
	<input type="checkbox"/> CHECK IF APPROPRIATE <input type="checkbox"/> SELF INSURANCE	
CARRIER FEIN	POLICY/SELF-INSURED NUMBER	ADMINISTRATOR FEIN

AGENT NAME & CODE NUMBER

## EMPLOYEE/WAGE

NAME (LAST, FIRST, MIDDLE)		DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE HIRED	STATE OF HIRE
ADDRESS (INCL ZIP)	SEX	MARITAL STATUS		OCCUPATION/JOB TITLE	
	<input type="checkbox"/> MALE (M) <input type="checkbox"/> FEMALE (F) <input type="checkbox"/> UNKNOWN (U)	<input type="checkbox"/> UNMARRIED/SINGLE/DIVORCED (U) <input type="checkbox"/> MARRIED (M) <input type="checkbox"/> SEPARATED (S) <input type="checkbox"/> UNKNOWN (K)		EMPLOYMENT STATUS	
PHONE	# OF DEPENDENTS			NCCI CLASS CODE	
RATE	PER: <input type="text"/> DAY <input type="text"/> MONTH <input type="text"/> WEEK <input type="text"/> OTHER: <input type="text"/>	#DAYS WORKED WEEK	FULL PAY FOR DAY OF INJURY?	<input type="checkbox"/> YES <input type="checkbox"/> NO	
			DID SALARY CONTINUE?	<input type="checkbox"/> YES <input type="checkbox"/> NO	

## OCCURRENCE/TREATMENT

TIME EMPLOYEE BEGAN WORK	<input type="text"/> AM <input type="text"/> PM	DATE OF INJURY/ILLNESS	TIME OF OCCURRENCE	<input type="text"/> AM <input type="text"/> PM	LAST WORK DATE	DATE EMPLOYER NOTIFIED	DATE DISABILITY BEGAN
CONTACT NAME/PHONE NUMBER			TYPE OF INJURY/ILLNESS		PART OF BODY AFFECTED		
DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES? <input type="checkbox"/> YES <input type="checkbox"/> NO			TYPE OF INJURY/ILLNESS CODE		PART OF BODY AFFECTED CODE		
COUNTY WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED				ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED			
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED				WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED			
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL							CAUSE OF INJURY CODE
DATE RETURN(ED) TO WORK	IF FATAL, GIVE DATE OF DEATH	WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? WERE THEY USED?				<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)		HOSPITAL (NAME & ADDRESS)			<b>INITIAL TREATMENT</b> NO MEDICAL TREATMENT (0) <input type="text"/> MINOR: BY EMPLOYER (1) <input type="text"/> MINOR CLINIC/HOSP (2) <input type="text"/> EMERGENCY CARE (3) <input type="text"/> HOSPITALIZED > 24 HRS (4) <input type="text"/> FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED (5) <input type="text"/>		
WITNESSES (NAME & PHONE #)							
DATE ADMINISTRATOR NOTIFIED	DATE PREPARED	PREPARER'S NAME & TITLE				PHONE NUMBER	

**MISSISSIPPI WORKERS' COMPENSATION COMMISSION  
PETITION TO CONTROVERT**

**PLEASE COMPLETE ALL INFORMATION**

MWCC #:

<b>Claimant Name:</b> <b>Address:</b> <b>City:</b> _____ <b>State:</b> _____ <b>Zip:</b> _____ <b>SSN:</b> _____ <b>Date of Birth:</b> _____	<b>Insurer Name:</b> <b>Address:</b> <b>City:</b> _____ <b>State:</b> _____ <b>Zip:</b> _____
<b>Employer Name:</b> <b>Address:</b> <b>City:</b> _____ <b>State:</b> _____ <b>Zip:</b> _____	<b>Claims Administrator (TPA) Name:</b> <b>Address:</b> <b>City:</b> _____ <b>State:</b> _____ <b>Zip:</b> _____ <b>Phone:</b> _____

Comes now the claimant and controverts this cause and in support thereof alleges the following:

1. On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, claimant received a compensable injury while in the employ of the captioned employer.
2. Claimant's Occupation: \_\_\_\_\_ Average Weekly Wage: \_\_\_\_\_
3. **County** and place of accident or illness: \_\_\_\_\_
  - A. Nature of work in which claimant was engaged at the time of injury or illness: \_\_\_\_\_
  - B. Description of accident or illness and how it happened: \_\_\_\_\_
  - C. Accurately describe the part or parts of body involved or injured, or type of occupational disease: \_\_\_\_\_
  - D. Date employer first notified of injury or illness and name and title of person notified: \_\_\_\_\_
  - E. Name and addresses of witnesses: \_\_\_\_\_
4. Names and addresses of attending physicians and hospitals with dates medical treatment rendered: \_\_\_\_\_
  - A. Was medical treatment furnished by employer? Yes \_\_\_ No \_\_\_.
  - B. Is medical treatment presently being furnished by employer? Yes \_\_\_ No \_\_\_.
5. Compensation has \_\_\_ has not \_\_\_ been paid for \_\_\_\_\_ disability from \_\_\_\_\_ to \_\_\_\_\_ at the rate of \$ \_\_\_\_\_.
  - A. Period of temporary disability: \_\_\_\_\_
  - B. Date of maximum medical improvement: \_\_\_\_\_
  - C. Date able to resume employment: \_\_\_\_\_
  - D. Nature, degree and extent of permanent disability: \_\_\_\_\_
  - E. Loss of wage earning capacity, if applicable: \_\_\_\_\_
6. Injury did \_\_\_ did not \_\_\_ result in death. Date of death (if applicable): \_\_\_\_\_  
Name, address, date of birth and relationship of each claimant who was dependent and for whom claim is made is listed on Exhibit "A", attached hereto, and made a part hereof by reference.
7. Are penalties demanded: Yes \_\_\_ No \_\_\_. If yes, why? \_\_\_\_\_
8. Other matters in dispute are as follows: \_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Except as required by Miss. Code Ann. § 71-3-7(1) below, medical records are no longer to be filed with the Petition to Controvert. A party to a controverted claim shall not file medical records with the Commission unless attached to a Prehearing Statement, or unless relevant to a motion or response to motion and attached thereto as an exhibit.

However, for injuries occurring on or after July 1, 2012, pursuant to Miss. Code Ann. 71-3-7(1)(as amended), in all claims in which no benefits, including disability, death and medical benefits, have been paid, the claimant shall file medical records in support of his claim for benefits when filing a petition to controvert. If the claimant is unable to file the medical records in support of his claim for benefits at the time of filing the petition to controvert because of a limitation of time established by Section 71-3-35 or Section 71-3-53, the claimant shall file medical records in support of his claim within sixty (60) days after filing the petition to controvert.

\_\_\_\_\_  
Signature of Claimant or Representative  
Name, address, phone number, & bar number of attorney:

GENERAL	<b>Mississippi Workers' Compensation Commission</b> <b>ANSWER</b> PRINT OR TYPE	MWCC#  <i>*If Employer or Carrier Utilizes a Third Party Administrator, Provide Name and Address</i>
	CLAIMANT  VS  EMPLOYER  INSURANCE CARRIER	NAME  ADDRESS  CITY, STATE, ZIP
EMPLOYER AND/OR CARRIER RESPONSE	<b>The Employer and/or Carrier above named, for answer to the Petition to Controvert herein, respectfully states:</b>  1. It is <i>admitted</i> ___ <i>denied</i> ___ that claimant sustained an injury or occupational disease on or about the date set forth in the Petition to Controvert. 2. It is <i>admitted</i> ___ <i>denied</i> ___ that the relationship of employer and employee existed at the time of the alleged injury or occupational disease. 3. It is <i>admitted</i> ___ <i>denied</i> ___ that the parties were subject to the Mississippi Workers' Compensation Act at the time of alleged injury or occupational disease. If denied, state reason: _____ _____ 4. It is <i>admitted</i> ___ <i>denied</i> ___ that at the time of the alleged injury or occupational disease the employee was performing service growing out of and in the course of employment. 5. It is <i>admitted</i> ___ <i>denied</i> ___ that the accident causing the disability for which compensation is claimed arose out of the alleged employment. 6. It is <i>admitted</i> ___ <i>denied</i> ___ that notice of injury or occupational disease complained of in the Petition to Controvert was received. 7. It is <i>admitted</i> ___ <i>denied</i> ___ that the employer was insured under the Mississippi Workers' Compensation Act at the time of alleged injury or occupational disease, or was a Self-Insurer under the Mississippi Workers' Compensation Act. 8. It is <i>admitted</i> ___ <i>denied</i> ___ that the average weekly wage as set forth in the Petition to Controvert is correct. If denied then state the average weekly wage, attach hereto a wage statement or state reason not furnished: _____ _____ 9. It is <i>admitted</i> ___ <i>denied</i> ___ that claimant was temporarily disabled for the period stated in the Petition to Controvert. If denied, state temporary disability admitted: _____ 10. It is <i>admitted</i> ___ <i>denied</i> ___ the claimant is permanently disabled to the extent and for the period stated in the Petition to Controvert. If denied, state permanent disability admitted: _____ 11. It is <i>admitted</i> ___ <i>denied</i> ___ that claimant sustained the loss of wage earning capacity stated in the Petition to Controvert. If denied, state loss of wage earning capacity admitted: _____ 12. Affirmative defenses, special pleadings or matters in dispute (use additional sheet if necessary) _____ _____ 13. Has any compensation been paid to date? YES ___ NO ___ If yes, state amount and give inclusive dates: _____ _____ _____	
	<div style="border: 2px solid red; padding: 10px;"> <p>Medical records are no longer to be filed with the Answer to Petition to Controvert. Except as required by Miss. Code Ann. § 71-3-7(1), a party to a controverted claim shall not file medical records with the Commission unless attached to a Prehearing Statement, or unless relevant to a motion or response to motion and attached thereto as an exhibit.</p> </div>	
DATE	This the _____ day of _____, _____ _____ _____ _____ <div style="text-align: right;">           Name _____            Title _____ Phone _____         </div>	



# MISSISSIPPI WORKERS' COMPENSATION COMMISSION

Post Office Box 5300, Jackson, Mississippi 39296-5300

## EMPLOYER'S NOTICE OF CONTROVERSION

MWCC FILE  
NUMBER

CARRIER FILE  
NUMBER

EMPLOYEE CLAIMANT		SOC. SEC. NO.		NATURE OF INJURY	
ADDRESS		DATE OF BIRTH	AGE	SEX	
CITY	STATE	ZIP	INJURY DATE		
EMPLOYER			INSURANCE CARRIER		
_____ _____ _____ ADDRESS			_____ _____ _____ ADDRESS		
CITY	STATE	ZIP	CITY STATE ZIP		

Pursuant to Section 71-3-37(4) of the Mississippi Workers' Compensation Act, the above named employer controverts the referenced employee's right to workers' compensation upon the following grounds:

I hereby certify that a copy of this notice has been served, by mail or personal delivery, to the above named employee at the most current address which can be determined by diligent inquiry or to his or her attorney, if represented.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Employer/Carrier Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

Telephone number: \_\_\_\_\_

If you are using Adobe Acrobat, navigate using the Tab key.

Mississippi Workers' Compensation Commission

NOTICE OF FINAL PAYMENT

PRINT OR TYPE

(1) EMPLOYEE NAME AND ADDRESS - (INCLUDE CITY, STATE and ZIP)	(4) DATE DISABILITY BEGAN	(5) DATE MAXIMUM MEDICAL IMPROVEMENT
	(6) DATE RETURNED TO WORK	(7) DATE OF FINAL PAYMENT
(8) EMPLOYER NAME AND ADDRESS - (INCLUDE CITY, STATE and ZIP)	(9) INSURANCE CARRIER NAME & SERVICING CO. (if applicable)	

Compensation payments were made as follows:

NOTICE: If salary paid in lieu of compensation, report below the amount of compensation which would have otherwise been due.

(10) Average Weekly Wage: \$	(11) Rate of Weekly Compensation \$		
<b>A. DISABILITY PAYMENTS</b>		<b>B. DEATH PAYMENTS</b>	
(12) Weeks Days Temporary Total	\$	(16) Weeks Days (itemize at 26 below)	\$
(13) Weeks Days Temporary Partial	\$	(17) Payment to Spouse (Section 71-3-25(a))	\$
(14) Weeks Days Permanent Partial	\$	(18) Funeral Expenses	\$
% loss to		(19) Second Injury Fund	\$
(15) Weeks Days Permanent Total	\$		
Total Disability Payments	\$	Total Death Payments	\$
<b>C. SETTLEMENT PAYMENTS</b>		<b>D. OTHER PAYMENTS</b>	
(20) Lump Sum	\$	(23) Total Medical Expenses	\$
(21) Compromise	\$	(24) Rehabilitation Expenses	\$
(22) Third Party: (Attach order if not approved by MWCC)		(25) Other (Specify)	\$
a. Amt. reimbursed for comp. previously paid (Subtract reimbursements)	\$ ( )		
b. Amt. credited against future liability	\$		
Total Settlement Payments	\$	TOTAL PAYMENTS (A + B + C* + D) *If C is a negative amount, subtract from total	

(26) Dependents and Spouse Payments Itemized Below (attach separate page if necessary)

Name and Relationship	Rate	Weeks	Days	Total
a.				\$
b.				\$
c.				\$
d.				\$

(27) If full compensation was not paid, explain: (attach separate page if necessary)

NOTICE TO EMPLOYEE OR BENEFICIARY

This is **NOT** a release of the employer's or the insurance carrier's workers' compensation liability. It is a statement of workers' compensation benefits already paid. If no further workers' compensation benefits are provided within one (1) year from the date this form is properly filed with the Commission, the right to any further such benefits may be barred by the applicable statute of limitations and this claim finally closed. Exceptions may apply for incompetents or minors. If you incur additional loss of time from work, additional medical expense, or other additional expense, due to this injury, you should immediately contact your employer, the insurance carrier, or the Mississippi Workers' Compensation Commission for further guidance.

PHONE #:

Prepared by: Date / /

Employee's Signature: Date / /  
(or representative or beneficiary)