

1




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RECAP


- **Industrial Injury:** Sudden and tangible happening; immediate and prompt results resulting in physical conditions. Deadline is 1 year from DOI (date of injury).
- **Occupational Disease:** A disease that "arises naturally and proximately out of employment." **RCW 51.08.140**. Deadline is 2 years from notification.
- Both must be in the Course of Employment.
- Remember to have all your important forms in order and correct (SIF-2, PIR, SIF-5 and 5a, APF, and any incident reports).
- Investigate the origins of the claim. Know the claimant's story and the mechanism of injury.



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RECAP


- Deception Detection Basics:
 - Active Listening (L-Squared Mode).
 - 5-Second Rule.
 - Clusters and Multiple Indicator Rule.
- Big Deception Indicators:
 - Invoking religion
 - Qualifiers
 - Inconsistent statements
 - Failure to answer
 - Going on attack mode
 - Convincing statements
 - Selective memory



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TIME-LOSS COMPENSATION


The compensation owed to a worker in some circumstances when the conditions resulting from the injury has made it impossible for the worker to return to work on a temporary basis.



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PURPOSE


WAGE REPLACEMENT - Loss of wage-earning capacity.



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When is it to be paid?


- > [RCW 51.32.090](#) - "When the total disability is only temporary, the schedule of payments in [the permanent total disability section] shall apply."
- > That statute does not define "total disability."
- > Go to definition of permanent total disability in Definition statute: "Permanent total disability means loss of both legs... or any other condition permanently incapacitating the worker from performing any work at any gainful occupation." [RCW 51.08.160](#)



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Entitlement


1. Unable to work; or
2. Participating in vocational services.



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Unable to Work


- Need medical certification based on objective findings.
[WAC 296-20-01002](#)
- Medical certification accepted from doctor, ARNP, PA, chiropractor, naturopath.
- Not accepted from psychologist, physical therapist or licensed mental health professional.
- Retroactive time loss certification is permissible.



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Participating in Vocational Services

- "The worker shall receive TTD compensation ... while he or she is actively enrolled and successfully participating in a vocational plan."
[RCW 51.32.099](#)
- Time loss ends when approved vocational plan ends.
[RCW 51.32.095](#)




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Inability to Work

[WPI 155.07](#)

Total disability is an impairment of mind or body that renders a worker unable to perform or obtain a gainful occupation with a reasonable degree of success and continuity. It is the loss of all reasonable wage-earning capacity.


A worker is totally disabled if unable to perform or obtain regular gainful employment within the range of the worker's capabilities, training, education, and experience. A worker is not totally disabled solely because of inability to return to the worker's former occupation. However, total disability does not mean that the worker must have become physically or mentally helpless.



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Exceptions

1. Kept on Salary
2. Voluntarily Retired
3. Vocational Dispute
4. Incarcerated Under Sentence
5. Deliberate Injury




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Kept on Salary

Not entitled to TTD if kept on salary.

BUT if the employer is paying sick leave or vacation leave, claimant is not being kept on salary. It is viewed as an accrued benefit which the employee earned as a result of past work. Thus, claimant can receive both sick leave and time loss compensation.




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Kept on Salary

Some employers have programs in which the claimant elects to take either:

- No sick/vacation pay,
- Full day of sick leave/vacation pay, or
- Differential between time loss compensation and full pay.



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Voluntarily Retired

Not entitled to TTD if voluntarily retired.

Test:

- A. Worker not receiving income from any employment; and,
- B. No bona fide attempts to return to work after retirement; and
- C. Industrial injury or occupational disease is not a proximate cause for retirement.

[WAC 296-14-100](#)



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Not Entitled During Vocational Dispute of Employability

If Department finds claimant employable, TTD can be terminated even if disputed.

May need to reinstate TTD if Director overturns the Decision or if the Director defers the Decision and requests more information before making a determination.



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Incarcerated Under Conviction and Sentence

Not entitled if incarcerated under conviction and sentence.

Entitled if incarcerated but no conviction and sentence. Impact of a suspended sentence.

Beneficiaries may be entitled anyway.

[RCW 51.32.040](#)




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Deliberate Intention to Harm Self

If injury or death results from deliberate intention to produce injury or death or while engaged in felony, neither worker nor beneficiaries receive payments.

Effect of suicide: Not deliberate intention if delirium or irresistible impulse or acute dementia.
Shirley case – intended act but not the result of death.




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Receipt of Unemployment Compensation

Not entitled to both TTD and unemployment compensation.

But must pay TTD if person is entitled even if also receiving unemployment ([RCW 50.20.085](#)). Unemployment benefits to be repaid.

Light duty? Possible receipt of both benefits but statute says no.




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Timing of Payment of TTD

If medically certified, make first payment within 14 days of notice of claim ([RCW 51.32.210](#)).

Three-Day Rule: Not entitled to TTD for day of injury and next three days. However, if disability continues beyond 14 days, the first three days are paid ([RCW 51.32.090\(7\)](#)).

Pay TTD if certified until the Department issues a determinative order even if the self-insured denies the claim.
In Re Lynette Murray, BIIA Sig Dec 42,296 (1974).



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Calculations of TTD

- TTD is 60% to 75% of person's gross monthly wages as of date of injury. Percentage depends on marital status and number of children.
 - Married: + 5%
 - Dependent Child: + 2%



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Determination of Gross Wages

- Standard method: [RCW 51.08.178\(1\)](#)
- Seasonal, part-time, or intermittent: [RCW 51.08.178\(2\)](#)
- Using usual wage paid to other employees in like or similar occupations: [RCW 51.08.178\(4\)](#)



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Standard Subsection 1 Method


Use monthly wages. If wages not fixed by month, multiply daily wage by number of days normally employed per week.



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Seasonal, Part-Time, or Intermittent Work: Subsection 2


- Determination of whether employment is seasonal, intermittent, or part-time depends on claimant's relationship to employment and intention.
- *Avundes, Double D Hop Ranch.*
- Calculated by dividing by 12 the wages earned, including overtime, from all employment in any 12 successive months preceding injury which fairly represents claimant's employment pattern.
- Overtime includes overtime pay.



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Like Employment: Subsection 4


If neither subsection 1 or 2 applies, monthly wage is based on usual wage paid to other employees engaged in like or similar occupations where the wages are fixed.



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Definition of Wages


- Salary or hourly compensation;
- Reasonable value of board, housing, fuel or other consideration of like nature;
- Health care contributions made by the employer (even if claimant not yet eligible for health care);
- Bonus;
- Shift differentials;
- Tips – to the extent they are reported for income tax purposes;
- Overtime hours included in subsection 1 but as straight hours. Overtime compensation included in subsection 2;
- Wages from other jobs are included.



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COMPLEX CLAIMS COME FROM COMPLEX ORIGINS


- > When a claim comes in the door remember C4-0. Is this a complex origin and will it result in a complex claim?
- > What is a complex origin?
 - Introducing: *The Plus Doctrine*[®]



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THE PLUS DOCTRINE!


Complex claims can come from anywhere. It can be a difficult factual situation, complicated medical situation, parties have become entrenched, opposing counsel is uncooperative, etc. However, a commonality of a number of complex claims is that the origin of the claim has a plus sign in it....



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THE PLUS DOCTRINE

- > Aggravation of pre-existing Disease + New Injury
- > Re-Opening Application + New Injury
- > Re-Opening Application + New Occupational Disease
- > Re-Opening Application + Subsequent Intervening Injury After Closure
- > Prior Injury to Similar Body Part + New Injury or Occupational Disease
- > Anything At All + Mental Health Condition
- > New Injury + Long Term Opiate Use




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AGGRAVATION OF PRE-EXISTING + NEW INJURY



Doc
Doc injured his lower back at home while chasing all the rabbits out of the house that Snow White had brought inside. While working in the Gems Mine, Doc bent over to pick to pick up some gems and felt pain in his lower back.


- **Legal to Consider**
 - Claim allowance on the new injury.
 - Or, denial of the claim as being a natural progression of the condition.
 - Treatment needed as a result of the new injury or is it the result of the pre-existing conditions.
 - Remember to segregate the conditions when rating for PPD. Lighting up doctrine. Asymptomatic conditions.
 - *Harbor Plywood*
- **Toolbox**
 1. Request medical records of PCP.
 2. IME ASAP to establish division of the pre-existing and the new.
 3. Check Mechanism of Injury.
 4. Talk to co-workers and get statements to see if there were prior complaints.
 5. Get a hold of all diagnostic studies.
 6. If over 50 possibly consider CRSA.



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RE-OPENING APPLICATION + NEW INJURY



Bashful
Bashful had previously injured his elbow while down in the Gems Mine. He was treated for right epicondylitis and the claim was closed. He now applies for an additional injury to his right elbow.


- **Legal to Consider**
 - If multiple employers, ask the Board to join the other employers. Motion for Joinder.
 - Not mutually exclusive. You can have both.
- **Toolbox**
 1. If same employer, consider allowing new injury to aid in pension.
 2. TLC can be shared between two claims.
 3. Careful about stipulating to JFs, may not want to consolidate the claims.



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Unemployment Fund


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RE-OPENING APPLICATION + NEW OCCUPATIONAL DISEASE



Happy
Happy chased after a thief that was stealing gems from the Gems Mine. While chasing the thief, he twisted and blew out his knee. He was treated accordingly, and the claim was closed. A few years have passed, the rest of the dwarfs had not seen Happy in a while. Happy now applies to re-open his claim.


- **Legal to Consider**
 - You can have a re-opening of an old injury with one employer and a new occupational disease with a subsequent employer.
 - The courts have difficulty dividing the extent of the costs between the two employers.
 - *In re Robert Tracy*, Not Mutually exclusive.
 - Joint Orders.
 - Last injurious exposure rule. [WAC 296-14-350](#)
- **Toolbox**
 1. Check for second employer! – is it the Feds?
 2. Declarations on apportionment.
 3. Obtain diagnostic studies
 4. Wait for all records before getting an IME.



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RE-OPENING APPLICATION + SUBSEQUENT INTERVENING INJURY AFTER CLOSURE




Sleepy
Sleepy was tired at work and wasn't paying attention; he didn't even see the mining cart full of gems coming down the track that ended up striking him and injuring his shoulder. He had a surgery to repair his rotator cuff and the claim was subsequently closed. A couple years later he was in a MVA and his shoulder has been hurting since then. Sleepy now applies to re-open his claim.

- **Legal to Consider**
 - When a person's condition becomes worse, the employer of injury is not responsible if a new supervening cause, independent of original injury caused the current condition. The subsequent event breaks the chain of causation.
 - *In re Paul Storie and In re Richard Davies*
- **Toolbox**
 1. Insurance claims search.
 2. Incident reports from accident.
 3. Investigative medical records sweep of geographical area.
 4. Declarations of doctors.
 5. Form letters to claimant with all re-opening applications




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PRIOR INJURY TO SIMILAR BODY PART + NEW INJURY OR OCCUPATIONAL DISEASE




Sneezy
Sneezing injured his neck sneezing. He now files a new claim for numbness down his right arm claiming it's a result of work.

- **Legal to Consider**
 - Same legal considerations mainly as all the other situations. The issue to think of here is the medical relationship between the two injuries.
- **Toolbox**
 1. Was the prior condition work related or with another ER.
 2. Consider a consultation with a doctor to discuss potential relationship.
 3. IME, but not without prior medical records.




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ANYTHING AT ALL + MENTAL HEALTH CONDITION




Grumpy
Well, he is Grumpy. Depression, anger issues, anxiety. Grumpy files a claim for an injury to his back while working at the Gems Mine.

- **Legal to Consider**
 - Any medical condition caused by original injury is responsibility of injury
 - Injury only has to be A cause. Claimant does not have to establish existence of mental health condition using objective findings, subjective findings are enough (*Price v. DLI*).
 - Switch over to DSM-5.
- **Toolbox**
 1. Court searches for criminal records
 2. Social Media investigations.
 3. Consider authorizing the treatment to the unrelated condition to aid in the recovery of the injury. *Maphet* consideration with *In Re Michael Reed* caveat.
 4. If there is a hint of mental health issue while claim is open, establish a baseline.
 5. Consider treating mental health early on so claimant doesn't become entrenched. Maybe.




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NEW INJURY + PRE-EXISTING OR SUBSEQUENT LONG-TERM OPIATE USE










Dopey
Dopey has struggled with opiate usage in the past. He filed a claim for an injury to his thoracic spine. He was given opiates for the pain. The claim has been open for awhile and his opiate usage has only been increasing.


- **Legal to Consider**
 - If a condition is caused as a result of the treatment, it becomes part of the claim.
 - The regulations control most of this area.
 - WACs.
- **Toolbox**
 1. Follow-up, Follow-up, Follow-up.
 2. Consider transferring the AP.
 3. Opiate contracts.
 4. UA drug screens.



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FINAL WORDS ON "THE PLUS DOCTRINE"


-  Aggravation of Pre-Existing Disease + New Injury
-  Re-Opening Application + New Injury
-  Re-Opening Application + New Occupational Disease
-  Re-Opening Application + Subsequent Intervening Injury After Closure
-  Prior Injury to Similar Body Part + New Injury or Occupational Disease
-  Anything At All + Mental Health Condition
-  New Injury + Long Term Opiate Use



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MENTAL HEALTH MANAGEMENT

- There is no such thing as a Mental Health Occupational Disease Claim.
 - UNLESS the claimant is a firefighter, law enforcement, or 911 operator.
- Stress mental health claims MUST come from a single traumatic event. Which exposure must occur through:
 - Directly experiencing the event,
 - Witnessing, in person, the event as it occurred to others, or
 - Extreme exposure to aversive details of the traumatic event.
- Treatment must result in clinically meaningful improvement.



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MENTAL HEALTH MANAGEMENT

- When dealing with a mental health claim be vigilant.
- Monitoring the treatment is the MOST important piece.
- Mental Health treatment can be endless; the employer's tools are built into the statutes by requiring the treating provider to comply with strict reporting guidelines.
 - Use the guidelines and reporting to your advantage.
- Use the Mental Health Specialists Authorization and Reporting Requirements document provided by LNI.





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CLAIM STAGNATION

Why is claim stagnation so important?


Because of this graph:

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CLAIM STAGNATION

- If a claim is not moving forward through the claim process, the employer's position is consistently being degraded day after day.
- There should always be something in the pipeline.
- If you cannot find a way around a stagnate claim, you should get help.
 - Sometimes it is as simple as another voice on the end of the line.




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CLAIM STAGNATION

Types of Claim Stagnation

- **Communication Interference**
Possibly caused by other individuals in the process. Direct communication the with claimant is necessary to overcome this obstacle. When in doubt, get forceful and make clear, articulated demands.
- **Medical Stagnation**
You need to figure out if it is medical fear, or purposeful. An interview with the claimant is helpful. Assess whether they want to actually return to work, or if they are just scared of the possible medical procedure.
- **Staffing Changes**
Staff is very mobile at the moment. Record past attempts. Develop your elevator speech. Start with the *Communication Trinity*:
 1. This is where we were.
 2. This is what is happening.
 3. This is what I need from you.




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CLAIM STAGNATION

Types of Claim Stagnation - Continued


- **Unresponsive Medical**
Happens when your providers stop communicating. Use your contacts to find other ways into the office. Ask your coworkers if they have contacts. Multiple methods of communication. Diary and repeat. Don't be afraid to use the claimant's attorney or claimant to help. An answer you don't like is NOT the same as a "no" answer.
- **Litigation Stagnation**
Happens when a case has been referred to legal and then nothing happens. Chances are stuff is actually happening, the attorney just hasn't provided updates. Solution: Ask the attorney for an update. Be clear and direct about future update expectations and requested frequency. If it is still an issue, or claim is not moving, tell the attorney it is an issue and if it persists, get a new attorney. Use the same tools as unresponsive medical.



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CLAIM STAGNATION


- **Best Avoidance Strategies**
 - Become one with your calendar. Live, breath, and dream of your calendar.
 - No but really..... Diary, diary, diary. Develop a system and use it constantly for everything. Make it second nature.
 - Learn to recognize people's communication patterns. Don't be afraid to write notes in the contact card for those individuals.
 - The gatekeepers in an organization are vital to effective B2B communication.
 - Remember the pleasantries: Please, Thank You, It was great speaking with you.
 - Last, but not least, when backed into the corner of stagnation, don't be afraid to hit the help button. Sometimes it just needs to come from someone else.



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IN CONCLUSION


- Remember to do your initial claim investigations (I.I. v. O.D.; Deceit detect).
- TLC – certified as unable to work or in Vocational Services.
- Watch out for the “+” signs. Complicated claim benefit from early intervention.
- Use all the tools at your disposal. Some will fit better than others.
- Avoid stagnation.
- Use your team and reach out for help if trapped.



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**A QUICK WORD:
NURSE CASE MANAGEMENT**

- Nurse Case Management will be changing dramatically in the next few months.
- The Department has significantly changed their payment structure, potentially resulting in the loss of tens of thousands of dollars for NCMs statewide.
- Also, from the grapevine, we are hearing that a very large number of NCMs will be leaving the profession as a whole in the next ten days.
- You will need to watch all cases involving nurse case managers closely. Ask for updates in all cases with NCMs as soon as possible in case they can no longer be used.



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THE FULL SERIES

Part I: Initial Claim Evaluation, Investigation, and Filing
May 25, 2023

Part II: Claim Management and Recognizing Complications
June 27, 2023

Part III: When and How to Close a Claim
July 20, 2023

Part IV: The World of Litigation and Board Appeals
September 14, 2023

Part V: Knock, Knock, Look Who's Back
October 26, 2023



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THANK YOU!

We look forward to seeing you at Part 3!
When and How to Close a Claim

July 20th, 2023, at 10:00 a.m.
 See you there!

Contact me with any questions

Tim Reeve
tim@reevelawfirm.com
 206.818.2900



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QUESTIONS?



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In Association with:
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June 27, 2023



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Thank You!

We appreciate your time and participation!
 We invite you to complete the post-event survey.
 Your feedback will inform our efforts to continually enhance the value of these events!



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FEEDBACK SURVEY



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