

DIVISION OF WORKERS' COMPENSATION

Minimizing the impact of work-related injuries and illnesses. Helping resolve disputes over workers' compensation benefits. Monitoring the administration of claims.

FACT SHEET D

ANSWERS TO YOUR QUESTIONS ABOUT PERMANENT DISABILITY BENEFIT

Permanent disability (PD) is any lasting disability from your work injury or illness that affects your ability to earn a living. If your injury or illness results in PD you are entitled to PD benefits, even if you are able to go back to work.

Do I need to fill out the claim form (DWC 1) my employer gave me?

Yes, if you want to make sure you qualify for all benefits. If you do not file the claim form within a year you may not be able to get benefits. Your employer must give you a [DWC 1 claim form](#) within one day of knowing you were injured. Filling out the claim form opens your workers' comp case. State law also lays out benefits beyond the basics you may qualify for once you file the claim form with your employer. Those benefits include, but are not limited to:

- A presumption that your injury or illness was caused by work if your claim is not accepted or denied within 90 days of giving a claim form to your employer
- Up to \$10,000 in treatment under medical treatment guidelines while the claims administrator considers your claim
- An increase in your disability payments if they're late
- A way to resolve any disagreements that might come up between you and the claims administrator over whether your injury or illness happened on the job, the medical treatment you receive and whether you will receive PD benefits.

What if my employer didn't give me the DWC 1 claim form?

Ask your employer for the form or call the claims administrator to get it. The claims administrator is the person or entity handling your employer's claims. The name and phone number of this entity should be posted at your workplace in the same area where other workplace information, like the minimum wage, is posted. You may be able to confirm who your claims administrator is by going to www.caworkcompcoverage.com. You can also get the form from the Division of Workers' Compensation (DWC) Web site at www.dwc.ca.gov. In the right navigation pane, under "Quick Links," click on "forms".

Who decides if I should get PD benefits? How is that done?

A doctor decides if your injury or illness caused PD. The doctor's report is then turned into a PD rating. The process used to turn the doctor's report into a rating can vary depending on your date of injury and other factors. The PD rating determines the benefits you'll receive.

After your doctor decides your injury or illness has stabilized and no change is likely, PD is evaluated. At that time, your condition has become permanent and stationary (P&S). Your doctor might use the term maximal medical improvement (MMI) instead of P&S.

Once you are P&S or have reached MMI, your doctor will send a report to the claims administrator telling them whether you have any PD. The doctor also decides if any of your disability was caused by something other than your work injury, such as a previous injury or another condition. This is called apportionment.

The claims administrator may ask you to fill out a form describing your disability.

What if I don't agree with the doctor?

If you or the claims administrator disagrees with your doctor's findings you can be seen by a doctor called a qualified medical evaluator (QME). You request a QME list (called a panel) from the DWC Medical Unit. The claims administrator will send you the forms to request a QME. Your employer will pay for the cost of the

QME exam. You have 10 days from the date the claims administrator tells you to begin the QME process to submit your request form to the [DWC Medical Unit](#). If you do not submit the form within 10 days, the claims administrator will do it for you and will get to choose the kind of doctor you'll see.

There are other specific and strict timelines you must meet in filing your QME forms or you will lose important rights. Read the DWC Information and Assistance (I&A) Unit [guide 2](#) and refer to fact sheet E for more information.

What is a PD rating and how is it calculated?

First, after your exam, the doctor will write a medical report about your impairment. Impairment means how your injury affects your ability to do normal life activities. The report includes whether any portion of your impairment was caused by something other than your work injury. The doctor's report ends with an impairment number. Next, the impairment number is put into a formula to calculate your percentage of disability. Disability means how the impairment affects your ability to work. Your occupation and age at the time of your injury affect your PD calculation. If you were hurt before Jan. 1, 2013 your diminished future earning capacity shall also be a factor in your rating. Then, any portion of your disability caused by something other than your work injury is taken out of the calculation.

Your disability will then be stated as a percentage. Your percentage of disability equals a specific dollar amount, depending on the date of your injury and your average weekly wages at the time of injury. A rating specialist from the DWC [Disability Evaluation Unit](#) may help calculate your rating.

If your employer has 50 or more employees, and you were injured before 2013, the amount also may be affected by whether or not your employer makes a suitable return to work offer. For injuries occurring on or after Jan. 1, 2013 all permanent disability ratings will be increased by a Whole Person Impairment factor of 1.4.

How is PD paid?

Once your doctor says you have PD, the claims administrator will estimate how much you should receive and begin making payments to you, even if the final percentage of disability has not been calculated. PD benefits are paid in addition to temporary disability (TD) benefits you received. The claims administrator must begin paying your PD within 14 days after TD ends and continue the payments until a reasonable estimate of your disability amount has been paid. If you have not missed any work, PD payments are due from the date the doctor says you are P&S. PD benefits continue to be paid every two weeks on a day picked by the claims administrator until a reasonable estimate of your disability amount has been paid. When the actual amount of PD due has been determined, the amount over the estimate must be paid.

If you were injured and have ratable permanent disability, as of Jan. 1, 2013 PD payments are not due if you return to modified, alternative or regular work with your employer at 85 percent of your wages or return to work for any employer at 100 percent of your wages. When you receive your PD award, you will then receive an adjusted payment beginning with the last date TD was paid or when you made a maximum medical recovery, whichever is earlier.

How is my claim finally resolved?

After the amount of PD in a claim is determined, there is usually a settlement or award for benefits. This award must be approved by a workers' compensation judge. If you have an attorney, your attorney should help you obtain this award. If you don't have an attorney, the claims administrator should help you obtain the award. You can also get help from the I&A officer at the local Workers' Compensation Appeals Board office. If your doctor said further medical treatment for your injury or illness might be necessary, the award may provide future medical care.

There are two types of settlements. A settlement is agreed on by you and the claims administrator.

You can resolve your whole claim through one lump sum settlement called a [compromise and release](#) (C&R). A C&R may be best when you want to control your own medical care and/or you want a lump sum payment for your PD. A C&R usually means that after you get the lump sum payment approved by the workers' compensation judge, the claims administrator will not be liable for any further payments or medical care.

You can also agree to a settlement called a [stipulation with request for award](#) (stip). A stip usually includes a sum of money and future medical treatment. Payments take place over time. A judge will review the agreement.

If you cannot agree to a settlement with the claims administrator, you can go before a workers compensation judge, who will decide your PD award. A judge's finding is called a findings and award (F&A). The F&A

generally consists of an amount of money and a provision for the claims administrator to pay for approved future medical treatment.

If your injury results in a permanent disability and the state determines that your PD benefit is disproportionately low compared to your earning loss, you may qualify for additional money from the Department of Industrial Relations' Special Earnings Loss Supplemental program which is also known as the Return to Work Program. If you have questions or think you qualify, contact your local I & A office or visit the DIR website at www.dir.ca.gov.

For more information, call 1-800-736-7401 or visit the DWC Web site at www.dwc.ca.gov to find a local [I&A office](#). You may also download [I&A guides](#) and get information on workshops for injured workers.

The information contained in this fact sheet is general in nature and is not intended as a substitute for legal advice. Changes in the law or the specific facts of your case may result in legal interpretations different than those presented here.

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