



# JUGE NAPOLITANO

GUILBEAU RULI FRIEMAN APLC

## TYPES OF DISABILITY BENEFITS LSA-R.S. 23:1221(1)(2)(3)(4)

- \* Temporary Total Disability (TTD): Inability to engage in any employment or self employment of any nature. (temporarily or indefinitely).
- \* Permanent Total Disability (PTD): Inability to engage in any employment or self employment of any nature. (permanently)
- \* Supplemental Earnings Benefits (SEB): Should be paid if the accident results in an inability to earn 90% or more of the injured workers' pre accident AWW.
- \* Permanent Partial Disability (PPD/Schedule Benefits): Compensation is paid based upon an impairment rating even if the employee has returned to work.
- \* First week of TTD is not paid unless disability lasts for 2 weeks.

## SCHEDULE BENEFITS (PPD benefits)

Payment is calculated by taking the percentage of impairment multiplied by the number of weeks called for in the schedule below. The weekly rate is sixty-six and two thirds percent of wages.

Body Part	Max Weeks
Thumb	50
Index first finger	30
Any other finger	20
Any toe	10
Hand	150
Arm	200
Foot	125
Leg	175
Eye	100

\*Body as a whole is not recoverable in Louisiana.

\*Any weeks paid in TTD, SEB or PTD are applied as a credit toward any benefits that would owed for PPD benefits.

## AVERAGE WEEKLY WAGE (AWW) LSA-R.S. 23:1021(10)

Full-Time Employee: (A)Hired for 40 hour and worked 40 or more. Average the hours in the 4 full weeks prior to the accident and multiply hours by the hourly rate. If average is less than 40, employee given presumption of 40 hours. (B)Hired for 40 hours but worked less "at his/her own discretion". Calculation is the average of the earnings in the 4 full weeks prior to the accident.

**Overtime** is calculated by averaging all hours in the 4 full weeks. Multiply the straight-time rate times 40 hours and multiply the overtime rate times the hours of overtime

Part-Time Employee: Employer must have records showing that the employee is considered part time. Employee must knowingly accept employment for less than 40 hours per week.

If the claimant has no job other than the part-time job the the calculation is an average of the hours in the 4 full weeks prior to the accident and multiply the hours times the hourly wage.

If the employee has another job in addition to the part-time job than the calculation is an average of hours from all employment. If the average is more than 40, only use 40 hours. Multiply these hours times the wage rate where the accident occurred.

Annual Salary Employee: calculate by dividing the annual wage by 52.

Monthly Employee: Multiply monthly wage by 12 and divide 52.

Unit/Commission/Piece meal: Designed originally for the timber industry. Determine the gross earnings in the 26 weeks prior to the accident. Divide the gross earnings by the number of days actually worked in the same period and multiply the resulting day rate by the average number of days worked per week.

## TIME PERIODS LSA-R.S. 23:1201

TTD, PTD and Death Benefits are due 14 days after employer knows of injury or death.

SEB's are due on the 14th day after the employer has knowledge of compensable wage loss.

PPD benefits are due on 30th day after employer receives medical report giving notice of PPI rating.

Medical expenses are due on 60th day after receipt.

Failure to pay within the time delays can result in a penalty of \$2,000 for each late payment, capped at \$8,000 in penalties, as well as reasonable attorney's fees.

## MAXIMUM MINIMUM COMPENSATION RATES LSA-R.S. 23:1202

Date of Injury	Max.	Min.
9/01/09-8/31/10	\$577	\$154
9/01/10-8/31/11	\$579	\$154
9/01/11-8/31/12	\$592	\$158
9/01/12-8/31/13	\$605	\$161
9/01/13-8/31/14	\$619	\$165
9/01/14-8/31/15	\$630	\$168
9/01/15-8/31/16	\$649	\$173
9/01/16-8/31/17	\$657	\$175
9/01/17-8/31/18	\$653	\$174
9/01/18-8/31/19	\$665	\$177
9/01/19-8/31/20	\$688	\$183
9/01/20-8/31/21	\$705	\$188
9/01/21-8/31/22	\$743	\$198

Note: Minimum compensation rate does not apply to SEB payments.

## PRESCRIPTIVE PERIODS LSA R.S. 23:1209 (Statute of Limitations)

Prescription-time limit established in law in which a claim must be filed or it will be dismissed(it has "prescribed").

Indemnity benefits are distinguished from medical benefits. They have separate prescriptive periods.

Indemnity Benefits:

**No indemnity paid**-one year from the injury or death.

**If indemnity paid**-one year from the time the last payment was made to file a claim for TTD, PTD or PPD.

**If indemnity paid**- SEB prescribes after 3 years from the last payment of indemnity.

Medical Benefits:

No medical benefits paid-one year from the date of injury or death.

If medical paid-3 years from the date of the last payment.

## ACCIDENTS LSA-R.S. 23:1021(1)

An unexpected or unforeseen actual, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration.

## MENTAL DISABILITY CLAIMS LSA-R.S. 23:1021(C) and (D)

Physical/Mental: Physical injury resulting in mental disability. Most common diagnosis is major depression due to pain, also includes post-traumatic stress disorders.

Must be proven:

1. Clear and Convincing evidence,
2. Condition be diagnosed by a licensed psychiatrist or psychologist, and
3. Meet criteria established in DSM.

Mental/Mental: Mental injury resulting from experiencing event absent any physical injury. Requires the same elements of proof as physical/mental and in addition, must result from sudden, unexpected and extraordinary stress related to employment.

Stress must be extraordinary using objective standard. Long term stress is not compensable.

## CARDIOVASCULAR CLAIMS LSA-R.S. 23:1021(7)(e)

Heart-injury shall not be considered compensable unless it is demonstrated by clear and convincing evidence that:

(1)Physical work stress was extraordinary and unusual in comparison to the stress or exertion experienced by the average employee in that occupation.

(2)The physical work stress or exertion, and not some other source of stress or preexisting condition, was the predominate and major cause of the heart-related injury.

## OCCUPATIONAL DISEASE LSA-R.S. 23:1031.1

Disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease. Includes CTS, but does not include cumulative trauma disorders such as degenerative disc disease, spinal stenosis or any type of arthritis.

## EXTRA-TERRITORIAL COVERAGE LSA-R.S. 23:1035.1

Employee injured in another state may file claim in La. WC:

\*If principally employed in this State or

\*Contract of hire made in La.

Out of state worker injured in Louisiana may elect Louisiana as the venue. The courts have accepted subject matter jurisdiction.



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### **FRAUD LSA-R.S. 23:1208**

Section 1208 applies to any material false statement or material misrepresentation, including one concerning a prior injury, made specifically for the purposes of obtaining workers' compensation benefits. The section is applicable at the time the employee makes the statement, as opposed to the time of the accident.

### **SECOND INJURY FUND LSA-R.S. 23:1371 et. Seq.**

Requirements for Recovery

1. Knowledge of Permanent Partial Disability: A permanent partial disability is a condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment should the employee become unemployed. Must have knowledge prior to the subsequent job accident.

2. Merger with Subsequent job injury: Merger can occur when the subsequent injury would not have occurred but for the preexisting condition or the disability resulting from the subsequent injury has merged permanent partial condition to create a greater disability. Claim for SIF relief must be filed within 52 weeks of the first payment of any benefits in the claim.

### **DEATH BENEFITS LSA-R.S. 23:1231 et. seq.**

Burial Expenses are \$8,500 maximum. If cost is less than 8,500, the difference between the costs and 7,500 is paid to the heirs.

Benefits are based on dependency. Total benefit amount available to all dependents is 65% of the AWW at the time of accident.

R.S. 23:1231 establishes the priority among claimants for death benefits.

If no other legal dependents, but surviving children over the age of majority then the sum of \$75,000 is divided equally among the surviving children. If no dependents and no surviving children over the age of majority then the surviving parents are to be paid \$75,000 each.

### **AFFIRMATIVE DEFENSES LSA-R.S. 23:1081**

Intoxication: Burden of proving intoxication remains with the employer/insurer, but the following presumptions apply to assist in proving intoxication:

Blood alcohol level at the time of the accident of .05 or less by weight, presumed not intoxicated.

Blood alcohol level at the time of the accident in excess of .05 but less than .08 by weight, then no presumption, but may be considered with other competent evidence.

Blood alcohol level of .08 or greater by weight, it is presumed that the employee was intoxicated. Other competent evidence of intoxication can also be introduced to establish intoxication.

Employers also have the right to administer drug and alcohol testing immediately after the job accident. If an employee refuses to submit to the test immediately after a job accident, it is presumed that the employee is intoxicated at the time of the accident. The employer can establish the use of illegal drugs by introducing the results of an employer-administered urine test pursuant to a written and promulgated drug policy.

Once the employer has met the burden of proving intoxication, it is presumed that the accident was caused by the intoxication. The burden of proof then shifts to the employee to prove that the intoxication was not a contributing cause of the accident.

Initial Aggressor: The statute denies compensation for an injury caused "to the initial physical aggressor in an unprovoked physical altercation, unless excessive force was used in retaliation against the initial aggressor."

The initial aggressor can recover benefits if provoked by verbal attacks. "fighting words"

Willful Intent to Injure: Defense to work injuries that can be proven to be self-inflicted.

### **CHOICE OF PHYSICIAN**

Claimant is allowed his choice of physician in each field of speciality provided the need for the specialist is reasonable and medically necessary.

If the employer/insurer has directed a claimant to a physician that will not be considered the employee's choice. The employee can select that particular physician as his own if he fills out the LDOL Choice of Physician form.

If the claimant selected the physician and was not directed to the physician by the employer/insurer that is considered the claimant's choice of physician. Despite this it is recommended the you still have the claimant sign a choice of physician form so that the selection is clear.

The LDOL Choice of Physician Form can be found at [www.laworks.net](http://www.laworks.net) under the WC forms section.

### **SETTLEMENTS LSA-R.S. 23:1271**

Parties can settle indemnity and medical benefits or the parties can elect to just settle one and leave the other portion open.

Settlements must be approved by the insured.

Non-represented party must appear before the OWC judge to have the settlement approved in open court.

Two types: Lump sum and compromise settlements. Majority of settlements in WC are compromise settlements. Lump sum settlements can not be discounted at a rate greater than 8% per annum or the employer could be liable for a penalty of 1 and 1/2 times the correct amount.

### **MILEAGE REIMBURSEMENT LSA-R.S. 23:1203(D)**

January 10, 2022 - December 31, 2022 58 cents per mile  
July 1, 2021 - January 9, 2022 56 cents per mile  
January 1, 2021 - June 30, 2021 56 cents per mile  
July 1, 2020 - December 31, 2020 57 cents per mile  
January 1, 2020 - June 30, 2020 57.5 cents per mile  
July 1, 2019 - December 31, 2019 58 cents per mile  
July 1, 2018 - June 30, 2019 54 cents per mile

### **SUBROGATION LSA-R.S. 23:1101 et. seq.**

Employers and insurers may seek reimbursement from certain third persons.

Third Person: is a person who (1) is not immune from tort liability and (2) has a legal liability to pay damages for the employee's compensable injury, sickness or disease.

"Third Person" includes any party that causes injury to an employee at the time of the employee's accident or at any time thereafter provided that the employer or insurer is obligated to pay workers' compensation benefits because the injury caused by the third person aggravated the employee's job injury.

Employer's lien takes precedent over the employee's recovery in the third party litigation.

Limitations to Employer/Insurer's Right to reimbursement: Attorney's fees and cost- employer's lien is reduced by 1/3 (Moody Fees) for recovery by employee's attorney. Employer's lien can also be reduced based on the employer's pro rata share of the costs.

**QUESTIONS? Contact any of our attorneys at (504) 831-7270 or visit our web site. [www.jugefirm.com](http://www.jugefirm.com)**