

Manager/Supervisor Risk Management

#31– 2/23/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMPENSATION –PERMANENT DISABILITY

The next few topics will deal with another type of WC benefit – permanent disability. It is important to remember, as always with WC, that we are not talking about damages. This is not an award for pain and suffering, or emotional distress.

Permanent disability is the disability (physical and/or mental), if any, that the doctor determines is left after the injured worker becomes permanent and stationary. Historically the measure of payment for a permanent disability was based on the worker's diminished ability to compete in the open labor market. The 2004 WC reforms changed the basis to a "percentage of whole body impairment determined as provided in the fifth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and diminished future earning capacity based on empirical data." I don't know – and don't want to know – what any of that means other than it is the last element of the rating formula listed below, and is based on facts and conclusions contained in the doctor's medical report.

What is important to understand is that the disability becomes "permanent" when the injured worker has reached "maximal medical improvement," or is declared "permanent and stationary." This occurs when the treating doctor determines that no major change is expected for better or worse, and that the level of disability will remain about the same for the rest of the injured worker's life.

Permanent disability is expressed in percentages based on the following elements:

- The nature of the physical injury or disfigurement;
- The occupation of the injured worker;
- The age of the employee at the time of the injury; and
- The employee's diminished future earning capacity.

These factors are components in a rating formula that produces the percentage of permanent disability. The first three elements in the formula are fairly objective; the last element comes from the treating doctor's medical report that declared the injured worker permanent and stationary.

Ratings are done by experts – claims examiners, attorneys, and/or State disability unit raters. Negotiation is rare; the rating formula is what it is with hopefully objective results. All ratings are ultimately reviewed and approved for adequacy by a workers' compensation judge as part of the settlement process.

What does this mean to the supervisor/manager? If your worker has an injury that results in a permanent disability, a statutory process will occur to determine what compensation they will receive, if any. The process requires professional expertise, and each rating is unique. You cannot compare ratings and injuries; there are too many factors that are unique to each claim.

Next topic: Workers' Compensation – Permanent Disability - dollars