

STATE OF WISCONSIN



Department of Workforce Development

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# Delay Penalties: How to Avoid Them

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Dispute Resolution Specialists

# Agenda

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- Types of Delay Penalties
- Delay Penalties on Temporary Disability
- PPD Payment Requirements
- PPD and IMEs
- Surcharges vs. Delay Penalties
- Delay Tips and Strategies



# Types of Delay Penalties

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- Delay penalty for late payment of Temporary Disability benefits.
- Delay penalty for late payment of Permanent Partial Disability (PPD) benefits.

# Delay: Temporary Disability (TD)

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- §102.22 Wis. Stats. – delays for late TTD payments.
- The Division may assess a 10% delay penalty if the employer or their insurer inexcusably delays in making the first TD payment.
- Delay inquiry is sent if:
  - First TD payment is made more than 14 days after employee leaves work as a result of an injury, and;
  - Amount due is \$500 or greater.



# Inexcusable Delay: Temporary Disability

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- If the first TD payment is made more than 30 days after the date the employee leaves work because of a work injury, and the first payment is \$500 or more, § 102.22 states that the 10% penalty shall be assessed.
- May incur penalty for delay of any length of time in making any other indemnity payment that is due an injured employee.



# Excusing TD Delay - Employer

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- Employee did not notify employer of injury, or
- Employer pays sickness, accident insurance, and/or salary until compensability is determined, or
- Employer's first claim or first delay (Note: we do check our records for employer's claim history).



# New Voluntary Notice for Employers

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May 2024: WCD released Notice to Injured Workers and Employers (Form WKC-19606-P).

- Voluntary for employers to post – not mandatory.
- Tells employers and employees what to do in the event of a work injury.
- Gives contact information for organization that is handling this employer's worker's compensation claims.
- Available in English, Spanish, and Hmong.



# Excusing TD Delay – Insurance Company

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- Insurance investigation.
- Only considered for whether delay will be excused if the investigation is concluded within six weeks, and
- Within 14 days of receiving notice of injury, you have mailed a letter to injured worker notifying them of your investigation.



# Temporary Disability and Investigations

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## IMPORTANT NOTE:

- WCD granting you extra time to **investigate** a claim **will not** excuse a delay penalty.
- Investigating a claim is different from reporting a claim.
- The extended time given for investigating the claim may avoid the assessment of a surcharge for late reporting (§102.35(1) Wis. Stats).



# Delay: PPD

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## **§102.32(6)(e):**

PPD for an injury, including payments based on minimum PPD ratings by rule, shall continue on a monthly basis and shall accrue and be payable between intermittent periods of TD.

**NOTE:** PPD is due and payable on a claim whenever you have a 30-day period of disability when no TD is being paid.



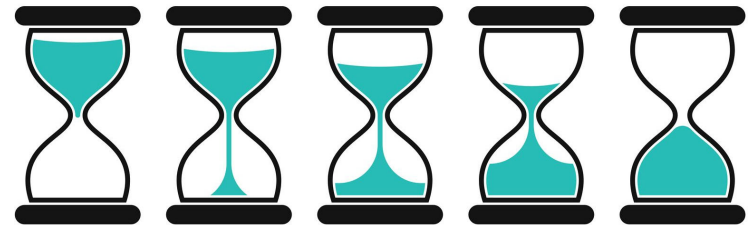
# Delay: PPD and Statutory Minimums

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**§102.32(6)(b):** PPD due for an injury based upon statutory minimums shall begin on the earliest of:

- Within 30 days after the end of the employee's healing period, or
- On the date compensation for TD ends.

If it's a surgery with a statutory minimum PPD rating, no need to wait for DWC worksheet.



# Delay: Amputations

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- Be sure to review the operative and emergency room notes: is there an amount of statutory PPD that you can issue before you receive a final medical report?
- Do not wait for Division worksheet.



# Delay: PPD But Not Statutory Minimum

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## **§102.32(6)(c):**

For an injury that results in PPD, **but the extent of PPD cannot be determined without a medical report,\*** PPD shall begin within 30 days after receipt of a medical report that provides a basis for a PPD rating.

\* So PPD is not a statutory minimum.



# Delay: Intermittent Periods of TD

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**IMPORTANT NOTE:** Whether or not the PPD is a statutory minimum, you still need to pay the due and accrued PPD from the date TD ended.

There may be several intermittent periods of temporary disability.



# Intermittent Periods of Disability

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- An injured worker had a meniscectomy on June 1 and was off work through July 12.
- On July 12, went back to work and worked several weeks. Knee kept getting worse.
- On December 28, injured worker had a total knee replacement.
- Returned to work June 25.
- When does PPD start to accrue?



# Intermittent Periods of Disability (cont.)

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We know that figuring out when and how much PPD to pay when an injured worker has had multiple periods of disability is really confusing! We get confused, too!

What you should do.

Call one of the Delay Specialists! We'll walk through it with you. That way, we'll both understand the claim and will help you to avoid or minimize a delay penalty!



# PPD and Independent Medical Exams

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The 30/90 day rule (first half):

- If you dispute the treating doctor's rating in the final medical report and you want to get an IME, DWD 80.52 states that within 30 days of receiving the treating doctor's final medical report you must:
  - Schedule the IME, and
  - Advise injured worker of IME.



# PPD and Independent Medical Exams (cont.)

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The 30/90 day rule (second half)

- If you have not received the IME report within 90 days after requesting the IME, to avoid a delay penalty, you must:
  - Pay the due and accrued PPD based on the **treating doctor's** final medical report.



# Surcharge vs. Delay Penalty

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- Surcharges are imposed for late reporting to the **state**.
- Delay penalties are imposed for inexcusably late payment to the **injured worker**.
- Delayed payments may be excused, but extensions granted for late reporting do not apply to delay penalties for late payments.



# Surcharge vs. Delay Penalty (cont.)

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- Surcharges are authorized for late reporting of any reports that have a due date: final medical reports and wage reports.
- Surcharges: \$100 for each late report.
- Surcharges are paid to Work Injury Supplemental Benefit Fund.
- An extension may be granted to avoid surcharges.



# Tips and Strategies

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You can prevent most delay inquiries and penalties by:

- Paying right away what you can determine.
- Not making token/good faith payments.
- Updating your WKC-13 when you pay, change, or stop any types of payments.
- Contacting the DWD/WCD/DRS if you have any questions.





# Questions?

## **Delay Specialists**

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