

### **85.34 Permanent disabilities.**

Compensation for permanent disabilities and during a healing period for permanent partial disabilities shall be payable to an employee as provided in this section. In the event weekly compensation under section 85.33 had been paid to any person for the same injury producing a permanent partial disability, any such amounts so paid shall be deducted from the amount of compensation payable for the healing period.

1. *Healing period.* If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

2. *Permanent partial disabilities.* Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1. The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. The compensation shall be based upon the extent of the disability and upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to one hundred eighty-four percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. For all cases of permanent partial disability compensation shall be paid as follows:

- a. For the loss of a thumb, weekly compensation during sixty weeks.
- b. For the loss of a first finger, commonly called the index finger, weekly compensation during thirty-five weeks.
- c. For the loss of a second finger, weekly compensation during thirty weeks.
- d. For the loss of a third finger, weekly compensation during twenty-five weeks.
- e. For the loss of a fourth finger, commonly called the little finger, weekly compensation during twenty weeks.
- f. The loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount for the loss of such thumb or finger.
- g. The loss of more than one phalange shall equal the loss of the entire finger or thumb.
- h. For the loss of a great toe, weekly compensation during forty weeks.
- i. For the loss of one of the toes other than the great toe, weekly compensation during fifteen weeks.
- j. The loss of the first phalange of any toe shall equal the loss of one-half of such toe and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount provided for the loss of such toe.
- k. The loss of more than one phalange shall equal the loss of the entire toe.

*l.* For the loss of a hand, weekly compensation during one hundred ninety weeks.

*m.* The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm and the compensation therefor shall be weekly compensation during two hundred fifty weeks.

*n.* For the loss of a foot, weekly compensation during one hundred fifty weeks.

*o.* The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during two hundred twenty weeks.

*p.* For the loss of an eye, weekly compensation during one hundred forty weeks.

*q.* For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.

*r.* (1) For the loss of hearing, other than occupational hearing loss as defined in section 85B.4, weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks.

(2) For occupational hearing loss, weekly compensation as provided in chapter 85B.

*s.* The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such; however, if said employee is permanently and totally disabled the employee may be entitled to benefits under subsection 3.

*t.* For permanent disfigurement of the face or head which shall impair the future usefulness and earnings of the employee in the employee's occupation at the time of receiving the injury, weekly compensation, for such period as may be determined by the workers' compensation commissioner according to the severity of the disfigurement, but not to exceed one hundred fifty weeks.

*u.* In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred.

If it is determined that an injury has produced a disability less than that specifically described in said schedule, compensation shall be paid during the lesser number of weeks of disability determined, as will not exceed a total amount equal to the same percentage proportion of said scheduled maximum compensation.

*3. Permanent total disability.* Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount is equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. The weekly compensation is payable during the period of the employee's disability.

Such compensation shall be in addition to the benefits provided in sections 85.27 and 85.28. No compensation shall be payable under this subsection for any injury for which compensation is payable under subsection 2 of this section. In the event compensation has been paid to any person under any provision of this chapter, chapter 85A or chapter 85B for the same injury producing a total permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for such permanent total disability.

4. *Credits for excess payments.* If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess shall be credited against the liability of the employer for permanent partial disability under section 85.34, subsection 2, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

5. *Recovery of employee overpayment.* If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a subsequent injury to the same employee. An overpayment can be established only when the overpayment is recognized in a settlement agreement approved under section 86.13, pursuant to final agency action in a contested case which was commenced within three years from the date that weekly benefits were last paid for the claim for which the benefits were overpaid, or pursuant to final agency action in a contested case for a prior injury to the same employee. The credit shall remain available for eight years after the date the overpayment was established. If an overpayment is established pursuant to this subsection, the employee and employer may enter into a written settlement agreement providing for the repayment by the employee of the overpayment. The agreement is subject to the approval of the workers' compensation commissioner. The employer shall not take any adverse action against the employee for failing to agree to such a written settlement agreement.

6. *Professional athlete.* For purposes of subsection 2, paragraph "u", a determination of the degree of permanent disability of an individual who was injured in the course of performing as a professional athlete shall not be determined based upon employment as a professional athlete but shall be determined based upon other occupations the individual has previously performed or was reasonably suited to perform at the time of the injury.

7. *Successive disabilities.*

a. An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

b. If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of section 85.34, subsection 2, as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.

If, however, an employer is liable to an employee for a combined disability that is payable under section 85.34, subsection 2, paragraph "u", and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.

c. A successor employer shall be considered to be the same employer if the employee became part of the successor employer's workforce through a merger, purchase, or other transaction that assumes the employee

into the successor employer's workforce without substantially changing the nature of the employee's employment.

[S13, § 2477-m9; C24, 27, 31, 35, 39, § **13941396**; C46, 50, 54, 58, § 85.3385.35; C62, 66, 71, 73, 75, 77, 79, 81, § 85.34; 82 Acts, ch 1161, § 811]

87 Acts, ch 111, § 2, 3; 94 Acts, ch 1065, §57; 96 Acts, ch 1186, §23; 97 Acts, ch 48, § 2; 98 Acts, ch 1061, § 4, 11; 98 Acts, ch 1160, §1; 2004 Acts, 1st Ex, ch 1001, §10, 11, 18

Legislative intent regarding successive disabilities; 2004 Acts, 1st Ex, ch 1001, § 20, 21

2004 amendments to subsection 2, paragraph u, and adding subsection 7 take effect September 7, 2004, and apply to injuries occurring on or after that date; 2004 Acts, 1st Ex, ch 1001, § 18