

85.33 Temporary total and temporary partial disability.

1. Except as provided in subsection 2 of this section, the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or 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. “*Temporary partial disability*” or “*temporarily, partially disabled*” means the condition of an employee for whom it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee’s disability. “*Temporary partial benefits*” means benefits payable, in lieu of temporary total disability and healing period benefits, to an employee because of the employee’s temporary partial reduction in earning ability as a result of the employee’s temporary partial disability. Temporary partial benefits shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee’s weekly earnings at the time of injury.

3. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee’s disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

4. If an employee is entitled to temporary partial benefits under subsection 3 of this section, the employer for whom the employee was working at the time of injury shall pay to the employee weekly compensation benefits, as provided in section 85.32, for and during the period of temporary partial disability. The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee’s weekly earnings at the time of injury, computed in compliance with section 85.36, and the employee’s actual gross weekly income from employment during the period of temporary partial disability. If at the time of injury an employee is paid on the basis of the output of the employee, with a minimum guarantee pursuant to a written employment agreement, the minimum guarantee shall be used as the employee’s weekly earnings at the time of injury. However, the weekly compensation benefits shall not exceed the payments to which the employee would be entitled under section 85.36 or section 85.37, or under subsection 1 of this section.

5. If an employee sustains an injury arising out of and in the course of employment while receiving temporary partial disability benefits, the rate of weekly compensation benefits shall be based on the employee’s weekly earnings at the time of the injury producing temporary partial disability.

6. For purposes of this section and section 85.34, subsection 1, “*employment substantially similar to the employment in which the employee was engaged at the time of injury*” includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.

[S13, §2477-m9; C24, 27, 31, 35, 39, §1394; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.33; 82 Acts, ch 1161, §7]

94 Acts, ch 1065, §4; 97 Acts, ch 48, §1

Referred to in §85.27, 85.34, 85.62, 96.7(2a), 96.23, 279.40