

WHAT TYPE OF BENEFITS CAN AN INJURED EMPLOYEE RECEIVE?

BY BRENDA S. SPILKER



Brenda S. Spilker

The type of benefits to which an employee who sustains a work accident is entitled is limited by statute. There are no benefits allowed for pain and suffering, nor for punitive damages.

Temporary Disability

Temporary disability benefits are paid to an employee during the period of time the worker is under medical treatment and has not reached a state of maximum recovery. There are two kinds of temporary benefits: (1) temporary total; and (2) temporary partial. Temporary total benefits are paid when a worker is taken off work completely. Temporary partial benefits are due when a worker is able to work, but in a reduced capacity, earning less than the wages at the time of the injury.

The temporary benefit amount is computed using the worker's actual average weekly hours for the 26 weeks prior to the accident. For example, if a worker averaged 25 hours per week in the six months prior to the accident and had an hourly wage of \$10.00, the average weekly wage is \$250.00. The temporary total disability amount is 66 2/3 percent of the average weekly wage. Using our example wage of \$250.00, the temporary total disability rate is \$166.67.

Temporary partial disability is computed by taking 66 2/3 percent of the difference between the average weekly wage minus the wages the employee is able to earn post accident. If the worker with an average weekly wage of \$250.00 is able to earn \$150.00 post injury, the temporary partial benefit amount is \$66.67 ($\$250.00 - \$150.00 \times 66 \frac{2}{3}\% = \66.67).

Permanent Disability

The type of permanency benefits to which an injured worker is entitled is dependent upon the injury. In Nebraska, the law differentiates between schedule and non-schedule injuries. Schedule member injuries are injuries to limbs, including the arm, hand, fingers, leg, foot and toes. Schedule member injuries also include permanent damage to an eye, ear, nose and loss of hearing. The statute allows for a certain number of weeks for the total loss of a schedule member. For example, a leg amputation entitles the worker to 215

weeks of permanency benefits. If the worker suffers a 10 percent permanent partial impairment to the leg, the injury is worth 21.5 weeks of permanency benefits.

Non-schedule injuries are called injuries to the body as a whole and include the head, neck and back. A worker is compensated based upon the loss of earning capacity for a body as a whole injury. Loss of earning capacity looks at the permanent restrictions and how they affect the worker's ability to: (1) procure employment; (2) hold employment; (3) perform the tasks required by the work; and (4) earn wages in employment. A ten-pound permanent lifting restriction to a worker who does not have a high school education and has only performed factory work will be different compared to a worker with an undergraduate degree who was performing a desk job at the time of injury.

Unlike temporary benefits, permanent disability must be computed using a minimum 40-hour work week. The worker who earned \$10.00 per hour and averaged 25 hours per week has an average weekly wage of \$400.00 for the purpose of computing permanent disability.

Vocational Rehabilitation

If a worker has permanent restrictions, he may be entitled to vocational rehabilitation services. When determining the types of vocational services which are appropriate, a list of priorities is utilized: (1) a return to the previous job with the same employer; (2) a modification of the previous job with the same employer; (3) a new job with the same employer; (4) a job with a new employer; and (5) a period of formal retraining which is designed to lead to employment in another career field.

Medical Benefits

There is no deductible or co-pay for medical benefits for a work-related injury. The employer is responsible for 100 percent of the medical costs, but may reduce the expenses paid to providers by utilizing a fee schedule approved by the Nebraska Workers' Compensation Court. Medical, surgical, hospital and prescription drug expenses are compensable if they will relieve pain or promote and hasten the employee's restoration to health and employment.

**BAYLOR, EVNEN,
CURTISS, GRIMIT & WITT, LLP**

WELLS FARGO CENTER
1248 "O" STREET, SUITE 600

LINCOLN, NEBRASKA 68508

PHONE: 402.475.1075

FAX: 402.475.9515

EMAIL: INFO@BAYLOREVNEN.COM

WWW.BAYLOREVNEN.COM

THE "REVISED" I-9 FORM—WHAT EMPLOYERS NEED TO KNOW

BY JENNY L. PANKO



Jenny L. Panko

Employers are familiar with the need to complete an Employment Eligibility Verification Form (I-9 Form) for all newly-hired employees in order to verify the employees' eligibility to work legally in the United States. On November 7, 2007, U. S. Citizenship and Immigration Services (USCIS) announced that a revised I-9 Form is now available for use.

The recent changes to the I-9 Form were required due to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which mandated a reduction in the number of documents that employers may accept from newly-hired employees during the employment eligibility verification process (acceptable documents). USCIS has now revised the I-9 Form to bring it into compliance with IIRIRA.

The I-9 Form contains three lists which state the various documents that may be accepted in order to verify employment eligibility. The most significant change to the revised Form I-9 is the elimination of five documents from List A of the List of Acceptable Documents. The reason these documents were eliminated from the list is because they lacked features to deter falsification. The five documents which may no longer be used to verify an individual's eligibility to work in the United States include:

- Certificate of U.S. Citizenship (Form N-560 or N-561)
- Certificate of Naturalization (Form N-550 or N-570)
- Alien Registration Receipt Card (I-151)
- Unexpired Reentry Permit (Form I-327)
- Unexpired Refugee Travel Document (Form I-571)

One document, the Unexpired Employment Authorization Document (I-766), was added to List A and may now be used to verify employment eligibility.

USCIS claims that the format, font and organization of the I-9 Form have been improved to make it more "readable and user-friendly." However, the portion of the form that requires completion looks substantially the same as the previous version. The new form should be completed exactly the same way as the old one. The only difference is the types of documents that employers may accept. Thus, the area that requires attention from employers is not in completion of the form itself but, rather, what documents may be used to verify employment eligibility.

Additionally, employers should be aware that the instructions for completion of Section 1 of the I-9 Form now indicate that the employee is not required to provide a social security number on Section 1 of the form, unless the employer participates in the "E-Verify Program," which is an internet-based system that provides an automated link to federal databases to help employers determine employment eligibility and the validity of social security numbers for new hires.

Although the revised I-9 Form is available in both English and Spanish, only employers in Puerto Rico are allowed to have employees complete the Spanish version. All other employers may use the Spanish version as a translation guide for Spanish-speaking employees, but must complete the English version and retain it in the employers' records. A translator may be used to assist non-English speaking individuals in completing the form.

The new I-9 Form is effective for all employees hired on or after November 7, 2007. Employers are not required to complete a new form for existing employees. It should be used, however, when existing employees require re-verification of eligibility to work.

A downloadable version of the revised I-9 Form may be found at www.uscis.gov, or by calling USCIS at 1-800-870-3676. An employer handbook is also available on line, or by calling the toll-free number.

BAYLOR EVNEN CLIENT SEMINAR

Baylor Evnen will host its annual client seminar on March 27, 2008. The focus of this year's seminar will be employment issues. The general topics to be addressed in this full-day seminar include:

- The Hiring Process: Background Checks and Drug Screening
- Managing Employee Terminations
- The Latest ADA Developments and Trends
- USERRA / Military and Family Leave
- Handling Unemployment Hearings
- Return to Work Strategies
- Retaliatory Discharge and Retaliatory Demotion Claims
- EEOC Claims

If you are interested in attending or have questions, please call Susan Blackwell at (402) 475-1075 or e-mail sblackwell@baylorevnen.com for additional information. We hope you can join us.

To find additional newsletter articles, go to our website at www.baylorevnen.com.

This Baylor Evnen publication provides substantive information and reflects the firm's opinions and views on current issues. The content is not legal advice. It cannot replace consultation with an attorney on specific matters, nor does it create an attorney-client relationship.



WELLS FARGO CENTER
1248 "O" STREET, SUITE 600
LINCOLN, NEBRASKA 68508
PHONE: 402.475.1075
FAX: 402.475.9515

EMAIL: INFO@BAYLOREVNEN.COM
WWW.BAYLOREVNEN.COM