

TITLE 4: ECONOMIC RESOURCES
DIVISION 9: LABOR

§ 9308. Disability Benefits.

Disability benefits shall be paid to the employee as follows:

(a) *Permanent Total Disability.* In case of total disability, adjudged to be permanent, 66 and two-thirds percent of his average weekly wages shall be paid to the employee during the continuance of such total disability.

Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

(b) *Temporary Total Disability.* In case of temporary total disability, 66 and two-thirds percent of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) *Permanent Partial Disability.* In case of permanent partial disability, the disability benefits shall be 66 and two-thirds percent of the average weekly wages, which shall be in addition to disability benefits for temporary total disability or temporary partial disability paid in accordance with subsection (b) or subsection (e) of this section respectively and shall be paid to the employee as follows:

- (1) Arm lost, 280 weeks disability benefits.
- (2) Leg lost, 248 weeks disability benefits.
- (3) Hand lost, 212 weeks disability benefits.
- (4) Foot lost, 172 weeks disability benefits.
- (5) Eye lost, 140 weeks disability benefits.
- (6) Thumb lost, 51 weeks disability benefits.
- (7) First finger lost, 28 weeks disability benefits.
- (8) Great toe lost, 26 weeks disability benefits.
- (9) Second finger lost, 18 weeks disability benefits.
- (10) Third finger lost, 17 weeks disability benefits.
- (11) Toe other than great toe lost, eight weeks disability benefits.
- (12) Fourth finger lost, seven weeks disability benefits.
- (13) *Loss of Hearing.* Disability benefits for loss of hearing of one ear, 52 weeks, or of both ears, 200 weeks.
- (14) *Phalanges.* Disability benefits for loss of more than one phalanges of a digit shall be the same as for lost of the entire digit. Disability benefits for loss of the first phalanx of a digit shall be one-half of the disability benefits for the loss of the entire digit.
- (15) *Amputated Arm or Leg.* Disability benefits for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of an arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, disability benefits shall be the same as for the loss of a hand or foot.
- (16) *Binocular Vision or Percent of Vision.* Disability benefits for loss of binocular vision or for 80 percent or more of the vision of an eye shall be the same as for loss of the eye.

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(17) *Two or More Digits.* Disability benefits for loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot shall be proportioned to the loss of the hand or foot.

(18) *Total Loss of Use.* Disability benefits for permanent total loss of use of a member shall be the same as for loss of the member.

(19) *Partial Loss or Loss of Use.* Disability benefits for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) *Disfigurement.* The administrator shall award proper and equitable disability benefits for serious facial or head disfigurement.

(21) *Other Cases.* In all other cases of permanent partial disability the disability benefits shall be two-thirds of the difference between the employee's average weekly wages and his wage earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability; provided that, disability benefits shall be subject to reconsideration as to the degree of such impairment by the administrator on his own motion or upon application of any party in interest.

(22) In any case in which there shall be loss of, or loss of use of more than one member or parts of more than one member set forth in subsections (c)(1) to (c)(19) of this section, not amounting to permanent total disability, the award of disability benefits shall be for the loss of, or loss of use of each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, subsection (c)(17) of this section shall apply.

(d) An award for disability may be made after the death of the injured employee. Any disability benefits to which any deceased claimant would be entitled under subsection (c) of this section shall, notwithstanding death arising from contributing causes other than the injury, be payable to and for the benefit of the following persons:

(1) If there be a surviving spouse, and no child of the deceased, to such spouse.

(2) If there be a surviving spouse, and surviving child or children of the deceased, one half shall be payable to the surviving spouse and the other half to the surviving child or children.

(3) If there be a surviving child or children of the deceased, but no surviving spouse, then to such child or children.

(e) *Temporary Partial Disability.* In case of temporary partial disability resulting in a decrease of earning capacity, the disability benefits shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage earning capacity after the injury in the same or another employment. Disability benefits are to be paid during the continuance of such disability, but no longer than five years.

(f) *Injury Increasing Disability.*

(1) If an employee receives an injury which of itself would only cause permanent partial disability but which, combined with a previous disability does in fact cause permanent total disability, the employer shall provide compensa-

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tion only for the disability caused by the subsequent injury; provided, however, that in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation in biweekly installments and at the same rate as the disability benefits paid for the subsequent injury shall be paid out of the Special Disability Fund established in 4 CMC § 9353; and

(2) In all other cases in which, following a previous disability, an employee receives an injury which is not covered by subsection (f)(1) of this section, the employer shall provide compensation only for the disability caused by the subsequent injury. In determining disability benefits for the subsequent injury or death resulting therefrom, the average weekly wages shall be such sum as will reasonably represent the earning capacity of the employee at the time of subsequent injury.

(g) The wage earning capacity of an injured employee in cases of partial disability under subsection (c)(21) of this section and subsection (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage earning capacity; provided, that if the employee has no actual earnings or if his actual earnings do not fairly and reasonably represent his wage earning capacity, the administrator may, in the interest of justice, fix such wage earning capacity as shall be reasonable, having due regard for the nature of the injury, the degree of physical impairment, the employee's usual employment, and any other factors or circumstances in the case which may affect the capacity of the employee to earn wages in a disabled condition including the effect of disability as it may extend into the future.

(h) In cases under subsection (c)(21) and subsection (e) of this section, upon the determination of the administrator that it is in the best interest of an injured employee entitled to disability benefits, the administrator may approve agreed settlements of the interested parties discharging the liability of the employer for such disability benefits, notwithstanding the provisions of 4 CMC §§ 9324(b) and 9325; provided, that the sum so agreed upon shall be payable in installments and shall be subject to commutation under 4 CMC § 9323(j); and provided further, that if the employee should die from causes other than the injury after the administrator has approved an agreed settlement as provided for herein, the sum so approved shall be payable in the manner prescribed in this section, to and for the benefit of the persons enumerated in subsection (d) of this section.

Source: PL 6-33, § 1 (§ 9308), modified.