

# WEST VIRGINIA CODE: §23-4-1D

## **§23-4-1d. Method and time of payments for permanent disability.**

(a) If the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, makes an award for permanent partial or permanent total disability, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall start payment of benefits by mailing or delivering the amount due directly to the employee within fifteen working days from the date of the award: Provided, That the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may withhold payment of the portion of the award that is the subject of subsection (b) of this section until seventy-seven days have expired without an objection being filed.

(b) When the commission, successor to the commission, other private carrier, self-insured employer, the office of judges or the Workers' Compensation Board of Review, whichever is applicable, enters an order or provides notice granting the claimant a permanent total disability award and an objection or petition for appeal is filed by the employer, the commission the successor to the commission or other private carrier, payment of monthly permanent total disability benefits shall begin. However, any payment for a back period of benefits from the onset date of total permanent disability to the date of the award shall be limited to a period of twelve months of benefits. If, after all litigation is completed and the time for the filing of any further objections or appeals to the award has expired and the award of permanent total disability benefits is upheld, the claimant shall receive the remainder of benefits due to him or her based upon the onset date of permanent total disability that was finally determined.

(c) If the claimant is owed any additional payment of back permanent total disability benefits, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall not only pay the claimant the sum owed but shall also add thereto interest at the simple rate of six percent per annum from the date of the initial award granting the total permanent disability to the date of the final order upholding the award. In the event that an intermediate order directed an earlier onset date of permanent total disability than was found in the initial award, the interest-earning period for that additional period shall begin upon the date of the intermediate award. Any interest payable shall be charged to the account of the employer or shall be paid by the employer if it has elected to carry its own risk.

(d) If a timely protest to the award is filed, as provided in section one or nine, article five of this chapter, benefits shall continue to be paid to the claimant benefits during the period of the disability unless it is subsequently found that the claimant was not entitled to receive the benefits, or any part thereof, in which event the commission shall, where the employer is a subscriber to the fund, credit the employer's account with the amount of the overpayment. If the final decision in any case determines that a claimant was not lawfully entitled to benefits

paid to him or her pursuant to a prior decision, the amount of benefit paid shall be considered overpaid. For all awards made or nonawarded partial benefits paid the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may only recover that amount by withholding, in whole or in part, as determined by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(e) An award for permanent partial disability shall be made as expeditiously as possible and in accordance with the time frame requirements promulgated by the board of managers.

(f) If a claimant is receiving benefits paid through a retirement plan, wage replacement plan, salary continuation plan or other benefit plan provided by the employer to which the employee has not contributed, and that plan does not provide an offset for permanent total disability benefits to which the claimant is also entitled under this chapter as a result of the same injury or disease, the employer shall notify the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, of the duplication of the benefits paid to the claimant. Upon receipt of the notice, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall reduce the permanent total disability benefits provided under this chapter by an amount sufficient to ensure that the claimant does not receive monthly benefits in excess of the amount provided by the employer's plan or the permanent total disability benefit, whichever is greater: Provided, That this subsection does not apply to benefits being paid under the terms and conditions of a collective bargaining agreement.