



2021 SOUTH CAROLINA WORKERS' COMPENSATION FUNDAMENTALS GENERAL PROVISIONS

Statute of Limitations (§ 42-15-40)

- 2 years from the date of an injury by accident
- Occupational disease: 2 years from notice of diagnosis to Claimant
- Repetitive trauma injuries **on or after** July 1, 2007: 2 years after Claimant knew or should have known the injury was compensable, and no more than 7 years from date of last exposure
- Repetitive trauma injuries **before** July 1, 2007: 2 years after date of last exposure
- Statute of limitations tolled by payment of compensation or filing of Form 50
- Change of Condition claim: 1 year from date of last payment of an award of compensation

Average Weekly Wage (AWW) (§ 42-1-40)

- Standard method of calculation based on Claimant's employment during the 4 quarters preceding the quarter in which the accident occurred

Gross Wages divided by Total Number of Weeks Worked

Calculation must include all jobs worked in the previous 4 quarters
- Use an alternative calculation if:
Period of time worked is too short, OR
Upon a showing that the standard method of calculation is unfair

Compensation Rate (Comp Rate)

- 66 2/3% of the AWW, subject to maximum and minimum comp rates

Maximum Rates

2016	\$784.03	2017	\$806.92	2018	\$838.21
2019	\$845.74	2020	\$866.67	2021	\$903.40

Minimum Rate is \$75.00 unless this amount exceeds the Claimant's AWW

Mileage and Expense Reimbursement

- 56¢ per mile—for medical visits > 5 miles from home, includes pharmacy visits
- Actual expenses for transportation, lodging, and subsistence may also be reimbursable

Useful Information for Dates of Accident July 1, 2007 and Later

- Generally: Procedural changes in the filing of claims are effective immediately; substantive changes to the law of workers' compensation only apply to accidents occurring on or after July 1, 2007.
- In repetitive trauma claims, Claimant must give notice to Employer within 90 days from when the Claimant could have reasonably discovered the condition was compensable (§ 42-15-20 (C))
- In claims for stress, repetitive trauma, aggravation, ongoing medical treatment after 10 weeks, and Dodge medicals, a doctor must state causation to "a reasonable degree of medical certainty"
- Employer/Carrier may contact treating physician without consent but must:

Notify Claimant beforehand

Advise Claimant of the purpose of the communication, and

Provide Claimant with written questions for doctor, and the doctor's response

Workers' Compensation Commission Contact Information

Main Line	(803) 737-5700	Coverage & Compliance	(803) 737-5707	Medical Services	(803) 737-5743
Executive Director	(803) 737-5744	Claims Department	(803) 737-5723	Judicial Department	(803) 737-5739

MEDICAL BENEFITS (§ 42-15-60 & §42-15-80)

Timing for Medical Treatment

- If claim is compensable, Claimant is entitled to medical treatment immediately after accident
- As may reasonably be required for a period not exceeding 10 weeks – HOWEVER –
- Treatment may be continued as long as the treatment will tend to lessen the period of disability

Type of Medical Benefits

- Medical, surgical, hospital, physical therapy, prescriptions, and other treatment prescribed by treating physician that effects a cure or gives relief
- Artificial and prosthetic devices that are causally related to the accident are provided for the lifetime of Claimant, including replacement and repairs (§ 42-15-60 & § 42-15-65)

Medical Records

- Employer/Carrier is entitled to all existing information pertaining to the claim compiled by health care facility or provider within 14 days of request (§ 42-15-95)
- Copying charge: 65¢/page for first 30 pages; 50¢/page thereafter
- Clerical fee: Not to exceed \$15.00 per request, plus actual postage costs and applicable sales tax

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PARTIAL DISABILITY – TEMPORARY AND PERMANENT (§ 42-9-10 & § 42-9-20)

- Paid when the Claimant's incapacity to work is partial
- Payments are 66 2/3% of the difference between AWW before injury and weekly wage earned after injury
- For a permanent and total wage loss award, Claimant must at a minimum injure a non-scheduled member or more than 1 scheduled member

TEMPORARY TOTAL DISABILITY BENEFITS (TTD)

Timing for TTD

- Claimant is entitled to TTD at his/her compensation rate when unable to work, per a physician's restrictions, for a period exceeding 7 days, until Claimant:
 - Reaches maximum medical improvement
 - Returns to work for at least 15 days
 - Is released to work with or without restrictions
 - Signs Form 17 agreeing that he/she is able to work; or
 - Refuses medical treatment provided (§ 42-15-60)
- If the period of disability exceeds 14 days, then Claimant is entitled to TTD beginning on the first date of work missed, including the first 7 days

Payment of TTD

- To start, adjust, or stop TTD within the first 150 days of injury, Employer/Carrier must file **Form 15**
 - If stopping TTD, filing Form 15 ceases benefits without a hearing
- After 150 days, Employer/Carrier must file Form 21 to stop TTD or TPD
 - After filing **Form 21**, Employer/Carrier continues to pay benefits until reaching agreement with Claimant, or the Commission issues an Order

PERMANENCY

Permanent Partial Disability (Scheduled Injuries under § 42-9-30 and Regulation 67-1101)

- For injuries to a scheduled member, Claimant receives compensation for the % loss of use of that member, not to exceed the maximum number of weeks assigned to the scheduled member

MEMBER	WEEKS	MEMBER	WEEKS	MEMBER	WEEKS
Arm	220	Foot	140	Nasal Passage	10-75
Back	300	Hand	185	Olfactory Nerve	10-75
If >50%, then	500	Hip*	280	Pancreas	10-500
Brain	5-250	Hearing (1 ear)	80	Rib	1.5-10
Coccyx	1-10	Hearing (both)	165	Shoulder*	300
Eye	140	Intestine (small)	10-400	Sinus	5-30
Fingers		Kidney	25-400	Skin	5-300
Thumb	65	Larynx	25-400	Stomach	25-500
Index	40	Leg	195	Toes	
Middle	35	Liver	25-250	Great Toe	35
Ring	25	Lung	25-400	All other toes	10
Little	20	Mandible	10-100	Tooth	.5-2

*Values for Hip and Shoulder only apply when the date of accident is July 1, 2007, or later.

Permanent and Total Disability

- If Claimant sustains >50% loss of use of the back, Claimant is presumed totally disabled
 - Presumption is rebuttable for dates of injury of July 1, 2007, or later
 - If rebutted, Claimant's % disability over 50% is calculated using 500 weeks
 - Example: loss of 75% to the back would qualify for an award of 375 weeks
- Total loss of both shoulders, hips, arms, legs, or vision qualifies a Claimant for total disability
- If found totally disabled, Claimant is entitled to 500 weeks compensation and lifetime medical benefits
 - Compensation award may be credited with any previously paid indemnity benefits

Commonly Used Forms

- **Form 12A**
First Report of Injury
- **Form 14B***
Physician's Statement
- **Form 15**
Temporary Compensation Report (starts and stops compensation)
- **Form 15S**
Supplemental Report of Varying Temporary Partial Payments
- **Forms 16/16A***
Agreement for Permanent Disability/Disfigurement Compensation
- **Form 17**
Receipt of Compensation (stops TTD)
- **Form 18**
Periodic Report (six month report)
- **Form 19**
Status Report & Compensation Receipt (closes file)
- **Form 20**
Statement of Employee's Earnings (calculates AWW & Comp Rate)
- **Form 21**
Employer's Request for Hearing (to terminate/suspend TTD/TPD)
- **Form 22**
Claimant's Answer to Request for Hearing
- **Forms 50/52**
Employee's Request for Hearing
- **Forms 51/53**
Employer's Answer
- **Form 58**
Pre-Hearing Brief
- **Form 70**
Mediator Report to WCC

*For use with injuries July 1, 2007, or later



CLEMENT RIVERS, LLP
ATTORNEYS AT LAW

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ABOUT OUR FIRM

Clement Rivers, LLP, was founded July 1, 1965 as the successor to the law firm of Hagood, Rivers & Young, which began in 1915. The firm has an AV rating, the highest in the Martindale Hubbell Law Directory and offers decades of experience in virtually all areas of civil law and litigation.

SEMINARS

Our attorneys have become well known for our seminars, which offer relevant and topical information while also providing some entertainment value. We have written and performed plays, including one musical, for client in-house seminars, and we have also presented at the annual South Carolina Worker's Compensation Educational Seminar, as well as for several South Carolina Prima conferences and for the South Carolina Association of Counties. To learn more, or to schedule a time for our attorneys to take our road show to you, please contact Leslie Whitten.

MEMBERS OF THE WORKERS' COMPENSATION PRACTICE GROUP

- Represent self-insured employers and insurance carriers at all judicial levels throughout South Carolina
- Institute strategic partnering by coordinating Employer's business needs with Carrier's administrative objectives
- Provide quality legal service at a reasonable and competitive fee
- Provide mediation services
- American Law Firm Association (ALFA) Membership which gives the Group national exposure

CLEMENT RIVERS, LLP WORKERS' COMPENSATION GROUP MEMBERS



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Drake has defended workers' compensation claims for insurance carriers and self-insured employees for 31 years. His vast experience includes the defense of repetitive trauma claims and chemical exposure claims. He is currently handling multiple-claimant asbestos litigation in addition to complicated claims involving brain damage and heart attacks. He is particularly knowledgeable on the issues faced by self-insured companies. Drake serves on the American Law Firm Association Workers' Compensation Steering Committee which is comprised of several dozen lawyers nationwide who practice primarily workers' compensation defense law. This network provides unique opportunities for the employers we represent. Drake is also a Circuit Court Certified Mediator and is listed in Best Lawyers in America.



Wallace G. Holland, Former Chair

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Buster is the former chair of the firm's Workers' Compensation practice group and, in his more than 48 years of practice, he has earned a preeminent reputation in South Carolina for representing employers and their carriers in Workers' Compensation claims. Buster now serves exclusively as a mediator and has mediated over 1,250 cases. Buster is a *Circuit Court Certified Mediator*, and he regularly handles mediations from his office in Charleston and near his home in the Florence/Pee Dee area. He also served on the South Carolina Workers' Compensation Commission's task committee, which drafted proposed regulations requiring mediations in certain South Carolina Workers' Compensation claims. Buster is regularly listed in Best Lawyers in America and was named as a Super Lawyer in South Carolina Super Lawyer magazine several years. In 2013, he received the Lifetime Achievement Award from the South Carolina Workers' Compensation Educational Association.



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In his workers' compensation practice, Robert has traveled statewide to defend employers and carriers on all types of workers' compensation claims. Robert is currently handling the defense of multiple-claimant lead exposure claims for large industries. He is also experienced in claims involving brain damage, lifetime benefits, and occupational diseases.

Leslie M. Whitten
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In her more than 18 years of defending Workers' Compensation claims, Leslie has defended numerous cases involving repetitive trauma claims and mental/mental injuries and has considerable experience representing large self-insured companies. Leslie is particularly knowledgeable on issues unique to the health care sector and is also a frequent speaker on developments in the field of workers' compensation. Leslie has received the AV Preeminent™ Rating Judicial Edition, which is the highest possible rating an attorney may receive for both legal ability and ethical standards.



Leslie M. Whitten, Partner

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In over 25 years of practice, Courtney has worked on both the defense and the claimant's side of workers' compensation matters. Now that she has returned to defense work, she is able to draw from this experience in defending employers and carriers in complicated brain damage cases and many other large-exposure claims.



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Steven has concentrated his practice in workers compensation law for more than 15 years representing both defendants and claimants. He also prosecuted with the Ninth Circuit Solicitor's office from 1993 – 2001.

For detailed biographical information, visit our website, www.ycrlaw.com.



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