



# Disability Benefits, Rates and Awards

Disability is a legal determination that reflects the impact of a workplace injury on the claimant's ability to work. The Workers' Compensation Law Judge establishes the level of disability based on the available medical evidence and other relevant information.

**AWARDS:** The maximum and minimum award rates are those that are in effect on the date of the accident, or the date of disablement.

## Maximum and Minimum Award Rates From 7/1/58 to Present

DATE OF ACCIDENT		MAXIMUM (in \$)				MINIMUM (in \$)				§15(6)
		TOTAL		PARTIAL		TOTAL		PARTIAL		
FROM	TO	TEMP	PERM	TEMP	PERM	TEMP	PERM	TEMP	PERM	
7/1/18	6/30/19	904.74				150				(a)
7/1/17	6/30/18	870.61				150				(a)
7/1/16	6/30/17	864.32				150				(a)
7/1/15	6/30/16	844.29				150				(a)
7/1/14	6/30/15	808.65				150				(a)
7/1/13	6/30/14	803.21				150				(a)
5/1/13	6/30/13	792.07				150				(a)
7/1/12	4/30/13	792.07				100				(a)
7/1/11	6/30/12	772.96				100				(a)
7/1/10	6/30/11	739.83				100				(a)
7/1/09	6/30/10	600				100				(a)
7/1/08	6/30/09	550				100				(a)
7/1/07	6/30/08	500				100				(a)
7/1/92	6/30/07	400*				40				(a)
7/1/91	6/30/92	350				40				(a)
7/1/90	6/30/91	340		280		30		20		(a)
7/1/85	6/30/90	300		150		30		20		(a)
7/1/84	6/30/85	275		135		30		20		(a)
7/1/83	6/30/84	255		125		30		20		(a)
1/1/79	6/30/83	215		105		30		20		(a)
7/1/78	12/31/78	180		105		30		20		(a)
1/1/78	6/30/78	125		105		30		20		(a)
7/1/74	12/31/77	125		95		30		20		(b)
7/1/70	6/30/74	95		80		30		20		(c)
7/1/68	6/30/70	85		70		30		20		(d)
7/1/65	6/30/68	60				20				(e)
7/1/62	6/30/65	55				20				(f)
7/1/60	6/30/62	50				20				(g)
7/1/58	6/30/60	45				20				(h)

\* Maximum rate for a WTC rescuer who worked for a private voluntary hospital is 3/4 of that claimant's wage on 9/11/01 (WCL § 15[6][a])



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**Schedule Loss of Use:** A schedule award is given not for an injury sustained, but for residual permanent physical and functional impairments.

## Loss of Use of Body Part: Maximum Number of Weeks Allowable for Compensation

Body Part	Maximum Number of Weeks
Arm	312 weeks
Leg	288 weeks
Hand	244 weeks
Thumb	75 weeks
First Finger	46 weeks
Second Finger	30 weeks
Third Finger	25 weeks
Fourth Finger	15 weeks
Foot	205 weeks
Great Toe	38 weeks
Other Toes	16 weeks
Eye	160 weeks

**Loss of Wage-Earning Capacity:** Loss of wage-earning capacity (LWEC) is the reduction in an injured worker’s earning capacity due to a work-related injury or disease. The determination of LWEC establishes the maximum number of benefit weeks available.

## LWEC and Maximum PPD Benefit

Loss of Wage-Earning Capacity	Maximum Weeks of PPD Benefits
15% or less	225 Weeks
16% - 30%	250 Weeks
31% - 40%	275 Weeks
41% - 50%	300 Weeks
51% - 60%	350 Weeks
61% - 70%	375 Weeks
71% - 75%	400 Weeks
76% - 80%	425 Weeks
81% - 85%	450 Weeks
86% - 90%	475 Weeks
91% - 96%	500 Weeks
96% or more	525 Weeks

The benefit rate is calculated under WCL § 15(5), and is based on wage earning capacity (WEC) per WCL § 15(5-a). For a working claimant, the earnings represent the claimant’s wage earning capacity, and the compensation rate is two-thirds of the difference between the claimant’s average weekly wage and earnings. For a non-working claimant with a non-scheduled permanent partial disability, WEC is based on the Board’s assessment of impairment plus vocational factors. In such cases, the rate is reflective of the diminished WEC.



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For example, if the Board finds a 60% WEC, the non-working claimant would receive benefits at  $40\% * 2/3$  of the Average Weekly Wage, subject to statutory maximums per WCL § 15(6).

**Legal Determination of Loss of Wage Earning Capacity:** The Board must establish LWEC and WEC based on the facts in the case. The LWEC is determined based on medical evidence and vocational factors. Medical evidence includes the nature and degree of the work-related permanent physical and/or mental impairment and its impact on the claimant's functional abilities. The inquiry seeks to quantify how much earning power an injured worker has lost in light of his or her medical impairment, functional limitations, prior work history, education, skills, and aptitudes. There is no simple formula to determine loss of wage earning capacity. See Matter of Longley Jones Management Corp., 2012 NY Wrk Comp 60704882.

As to WEC, in *Matter of Rosales v Eugene J. Felice Landscaping*, AD3d, 2016 NY Slip Op 07239 (2016), the Appellate Division, Third Department, affirmed the Board's "determination to fix claimant's wage-earning capacity based on the undisputed evidence of his physical disability and loss of wage-earning his functional limitations and vocational impediments.