

**Workers' Compensation
Supervisor's Manual**

The following materials were prepared for the use of employers and their claims administrators in the general administration of their workers' compensation programs. Each employee's workers' compensation case is unique, however, and the statements in these materials may not apply to, or may not be accurate in the context of, an individual case. These materials have been placed on the Georgia State Board of Worker's Compensation "Board" website in order to make them more available to potential users. However, their placement on the Board's website should not be interpreted as the Board's approval, in whole or in part, of these materials.

Please be aware that the Workers' Compensation Laws, Rules and Regulations are subject to change on July 1 of each year. If you have any questions about the information contained in this manual, please contact your insurance carrier/claims administrator or the State Board of Workers' Compensation.

July, 2005

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Temporary Total Disability (TTD) and

Temporary Partial Disability (TPD) Benefits

Maximum Weekly Compensation by Year of Accident
1990 -- 2003

<u>DOI Range</u>	<u>TTD Benefit</u>	<u>TPD Benefit</u>
7/1/05	450.00	300.00
7/1/03 – 6/30/05	425.00	284.00
7/1/01 – 6/30/03	400.00	268.00
7/1/00 – 6/30/01	375.00	250.00
7/1/99 -- 6/30/00	350.00	233.33
7/1/97 -- 6/30/99	325.00	216.67
7/1/96 -- 6/30/97	300.00	192.50
7/1/94 -- 6/30/96	275.00	192.50
7/1/92 -- 6/30/94	250.00	175.00
7/1/90 -- 6/30/92	225.00	150.00

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PLEASE NOTE: In workers’ compensation, some employers are insured and some employers are self-insured. Claims administration is carried out by a claims administrator who works for the insurer, third party administrator (TPA), or the employer’s claim office. References made in this manual to “claims administrator” would include all types of workers’ compensation insurance programs.

Chapter 1

Purpose, Introduction and History

I. Introduction and History

In 1920 the Georgia Workers' Compensation Act (the "Act") was passed into law. The Act was said to be "elective" and was presumed to be part of all employee/employer contracts. If the employer elected not to be covered by the Act and was sued under tort law, the employer could use traditional defenses such as assumption of the risk and contributory negligence. By 1972 all elective provisions of the Act were repealed. Every employer with three or more full or part-time employees regularly in service and in the same business is subject to the provisions of the Act. Certain types of employees are exceptions to the Act, such as railroad workers, farm laborers, real estate salespersons and domestic workers. See, O.C.G.A. §34-9-2.

Prior to 1920, the only recourse employees injured on the job had was to sue the employer under common law principles and prove negligence in order to recover cost from an injury or death on the job. Present workers' compensation law provides that the employer assume the cost of work-related injuries arising out of and in the course of employment. Workers' compensation is the exclusive remedy for recovery in Georgia for work-related injury, illness or death.

The Act is contained in the Official Code of Georgia, Title 34, Chapter 9. The Georgia State Board of Workers' Compensation administers the Act. The Governor appoints its three Board members (called directors) to four-year terms. The Board's major responsibilities include: conducting hearings to determine if an injury is compensable and how much will be paid in benefits; setting procedural rules to govern functions and hearings before the administrative law judges and the appellate division; in some aspects, regulation of insurance companies; and monitoring all claims for accuracy of payments for the duration of the claim.

Since 1920 when the Act became law in Georgia, there have been several important changes. In 1975 and 1985, the Act was expanded to require that the employer pay for the employee's vocational and medical rehabilitation. In July of 1992, the Act was revised to state that in the event of a catastrophic injury, the employer should provide a rehabilitation supplier within 48 hours of accepting the claim as a

compensable injury. Effective July 1, 1995, the Board was given the authority to prosecute and hear fraud cases and levy fines up to \$10,000 against employees, employer/insurers, and medical providers.

II. Major Objectives of Workers' Compensation Law

- A. Regardless of fault, to provide direct, immediate, necessary and reasonable medical, rehabilitation and income benefits to employees for work-related injuries, illness and/or income benefits to their dependents in case of death.
- B. To ensure prompt delivery of quality medical care for the injured employee and restore the employee to suitable employment.
- C. To encourage employer and employee interest in work place safety.

Chapter 2

Important Terms/Frequently Asked Questions

I. Important Terms

This section identifies some of the more common and important terms related to workers' compensation.

- A. **"Board"** means the Georgia State Board of Workers' Compensation.
- B. **"Employee"** generally means every person, including minors, in the service of another under any contract of hire or apprenticeship, written or implied, except a person whose employment is not in the usual course of the trade, business, occupation or profession of the employer. For a more complete definition, see O.C.G.A. §34-9-1(2).
- C. **"Employer"** generally means any individual, firm, association, or public or private corporation engaged in any business, employing three or more persons. For a more complete definition, see O.C.G.A. §34-9-1(3).
- D. **"Occupational Injury"** means an accidental injury arising out of and in the course of employment. Occupational diseases are included only to the extent specified in the Act.
- E. **"Catastrophic Injury"** is defined as severe paralysis; amputation of an arm, leg, hand, or foot; severe brain injury; second- or third-degree burns over 25 percent of the body or 5 percent of the face and hands; or total blindness. Other injuries that prevent the employee from performing his or her prior work and any work available in substantial numbers in the national economy could qualify. For a more complete definition, see O.C.G.A. §34-9-200.1(g).
- F. **"Change in Condition"** means a change in the wage-earning capacity, physical condition or status of an employee or other beneficiary covered by workers' compensation. This change in condition must have occurred after the date on which such wage-earning capacity, physical condition or status was last established by Board award or otherwise.

- G. **"Controvert"** is a formal notice by the employer to the Board that a claim for indemnity and/or medical benefits is being denied. The controvert form (Form WC-1, Part C or Form WC-3) must be filed within 21 days from the date the employer is aware of the injury in order to avoid penalties.
- H.. **"Notice"** of an on-the-job injury should be given by the employee to the employer within 30 days of the date of injury. Immediate notice will prevent administrative delay in the investigation and processing of the claim and insure prompt and appropriate medical treatment for the employee.
- I. **"Statute of Limitations"** relates to when a claim must legally be filed. A claim for workers' compensation benefits must be filed within one year from the date of injury or from the date of the last employer-provided medical treatment within the original period of limitation or it is barred from recovery. Once income benefits have been provided, an employee has two years from the last date of income benefits paid to seek reinstatement of income benefits, if he or she has a change in condition that caused the employee to again suffer economic disability. As of July 1, 1990, there is four-year statute of limitations on claims for permanent partial disability benefits.
- J. **"Subrogation"** permits the employer to institute an action against a third party to collect its expenses in workers' compensation benefits paid, when an employee is injured due to the fault of that third party.

II. Frequently Asked Questions

It is very important that the injured employee and the employer cooperate with the authorized treating physician regarding claim investigation, medical evaluations, treatment and rehabilitation services to assist in the administration of the employee's claim and medical recovery. Failure to do so may also affect the continuation of the employee's benefits.

A. **Exactly what is workers' compensation?**

Workers' compensation is a benefit program that provides medical and income benefits, and in certain circumstances, rehabilitation to an employee injured on the job. This program

may also provide benefits to an employee's dependents if death results from an on-the-job injury.

B. When does coverage begin?

Coverage begins under the workers' compensation program on an employee's first day on the job.

C. What is considered an on-the-job injury?

Any injury or illness arising out of and in the course of employment is by definition an on-the-job injury. Claims for injury occurring during breaks, lunch or personal activity may not be compensable.

D. What should supervisors do when an employee is injured?

Make sure the injured employee is given the opportunity to choose a physician from the Posted Panel of Physicians and is explained the Employee's Bill of Rights as provided by law. Make sure the injury is reported in accordance with company procedures and the Act.

Failure to follow these procedures could delay or jeopardize the employee's claim, delay the employee's recovery and return to work, result in employer penalties, and/or allow the employee to choose a non-panel physician.

E. Are on-the-job accidents or injuries investigated?

Yes, your company's insurance carrier or claims administrator, and sometimes OSHA, may investigate on-the-job accidents or injuries. Investigations are necessary to determine how an injury occurred, if the injury is compensable, and find ways to prevent similar injuries from happening again.

F. Are employee misconduct claims resulting in on-the-job injuries covered?

Generally, workers' compensation law does not provide benefits for an injury or accident resulting from an employee's willful misconduct.

G. What if the supervisor is concerned about safety records?

Any safety program that encourages employees to be safety conscious and prevent accidents is recommended and supported by the Board. Safety records should not, however, interfere with or take precedence over the prompt and proper reporting of employee injuries and accidents.

H. If an employee goes to his or her personal physician for treatment for an on-the-job injury, is the employer responsible for paying the medical costs?

Generally, no. The law requires the company to post in a conspicuous place at each work location a list of at least six physicians who are authorized to treat on-the-job injuries, at no cost to the employee. When an on-the-job injury occurs, the injured employee must select a physician from the Posted Panel of Physicians for treatment. If the employee is dissatisfied with the first selection, the employee is allowed one change to another physician from the Posted Panel of Physicians.

I. What must supervisors do if emergency treatment is needed?

If a true emergency situation exists, get temporary medical care from the nearest emergency location available. Once the emergency is over, however, the injured employee must return to a physician from the Posted Panel of Physicians for continued treatment. The employer may not be responsible for coverage of unauthorized treatment once the emergency is over.

J. What happens if an injured employee needs surgery?

Except in cases of an emergency, although not required by law, most employers prefer that the doctor communicate with the employer's workers' compensation administrator, the employee and the employer prior to scheduling any major surgical procedure for an on-the-job injury. The claims administrator will work with the injured employee and the treating physician to ensure that all appropriate and necessary arrangements are made. For appropriate action in the event of an emergency, see I. above.

K. What if the doctor says an injured employee needs a MRI or CT scan?

The doctor will schedule the MRI/CT scan. Precertification is not required by the Act, but contacting the insurance carrier/claims administrator may help identify cost-saving provider contracts. However, inappropriate delay in providing tests ordered by the authorized treating physician may result in employer penalties.

L. What if an injured employee needs physical therapy?

This is a benefit provided by workers' compensation programs. Again, precertification is not required by the Act. However, if the employer has contracted with specified providers, make sure the employee is aware of that option. Physical therapy is considered part of medical treatment and employees attend as directed by the authorized treating physician. Inappropriate delay in providing therapy ordered by the authorized treating physician may result in employer penalties.

M. Does the employee pay a portion of the medical charges?

No. Physician's bills and other medical bills are fully covered if a physician on the Posted Panel of Physicians treats the employee. All medical charges are paid according to the Medical Fee Schedule. Therefore, if providers bill above the fee schedule limits, the excess charges are not required to be paid by the employer or the employee. Employers who are billed for excess charges should simply notify the insurance carrier or claims administrator. Should the employee choose, however, to go to a physician that is not on the Posted Panel of Physicians, this may be considered unauthorized treatment and the company may not be required to pay for the charges.

The claims administrator/workers' compensation carrier coordinates all on-the-job injuries with the health insurance carrier.

N. Must the employee submit to medical examinations at reasonable times?

As long as the employee is receiving compensation, he is required to be examined by the authorized treating physician at

reasonable times. If the employee refuses to do so, his right to compensation shall be suspended until such refusal or objection ceases.

O. Does the employee get reimbursed for prescription drugs, parking, meals, prescribed medical supplies, and travel expenses?

Prescription drugs are covered by the Workers' Compensation Act. The employee should check with the employer to determine if any special arrangements have been made for direct payment of prescription charges. If not, the employee should pay for the prescriptions and submit the bill for reimbursement to the insurance carrier or claims administrator.

Under the Act, employees are entitled to reimbursement for parking, mileage, and some meals. Requests for mileage reimbursement should show exact miles and locations, and must be submitted within one year of the date of service.. The Board sets the mileage reimbursement rate. Supervisors should discuss other expenses with the claims administrator or workers' compensation carrier. Reimbursement payments must be paid within thirty (30) days or they may be subject to a late payment penalty.

P. What happens if an employee is unable to work because of the on-the-job injury?

An injured employee is entitled to receive weekly temporary total disability benefits if the employee misses more than seven days from work. The first check should be mailed within 21 days after the first day the employee misses work. If the employee is out more than 21 consecutive days due to his or her injury, the employee will be paid for the first seven days. The employee will receive two-thirds of his/her average weekly wage, but not more than the maximum rate provided by the Act at the time of injury.

Q. How long will the injured employee receive weekly temporary total disability benefits?

Effective July 1, 1992, for non-catastrophic injuries, the injured employee is eligible for weekly income benefits for as long as

he or she is totally disabled, up to a maximum of 400 weeks from the date of injury.

For catastrophic injuries, the employee is entitled to receive weekly income benefits for as long as he/she is totally disabled.

R. What happens to an injured employee's benefits if the physician authorizes a light-duty return to work?

Every effort should be made to return the injured employee to work in a suitable light-duty job. If no light-duty job is available for the employee, the employee continues to be entitled to disability benefits. If the employee remains out of work in a light-duty status for 52 consecutive weeks or a maximum of 78 aggregate weeks, the weekly income benefit can be reduced automatically by law from the temporary total disability rate to the temporary partial disability rate.

Also, if the employee has been released to light duty and a light-duty job is available, most employers will expect the employee to return to work. A refusal to return to work in this situation could result in suspension of workers' compensation benefits. The law allows a 15-workday "grace period" so that the employee may attempt to perform a light-duty job without fear of losing benefits.

S. What if the employee can no longer do his or her regular job and must take a lower paying job once released to return to work?

The injured employee may be eligible to receive temporary partial disability benefits based on a reduction in earnings. The employee will receive two-thirds of the difference between the pre-injury and post-injury average weekly rates of pay not to exceed the rate provided by the Workers' Compensation Act at the time of injury. These benefits will terminate when the employee's average weekly wage is the same or greater than the pre-injury wage or upon a maximum payment of 350 weeks from the date of injury.

T. What happens if the employee's on-the-job injury causes permanent partial disability?

The supervisor should be aware of available modified or alternative work and is responsible for communicating with the employee regarding modified or alternative work. This is important as the availability of alternative work affects entitlement to workers' compensation indemnity benefits.

U. Will the injured employee's dependents receive benefits if death occurs as the result of an on-the-job injury?

Yes. Death benefits are payable to eligible dependents (i.e.: dependent spouse, minor children) of an employee whose on-the-job injuries resulted in death. The Act provides the employer shall pay the dependents that are wholly dependent on the deceased employee's earnings for support at the time of the injury. Dependents are entitled to a weekly compensation equal to two-thirds of the deceased employee's average weekly wage (not to exceed the maximum rate provided by the Act at the time of the injury.) The number of dependents does not affect the benefit amount. When the surviving spouse is the sole dependent of a deceased employee, depending on date of injury, total benefits are limited to a maximum of \$100,000 (effective July 1, 1992) or \$125,000 (effective July 1, 2000). The dependency of a spouse and of a partial dependent shall terminate at age 65 or after payment of 400 weeks of benefits, whichever provides greater benefits. A child's benefit will terminate at the age of 18 unless the child is physically or mentally incapable of earning a livelihood, or at age 22 if he or she is a full-time student enrolled in a post-secondary school.

Burial expenses will be paid up to a maximum amount as provided by the Act. See O.C.G.A. §34-9-265.

V. What happens if an employee re-injures a pre-existing condition or injury?

The workers' compensation law limits the extent to which an aggravation of a pre-existing condition or injury is compensable. An aggravation of a pre-existing condition will only be found to be compensable while the aggravation is the cause of the disability. Once the aggravation resolves and the injured employee returns to the pre-injury condition, the claim will no longer be compensable.

W. What if the injured employee's claim is denied by workers' compensation?

If the injured employee's claim is denied, the employee should be notified of the reasons for the denial by receipt of a Form WC-1, which is filed with the Board by the claims administrator. The employee has the right to request a hearing before the State Board of Workers' Compensation if he or she disagrees with the denial of the claim.

Chapter 3

Handling Claims

I. Supervisor's Checklist

- A. Notify the designated person immediately of an on-the-job injury requiring medical attention.
- B. Make sure that the Posted Panel of Physicians and the Employees' Bill of Rights are posted in at least one conspicuous place on the work premises.
- C. Be familiar with the members of the Posted Panel of Physicians and the services of each physician.
- D. Make sure that employees understand the function of the Posted Panel of Physicians and the Employees' Bill of Rights and the procedure to follow in case of a work-related injury.
- E. Supervisors or the designated person should make every effort to accompany the employee to the selected panel physician to discuss diagnosis and treatment. Keep in mind the employee has a right to a private medical examination.
- F. After any injury requiring treatment by a physician, make sure the WC-1 is quickly completed and forwarded to the workers' compensation claims administrator.
- G. Contact the injured employee regularly by telephone and/or personal visits. Encourage fellow employees to do likewise.

II. Requirements

- A. Once an accident or injury requiring treatment by a physician is reported, supervisors need to ensure that a Form WC-1 is promptly sent to the person designated by the company. This is extremely important so that a thorough investigation of the claim can be made. In order to avoid penalties, an employer must notify the Board within 21 days of the employer's knowledge of the injury if the employer is denying a claim.

- B. For injuries not requiring medical attention, the employer may require prompt (such as one day) notice to a certain designated person and additional reports, such as a first-aid report. For injuries requiring medical attention, supervisors or the designated person should ensure the injured employee selects a physician from the Posted Panel of Physicians posted at the work location. Supervisors should also explain and insure employees understand the Employees' Bill of Rights (also posted). If an emergency situation exists, supervisors should insure that injured employees seek the nearest medical facility or emergency room. After the emergency is over, any further treatment will be provided by a physician selected by the employee from the Posted Panel of Physicians.
- C. Supervisors should determine if company policy requires a management representative to accompany injured employees to the physician's office. By doing so, this management representative will know the extent of any limitations or restrictions the physician orders and can also respond to questions from the physician regarding job duties or availability. Keep in mind, the employee has the right to a private physical exam with the physician.
- D. If the physician prescribes medication for an employee, contact the workers' compensation claims administrator BEFORE the employee goes to the pharmacy. The company's prescription drug program may allow employees to obtain prescription drugs at a pharmacy at no charge to the employee. Otherwise, the employee will have to pay and be reimbursed by the workers' compensation insurance carrier.
- E. Supervisors should keep the workers' compensation claims administrator up to date on the status of all workers' compensation claims. **Penalties** may be assessed against a company if either lost-time or medical only cases are not reported properly to the Board.
- F. One of the primary purposes of the claims administrator is to provide assistance in the employee's safe return to work. Also, it is essential that supervisory personnel seek to foster the employee's safe return to appropriate work. When an employer receives a light-duty return to work from the employee's treating physician, the employer should make every effort to accommodate and find productive light-duty work.

- G. Effective July 1, 1994, an employee is allowed a 15-workday "grace period" so that an employee may attempt to perform a light-duty job without fear of losing benefits if unable to perform the job. Benefits are to be immediately reinstated if the employee cannot do the job. The law also provides that benefits may be unilaterally suspended when an employee refuses to attempt a light-duty job.
- H. Supervisors have a major impact in assisting the employee's return to work. Although not required by law, as often as possible, supervisors should visit or at least telephone those employees who are losing time due to injury. Employees may feel frustrated and forgotten without regular contact from their supervisor. If injured employees believe that no one at work cares how they are doing or whether they return, the incentive to return to work may be substantially lessened.

III. Transitional Return to Work Program

- A. Whenever an employee's ability to work is restricted due to a work-related injury, supervisors should contact the workers' compensation claims administrator for help in returning the employee to work. This applies to an employee who is losing time from work due to injury as well as situations in which an employee is working with restrictions.
- B. When attempting to identify appropriate light duty work, the supervisor should contact the workers' compensation claims administrator to assist with this process. The workers' compensation claims administrator can assist supervisors by arranging a meeting or appointment with the treating physician and the employee to discuss appropriate light duty work. At the meeting, the essential functions of the employee's position should be discussed in light of the employee's restrictions. A plan can then be developed to transition the employee into full-duty work within a specified time period.
- C. The State Board's website has a Return to Work Program Manual which may assist you in developing a Return to Work Program for your organization. www.sbwc.georgia.gov.

Chapter 4

Employer's Statutory Duties

I. General

Every employer subject to the Act is required to ensure payment of income, medical and rehabilitation benefits to injured employees.

II. Posted Panel of Physicians

Under Georgia law, an employer must post a Panel of Physicians from whom injured employees can seek treatment. This list of physicians must be placed in at least one prominent place on the business premises (i.e., near time clock, in break room, etc.) and reasonable measures must be taken to ensure that employees understand the function of the panel and their rights with regard to the selection of a physician. Employees are also to be given appropriate assistance in contacting panel physicians when necessary. If medical treatment is necessary after a job-related injury, the employee has the right to choose a physician from the panel. This physician becomes the employee's authorized treating physician. The authorized treating physician may arrange for any consultation, referral or other specialized medical services required to treat the employee's injury. As of July 1, 1994, a referral physician may not refer treatment to another physician. If the employee becomes dissatisfied with the original choice from the panel, he or she may make one change to another panel physician. It would be helpful for the company's records to have the employee complete a form evidencing the change in panel physician. Any further changes require the approval of the employer or the Board. Effective July 1, 1994, the Board has the authority to order a change of physician on its own motion or when the employer and the employee are unable to reach an agreement regarding a physician choice.

Employers may satisfy the requirements for furnishing medical care under O.C.G.A. §34-9-200 via one of three types of panels of physicians:

- A. Regular Panel – consists of six or more non-associated physicians. One must be an orthopedic surgeon and one a minority physician (whenever possible). Not more than two industrial clinics shall be posted on the panel. An employee

may accept the services of a physician selected by the employer from the panel or may select another physician from the panel. The Board may grant exceptions to the size of the panel where it is demonstrated that six physicians or group of physicians are not reasonably accessible.

- B. Conformed Panel – consists of ten physicians. It must meet requirements for the regular panel plus have general surgeons and a chiropractor.
- C. Managed Care Organization (WC/MCO) – The WC/MCO must be certified by the Board. The WC/MCO must offer a full array of medical specialties as well as medical case management.

Often an employee will receive treatment by his or her personal physician after an injury. This occurs even though workers' compensation procedures are stressed to employees at meetings and other forums. Treatment by other than a panel physician in a non-emergency situation may be unauthorized. Payment for any and all medical charges from the unauthorized physician would then be the employee's responsibility. In a true emergency situation, the nearest emergency location can be used, but only to the extent of the emergency. Follow-up treatment is to be provided by an authorized panel physician.

III. Notice of Injury

Workers' compensation law in Georgia requires both the employee and employer to report work-related injuries. The Act, in general, requires that an employee report an injury to the employer within 30 days after the occurrence of the injury. Notice can be mere "inquiry notice" as slight as a supervisor noticing an employee limping on the job. In such a situation, the Act requires the employer to question the employee regarding the nature and cause of the injury. This 30-day notice period is excepted if the employee was prevented from giving notice due to physical or mental incapacity or due to fraud or deceit on the part of the employer. The Board requires written notification from the employer within 21 days after notice of an injury that causes an employee's absence for more than seven calendar days.

IV. Important Deadlines

The Board imposes a number of deadlines upon employers that are critically important. Failure to meet these deadlines can result in penalties.

A. Employer Deadlines

1. Within 21 days of employer knowledge of an injury or disability, a first report of injury (WC-1) must be filed with the Board if any employee loses more than seven days from work.
2. On the 21st day after employer knowledge of an injury, all benefits then due shall be paid or a 15% penalty shall be added.
3. On or before the 21st day of employer knowledge of an injury, the employer must file a “Notice to Controvert” (subsection C of Form WC-1 or a WC-3) if it elects to deny a claim. Failure to controvert a claim within 21 days may result in a 15% penalty on benefits accrued and payment of attorney’s fees.
4. Within 20 days of the date of an award, all income benefits shall be paid or the employer shall be subjected to a 20% penalty of accrued income benefits (unless a timely appeal is filed.)
5. After the 21st consecutive day of lost time following an injury, the employer must pay benefits due for the seven-day waiting period.
6. Within ten days from the date of a report establishing a permanent partial disability rating of an employee, the employer is assumed to have knowledge of the rating.
7. Within 48 hours of the acceptance of a catastrophic injury as compensable, the employer must file a Form WC-R1, “Request for Rehabilitation,” naming the

catastrophic supplier or giving reasons why rehabilitation is not necessary.

8. An authorized medical provider may request advance authorization for treatment or testing by completing Section 1 and 2 of Board Form WC/205 and faxing or emailing same to the insurer/self-insurer. The insurer/self-insurer shall respond by completing Section 3 of the WC-205 within five (5) business days of receipt of this form. The insurer/self-insurer's response shall be by facsimile transmission or email to the requesting authorized medical provider. If the insurer/self-insurer fails to respond to the WC-205 request within the five business day period, the treatment or testing stands pre-approved.

V. Employee Deadlines

- A. An employer's policy may require that an employee complete an incident report for injuries not requiring treatment by a physician. This is not a legal requirement.
- B. The law requires the employee, or his or her representative, to give notice of an injury to the employer within 30 days of the injury or disability.
- C. Within one year from the date of injury, the employee must file a claim with the Board or the right to compensation may be barred. There are two exceptions to this rule. First, if the employer has made payment of weekly benefits due to the injury, the claim may be filed within two years of the last payment of income benefits. Second, if the employer has furnished remedial medical treatment for the injury, the claim may be filed within one year after the date of last remedial treatment furnished by the employer. Cases involving employer fraud, mental incapacity or minors may also extend the time period for the employee to file a claim.
- D. Within two years of the date that the last payment of income benefits was actually made, the employee must file for a change in condition with the Board or a claim for future temporary disability benefits or temporary partial disability benefits may be barred.

- E. Within four years of the date that the last payment of income benefits was actually made, the employee must file for a change in condition with the Board or a claim for future permanent partial disability benefits may be barred.

Chapter 5

Types of Benefits

I. Income Benefits

A. Disability

There is a seven-calendar day waiting period before any income benefits are due. The seven-day waiting period includes those days the employee would not have worked even if there has been no injury (such as weekends, holidays, etc.) However, if the disability lasts for 21 consecutive days, compensation is retroactively paid for the first seven days. During the seven-day waiting period, an employee is entitled to receive medical benefits.

B. Types of Income Benefits

There are four basic income benefits available under the workers' compensation law to which an employee may be entitled. The maximum amount of workers' compensation benefits an employee can receive from an on-the-job injury, illness or death depends on the workers' compensation rate at the time of the injury and the employee's average weekly wage.

1. Temporary Total Disability Benefits (TTD)

Temporary total disability benefits are payable to those individuals who are totally incapacitated with total economic loss due to a compensable on-the-job injury. The employee is entitled to receive two thirds of his or her average weekly wage, not to exceed the maximum amount under the Act at the time of the injury. For non-catastrophic cases, payment of weekly benefits is limited to 400 weeks from the date of injury (if the injury occurred on or after July 1, 1992). The 400-week limit does not apply to catastrophic injury cases. For more information, see O.C.G.A. §34-9-261.

2. Temporary Partial Disability Benefits (TPD)

Temporary partial benefits are payable to employees injured on the job and determined by the authorized

treating physician to be unable to work full duty. The employee is entitled to receive two thirds of the difference between his or her average weekly wage before the injury and the average weekly wage the employee is able to earn after the injury, not to exceed the maximum amount under the Act (at the time of the injury). An employee may not recover temporary partial benefits for longer than 350 weeks from the date of injury. For more information, see O.C.G.A. §34-9-262.

However, in some circumstances, if a light-duty job is not available and the employee remains out of work in a light-duty status for 52 consecutive weeks (or 78 aggregate weeks), income benefits can be reduced automatically from temporary total disability benefits to the maximum eligible temporary partial disability benefits. The employer must notify the employee of this possibility within sixty days from receipt of the doctor's report containing the release (Form WC-104), in compliance with the requirements of Board Rule 104. For more information, see O.C.G.A. §34-9-104 and Board Rule 104.

If the employee is given a light-duty release and a light-duty job is available, the employee is encouraged to return to work. The Act provides for a 15 working day "grace period." This allows an employee to attempt to perform a light-duty job without fear of losing benefits if he or she is medically unable to perform the job duties. The employer must notify the employee of an offer of employment that is suitable to the impaired condition by filing a Form WC-240 at least ten days prior to the date the employee is expected to return to work.

3. Permanent Partial Disability Benefits (PPD)

Permanent partial disability benefits are payable to an individual who, as a consequence of a compensable on-the-job injury, suffers disability that is "partial in character but permanent in quality resulting from loss or loss of use of body members or from the partial use of the employee's body as a whole." It is payable based upon a percentage given by a physician in accordance

with the current American Medical Association Guidelines. The benefits are calculated by a formula multiplying a specified number of weeks assigned by statute (O.C.G.A. §34-9-263) times the percentage rating times the weekly benefit rate. Not all injuries result in ratings assigned by a physician.

4. Death Benefits

Death benefits are payable to eligible dependents (i.e.: dependent spouse, minor children) of an employee whose on-the-job injuries resulted in death. The Act provides that the employer shall pay the dependents that are wholly dependent on the deceased employee's earnings for support at the time of the injury. Dependents are entitled to a weekly compensation equal to two-thirds of the deceased employee's average weekly wage (not to exceed the maximum rate provided by the Act at the time of the injury). The number of dependents does not affect the benefit amount. When the surviving spouse is the sole dependent of a deceased employee, depending on date of injury, total benefits are limited to a maximum of \$100,000 (effective July 1, 1992) or \$125,000 (effective July 1, 2000). The dependency of a spouse and of a partial dependent shall terminate at age 65 or after payment of 400 weeks of benefits, whichever provides greater benefits. A child's benefit will terminate at the age of 18 unless the child is physically or mentally incapable of earning a livelihood, or at age 22 if he/she is a full-time student enrolled in a post-secondary school.

Burial expenses are payable up to the maximum allowed under the Act at the time of injury.

II. Medical Benefits

An employer shall furnish the injured employee medical treatment that is reasonable and necessary, and such medical, surgical, and hospital care, items, and services that are prescribed by an authorized licensed physician (including medical and surgical supplies, artificial members, and prosthetic devices and aids damaged or destroyed in a compensable accident.) The Act also provides that the medical provider must bill the employer and not the employee. All payments for medical expenses must be made within 30 days of receipt of the

bill with attached documentation from the medical provider to either the employer or the employer's workers' compensation insurance carrier. If the charges are not paid within the 30-day time frame, the Board may assess a penalty of up to 20% of a reasonable medical charge. The provider must submit its charges to the employer/insurer within one year of the date of service, or it will be deemed to have waived its right to collect.

III. Rehabilitation Benefits

In the event of a catastrophic injury, the employer is required to provide reasonable and necessary rehabilitation services. The employer either shall appoint a registered rehabilitation supplier or give reason why the rehabilitation is not necessary within 48 hours of the employer's acceptance of the injury as compensable or notification of a final determination of compensability, whichever occurs later. The necessity of rehabilitation services is subject to Board approval. Catastrophic injury means any injury that is one of the following:

- A. Spinal cord injury involving severe paralysis of an arm, a leg or the trunk;
- B. Amputation of an arm, a hand, a foot or a leg involving the effective loss of use of that appendage;
- C. Severe brain or closed head injury as evidenced by:
 - 1. Severe sensory or motor disturbances;
 - 2. Severe communication disturbances;
 - 3. Severe complex integrated disturbances of cerebral function;
 - 4. Severe disturbances of consciousness;
 - 5. Severe episodic neurological disorders; or
 - 6. Other conditions at least as severe in nature as any condition provided in subparagraphs (A) through (E) of this paragraph;
- D. Second- or third-degree burns over 25 percent of the body as a whole or third-degree burns to 5 percent or more of the face or hands;
- E. Total or industrial blindness; or

- F. Any other injury of a nature and severity that prevents the employee from being able to perform his or her prior work and any work available in substantial numbers within the national economy for which such employee is otherwise qualified. A decision granting or denying disability income benefits under Title II or supplemental security income benefits under Title XVI of the Social Security Act shall be admissible in evidence and the Board shall give the evidence the consideration and deference due under the circumstances regarding the issue of whether the injury is a catastrophic injury; provided, however, that no presumption shall be created by any decision granting or denying disability benefits under Title II or supplementary security income benefits under Title XVI of the Social Security Act.

IV. Occupational Diseases

“Occupational disease” means those diseases that arise out of and in the course of the particular trade, occupation, process or employment in which the employee is exposed to such disease, provided the employee or the employee's dependents first prove to the satisfaction of the State Board of Workers' Compensation all of the following:

- A. A direct causal connection between the conditions under which the work is performed and the disease;
- B. That the disease followed as a natural incident of exposure by reason of the employment;
- C. That the disease is not of a character to which the employee may have had substantial exposure outside of the employment;
- D. That the disease is not an ordinary disease of life to which the general public is exposed;
- E. That the disease must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence.

V. Prerequisites to Compensation for Occupational Diseases

Where the employer and employee are subject to the Act, the disablement or death of an employee resulting from an occupational disease shall be treated as the occurrence of an injury by accident.

The employee or, in the case of his or her death, the employee's dependents shall be entitled to compensation.

An employer shall be liable for compensation under the Act for an occupational disease only where:

- A. The disease arose out of and in the course of the employment in which the employee was engaged under such employer, was contracted while the employee was so engaged, and has resulted from a hazard characteristic of the employment in excess of the hazards of such disease attending employment in general;
- B. The claim for disablement is filed within one year after the date the employee knew or, in the exercise of reasonable diligence, should have known of the disablement and its relationship to the employment; but in no event shall the claim for disablement be filed in excess of seven years after the last injurious exposure to the hazard of such disease in such employment provided, however, that an employee with asbestosis or mesothelioma related to exposure to asbestos shall have one year from the date of first disablement after diagnosis of such disease to file a claim for disablement. In cases of death where the cause of action was not barred during the employee's life, the claim must be filed within one year of the date of death.

Any claimant who shall be entitled to compensation under the Act shall be entitled to burial expenses and medical, hospital and other treatment in the same amounts and with the same limitations and conditions as provided in the Act for injured employees. See O.C.G.A. §34-9-200 and §34-9-265.

VI. Pre-Existing Condition or Injury

Generally, an aggravation of a pre-existing condition will only be found to be compensable while the aggravation is the cause of the disability. Once the employee returns to the pre-existing condition, the claim may no longer be compensable.

Chapter 6

Claims Processing

I. Functional Responsibilities

An employer's workers' compensation administrator has three major responsibilities: 1) the thorough investigation and management of all workers' compensation claims; 2) the accumulation, analysis and management of all cost related to all medical reports, physician's fees, hospital fees, funeral expenses, rehabilitation expenses and other associated costs related to each claim; and 3) the processing of workers' compensation checks to employees who qualify for income benefits and the processing of authorized workers' compensation related medical bills either through the employer or insurance company.

A. Form WC-1

An employee's immediate supervisor/manager must submit all reports of accident/injury to the workers' compensation claims administrator when an injured employee receives medical treatment by a physician and/or begins to lose time. The workers' compensation administrator is required to file the WC-1 with the Board. Company policy may also require that this information be also provided to the safety or risk management departments so the accident can be investigated.

Company policy may also require that the supervisor document the incident in writing and file the document for future reference. Supervisors should make employees aware of their responsibility to report injuries, under the Act and under pertinent company policies.

The WC-1 asks if the employee worked the day following the injury. If this question is answered yes, the claim will be filed by the workers' compensation administrator and will await medical charges. If answered no, income benefits may be due. Benefits for temporary total disability are payable from the 8th day of disability. The income payment is late if it is not paid on or before the 21st day following the lost-time date on the WC-1. This would begin the income benefits as provided in the Act. If an employee returns to work, but is later out of work due to the injury, the supervisor/manager should immediately notify the

workers' compensation claims administrator. The same is true when an employee returns to work. Such communication will ensure that benefits are not overpaid or underpaid, which may eliminate problems for the injured employee and the workers' compensation administrator when the employee returns to work.

B. Benefits Calculation

Weekly income benefits are determined in several ways. The most common method is to calculate the benefit by multiplying the employee's average weekly wage for the 13 weeks immediately preceding the date of the accident by two-thirds. This calculated amount cannot exceed the maximum rate provided by the Act at the time of the injury. The date of the injury controls the maximum weekly benefit amount allowed.

If an injured employee loses wages due to modified work related to a disability, the employer will pay the difference in the pre-injury average weekly wage and what the employee is capable of earning in a modified job up to the maximum rate provided by the Act at the time of the injury.

Chapter 7

Subsequent Injury Trust Fund

I. Georgia Subsequent Injury Trust Fund

The Georgia Subsequent Injury Trust Fund (SITF) was established in 1977 as a separate state agency independent from any other department. The SITF will reimburse an employer for workers' compensation benefits paid when an employee is injured and the injury combines with a previous, known impairment to cause greater disability.

II. Purpose of SITF

The SITF was established as an incentive to employers to hire workers with disabilities caused by prior injuries. For example, an individual has back surgery and subsequently is hired by a new employer. If that individual then has a new back injury, the new employer is responsible for any aggravation to the previous back condition. If the new employer meets the requirements for reimbursement by the SITF as set forth in O.C.G.A. §34-9-360, the employer will be reimbursed for a portion of medical expenses and indemnity benefits paid to the injured employee.

III. Eligibility Requirements

In order to obtain reimbursement from the SITF, the employer must prove the following:

- A. The employee must have a pre-existing impairment that the employer considers to be permanent and a hindrance to employment.
- B. The employer must have knowledge of the prior impairment before the subsequent injury occurs.
- C. The employee's subsequent injury must be either directly caused by the prior impairment or combined with the prior impairment to create a greater disability.

IV. Reimbursement

If the SITF accepts the employer's claim, indemnity benefits are reimbursed after the employer has paid a 104-week deductible. Medical and rehabilitation benefits are reimbursed after the employer has paid the first \$5,000 in medical and rehabilitation benefits. The SITF will pay 50% of the next \$5,000 and then 100% of all medical payments exceeding \$10,000.

V. Steps to Take Now to Prepare for a Future SITF Claim

In order to establish knowledge of a prior condition, the following records should be maintained:

- A. Employment application
- B. Post employment health questionnaire -- Although the Americans with Disabilities Act does not allow the employer to ask medical questions prior to employment, a post employment health questionnaire may be used. Information regarding previous conditions or operations may be of use for a future SITF claim.
- C. Sick leave records
- D. Group insurance claims
- E. Workers' compensation claims

In addition to the above, if the supervisor learns of a previous medical condition after an individual has been hired, the supervisor should notify the company's human resources office. This information may be used later to support knowledge of a pre-existing condition. Appropriate measures should be taken to maintain this information in a manner which protects the injured employee's privacy as required by the Americans with Disabilities Act.

VI. How to File a Claim with the SITF

Your claims administrator will file a claim with the SITF if there is an indication that a pre-existing condition may have caused the injury or caused a greater disability when combined with a new injury. The claims administrator will file the following forms:

- A. Notice of Claim Form – This form must be filed with SITF no later than 78 weeks following the injury or the payment of an amount equivalent to 78 weeks of income benefits.
- B. Employer Knowledge Affidavit Form – The supervisor will be asked to complete this form in order to prove knowledge of the prior condition and that the supervisor considered the condition to be permanent and a hindrance to employment.
- C. Documentation supporting merger between the pre-existing condition and the subsequent injury. The claims administrator will usually request a letter from the treating physician to support merger.

Chapter 8

Workers' Compensation Medical Programs

I. Medical Care

The Act provides that authorized medical care be furnished at no cost to the injured employee.

II. Posted Panel of Physicians

The employer is required by law to post a Panel of Physicians and to explain the employee's Bill of Rights and give the employee the opportunity to choose a physician from the Posted Panel of Physicians. Supervisors are encouraged to assist employees in obtaining an appointment with the physician the employee chooses from the Posted Panel of Physicians. If the employee willfully seeks treatment from a physician not on the Panel of Physicians, coverage may not be provided by workers' compensation for the costs of medical care.

III. Panel of Physicians Options

There are three panel options available to employers under the Act. Each employer selects the option that best meets the needs of the company and their employees. The three options of Panel of Physicians are:

- A. Regular Panel – consists of six physicians. One must be an orthopedic surgeon and one a minority physician (whenever possible.) The Board may grant an exception to the size of the panel, where it is demonstrated that six physicians or group of physicians are not reasonably accessible.
- B. Conformed Panel – consists of ten physicians. It must meet requirements for the regular panel plus have general surgeons and a chiropractor.
- C. Managed Care Organization (WC/MCO) – The WC/MCO must be certified by the Board. The WC/MCO must offer a full array of medical specialties as well as medical case management.

IV. Covered Medical Expenses

When the employee seeks medical treatment from a posted panel of physicians, payment will be made in accordance with the Medical Fee Schedule for the related charges of the physician, hospital, radiologist, physical therapist, etc. If the employee receives a referral to another physician by the authorized treating physician and the treatment is related to the on-the-job injury, charges from this physician are also covered. Workers' compensation benefits also include payments for medical and surgical supplies, prosthetic devices, and medical aids damaged or destroyed in a compensable accident that has caused injury. The employee's parking and mileage to and from medical appointments are also reimbursable. If the employee or the healthcare provider fails to submit its charges within one year of the date of service, they have waived their right to collect such charges.

Workers' compensation law requires physicians to submit certain required forms and to accept payment within fee schedule limits. O.C.G.A. §34-9-205(b) forbids medical providers from billing the employee directly and from charging the employee for the portion of the medical expense that exceeds fee schedule limits.

An employee who has received indemnity (lost time) benefits has the right to one independent medical examination by a physician of the employee's choice. This physician does not have to be on the Posted Panel of Physicians. The examination must be scheduled within 120 days of receipt of any indemnity (lost time) benefits. The employee must notify the employer/insurer in writing in advance of the examination.

V. Medical Networks

Although not required by the Act, many employers/insurers have arranged for special services through medical networks making it easier for employees to obtain services. Check with your workers' compensation claims administrator regarding availability of these services.

A. Pharmacy Network

Participating pharmacies will bill workers' compensation directly for the cost of injury-related prescriptions eliminating the "out of pocket" expense to employees.

B. Mail Order Prescriptions

Employees taking long-term medications can receive their prescriptions via mail by making a phone call. This is especially helpful to disabled employees. However, not all companies have a mail-order prescription program. Please check with your workers' compensation claims administrator to see if this benefit is available.

C. Physical Therapy Network

Participating physical therapy networks will bill workers' compensation directly for the cost of injury-related physical therapy eliminating the "out of pocket" expense to employees.

Chapter 9

Safety and Health

Supervisors are responsible for the safety and health of individuals under their supervision and set the example in leadership and action. Supervisors should recognize, avoid and prevent possible hazards by knowing the work area, materials and equipment to be used. Safety is paramount and is the responsibility of everyone within the company. The following will help you in case of an accident.

I. Minor Injuries – No Medical Attention Required

- A. Some companies require completion of a first aid report within one day of the injury to serve as documentation of the date of the injury.

II. Medical Attention Required – Not Serious and No Lost Time

- A. Notify superiors, the safety and health advisors and the claims administrator/workers' compensation carrier.
- B. Complete an Employer's First Report of Injury (WC-1) within one working day and forward to the claims administrator/workers' compensation carrier.

III. Medical Attention Required – Serious, Possible Lost Time

- A. Call an ambulance.
- B. Notify the hospital to tell them an injured employee is enroute.
- C. Notify the safety and health advisor who will coordinate with the selection of a panel physician.
- D. Notify supervisor and the claims administrator/workers' compensation carrier.
- E. Complete an Employer's First Report of Injury (WC-1) within one working day.

V. Safety Library

Accident prevention is essential to prevent injuries and control workers' compensation costs. When strong safety programs are in place, workplace accidents are decreased, resulting in fewer lost-time days and lower medical and indemnity costs.

The State Board of Workers' Compensation's Safety Library is one of the resources available to assist in efforts toward accident prevention. The Safety Library contains over 400 videos on a wide variety of safety topics and is available to all employers in Georgia at no charge.

You can obtain a copy of the Safety Catalog by calling (404) 656-3697. To order a video, complete the form at the front of the Safety Catalog or call the telephone number provided above. The videos may be checked out for a period of two weeks. Information can also be obtained from the State Board website, www.sbwc.georgia.gov

Chapter 10

The Americans with Disabilities Act (ADA)

I. ADA Policy

A company's written ADA Policy, with approval of the corporate legal counsel, should be customized to the company's particular physical and corporate structure. Compliance begins with application for employment and continues through employment.

II. Medical Records

The ADA requires that medical records no longer be kept in an employee's personnel file. Therefore, all medical information applicable to on-the-job injuries should be sent directly to the workers' compensation claims administrator at the following address:

To be specified by your company

Designated management may keep medical information on employees if it is kept in separate, locked files.