



# Evans & Dixon, L.L.C.

## *Arkansas Workers' Compensation At-A-Glance*

Arkansas Workers' Compensation Commission  
<http://www.awcc.state.ar.us/>

### **Jurisdiction**

1. Accident in Arkansas
2. Contract of hire in AR & between AR resident and employer is in AR or general office in AR

### **Limitations § 11-9-701**

1. Claim must be filed w/in 2 yrs from DOI, unless compensation paid (Form C)
2. If benefits paid, must file 1 yr from date of last benefit or 2 yrs from DOI, whichever is greater
3. Occupational Disease, must be filed 2 yrs from the date of the last injurious exposure to the hazards of the disease
  - a. Statute begins to run when the employee knows or should reasonably know

### **Report of Injury § 11-9-529**

1. Employers must file w/in 10 days of notice or knowledge of an injury (Form 1)
2. Failure to file can result in \$500 fine
3. Employers must display Form P displayed conspicuously

### **Burden of Proof (General)**

1. Accident must be "major cause" – more than 50% § 11-9-102
2. Occupational Disease – must be casual connection between occupation and the disease by a prepond. of evid. § 11-9-601
3. Mental Illness, see § 11-9-113, Heart injury, see § 11-9-114, Hernia, see § 11-9-523

### **Notice of Injury § 11-9-701**

1. Should be given immediately and reported on appropriate form (Form N)
2. Failure to give notice will not always bar a claim
  - a. If employer had knowledge of injury (actual or constructive)
  - b. If employee did not know that condition arose out of employment
  - c. May be excused if good reason notice was not given, not fear of retaliation or harassment

### **AWW/Rate Consideration § 11-9-518**

1. General: Based on the contract of hire at the time of the accident, use the 52 weeks prior to the accident, include reasonable value of board, rent, housing, lodging, or similar advantages & also tips and commissions
2. Piece-basis employees: Divide the earnings by the number of hours to earn those wages during the 52 weeks prior to the week when accident occurred, then multiply hourly wage by the number of hours in a full-time work week
3. Overtime: Add to reg. weekly wages, divide OT by the # of weeks worked

### **Medical Treatment § 11-9-508**

1. Employer has right to choose initial treating physician, BUT employee can request a one-time change of physician

### **Benefits**

1. TTD § 11-9-519
  - a. Comp rate =  $2/3^{\text{rd}}$  of AWW up to statutory max
  - b. Waiting period (does not include DOI) – first 7 calendar days – no TTD
  - c. If more than 7 days, but less than 14 days off – only 2<sup>nd</sup> week of TTD due
  - d. If more than 14 days missed – TTD due from first day
  - e. Failure to pay TTD w/out an award w/in 15 days after due is an 18% penalty – w/ award penalty is 20% - willful failure to pay can result in up to 36% penalty
2. TPD § 11-9-520
  - a.  $2/3$  of the difference between AWW prior to DOI and earning capacity after injury
3. PPD
  - a. Follow scheduled body parts, or BAW is 450 weeks, benefits not to exceed 450 weeks
  - b. Proportionate loss of use, but may also consider age, education, work experience, and other factors affecting future earning capacity
  - c. After 12 months after the injury – may receive up to \$3,500 for serious and permanent facial or head disfigurement →

## Arkansas Workers' Compensation At-A-Glance Continued

### 3. PPD continued...

#### d. Ratings:

1. If employee back to work, clinical rating is due
2. If unable to return to work, rating is negotiable
3. Payments should start from date rating is given

### 4. PTD

- a. Inability to earn any meaningful wages in the same or other employment
- b. Rate is 2/3rds of AWW
- c. Claimant may be required to certify annually that is still PTD and not gainfully employed
- d. Benefits paid to dependents wholly and actually dependent upon employee
  1. Benefits to be paid in order of preference according to statutory schedule

### Illegally Employed Minors

1. Violation of state or federal law on minimum ages, entitled to double comp or death benefits
2. Does not apply if minor misrepresented age in writing to employer

### Defenses

1. Assault – barred unless shown by prepond. of evid. assault arose from work-related hostility between claimant and co-worker who caused assault
2. Horseplay – not compensable except as to innocent victims – horseplay not clearly defined
3. Going & Coming Rule
  - a. Not compensable while going or coming to work
  - b. Injuries on premises when employment service not being performed are excluded
  - c. If travel is a part of employment services, compensable
  - d. Dual purpose exception – travel had business and personal purpose
4. Recreational Activities
  - a. If injured during recreational activity for employee's own personal pleasure, not compensable

## OFFICE LOCATIONS

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### Defense Continued...

5. Alcohol & Drug Use § 11-9-102
  - a. Injury "substantially occasioned" by alcohol or drug use is not compensable
  - b. Mere presence creates a rebuttable presumption accident was caused by such use
  - c. Performing services for employer gives implied consent to reasonable drug testing
  - d. Employee must show by prepond. of evid. alcohol or drug use did not cause accident
  - e. Reasonable suspicion of drug or alcohol use at time of accident
    1. Testing for drugs must be done w/in 32 hours of accident
    2. Testing for alcohol must be done within 8 hours of accident