Summary of Workers' Compensation Law

The Division of Labor and Management, South Dakota Department of Labor and Regulation has summarized the basic provisions of our state's workers' compensation law. However, the information contained in this brochure is general in nature and is not intended as a substitute for legal advice. Changes in the law or specific facts of a case may result in legal interpretations different from those presented here. Anyone having further questions should contact the Division.

I. Workers' Compensation

Workers' compensation is an insurance program that pays medical and disability benefits for work-related injuries and diseases. Workers' compensation protects both employees and employers. Each covered employee has a right to benefits if injured on the job. In return, he or she forfeits the right to sue the employer for job-related injuries.

South Dakota law permits all employers to provide coverage rather than assume direct liability for workplace injuries. Thus, most employers obtain coverage by purchasing an insurance policy. Those employers that do not must prove they are financially secure enough to pay full benefits for any injuries to employees. These self-insurers are certified and regulated by the Department of Labor and Regulation.

II. Non-covered Employees

The following employees are exempt:

- Domestic servants, unless working for an employer for more than 20 hours in any calendar week and for more than six weeks in any 13-week period
- Farm or agricultural laborers
- One whose employment is not in the usual course of the trade, business, occupation or profession of the employer (independent contractor). This includes real estate brokers and owner operators of trucks who are certified as exempt by the Department.
- Certain elected officials of the state or any subdivision of state government
- Workfare participants

III. Benefits

Benefits are not allowed when injury is due to willful misconduct, intoxication, illegal use of drugs or failure to use a furnished safety appliance. A false representation as to health at the time of obtaining employment may also preclude awarding of benefits.

A. Medical

The employer or insurance carrier must furnish necessary first aid and medical, surgical and hospital services, including artificial members and body aids. Prosthetic devices, if damaged, are considered an injury. Repair or replacement of hearing aids, eye glasses, contact lenses and dentures must also be furnished if damaged or destroyed in an accident which caused bodily injury compensable under the law. Medical services will be subject to a fee schedule and in no case may a health care provider charge a higher price to an injured worker who is eligible for workers' compensation benefits.

The employee has the right to make the initial selection of a medical practitioner (defined as a licensed health care provider) and must notify the employer of this selection prior to treatment or as soon as reasonably possible after treatment has been provided. The employee must obtain written permission from the employer or insurer before changing health care practitioners. The employee may obtain a second opinion at his or her own expense. The employer also has the right to a second opinion. Services may also be regulated by the insurer's designated managed care plan.

Travel, lodging and meal costs incurred as a result of securing necessary medical treatment are also compensable in certain instances. Generally such expenses will only be allowed if an employee is required to travel to obtain medical treatment. The Division of Labor and Management should be contacted in regard to current rates.

B. Disability Benefits

State law provides for a series of benefits during the period of disability. Failure to make payment within 10 days of the date due may result in a penalty of 10 percent of the unpaid amount. The disability benefits are as follows:

Temporary total disability – An employee who cannot work because of work-related injury or disease is eligible for temporary total disability benefits. Generally this inability to work must be confirmed by a medical practitioner. Payment is not made for lost work time unless an employee is incapacitated for seven consecutive days. If the incapacity lasts for seven consecutive days or more, compensation is then computed from the date of injury. Payments continue until a medical practitioner releases the employee for return to work or determines that the employee's condition has reached a point of maximum improvement. The weekly rate for temporary disability payments is set forth in Section III-D.

Temporary partial disability – If a medical practitioner allows an employee who is still recovering from an injury or disease to return to part-time or modified work, and if the employee receives a bona fide job offer, and if the employee is receiving less than his or her usual earnings, the employee may be entitled to temporary partial disability benefits. These benefits are computed on the basis of one-half the difference between the average amount earned before the injury and the average amount the employee is earning or able to earn in some suitable employment after the injury. The amount of compensation allowed for temporary partial disability cannot exceed the maximum in Section III-D. The total compensation for earnings and workers' compensation may not be less than the amount received for temporary total disability, unless the employee refuses suitable employment. These benefits are payable until the employee is returned to full employment or until maximum improvement.

Permanent partial disability – If an injury or illness results in impairment of certain members of the body, an employee may be entitled to permanent partial disability benefits. Benefits are computed by applying a determination of the employee's percentage of impairment to the number of weeks designated in the table below for full disability of that body part. This number of weeks is then multiplied by the compensation rate as set forth in Section III-D. Payments are made on a weekly or bi-weekly basis unless a lump sum payment is allowed by the Division.

Loss	Weeks
Thumb	50
First or index finger	35
Second finger	30
Third finger	20
Fourth or little finger	15
Great toe	30
Any other toe	10
Hand	150
Arm	200
Foot	125
Leg	160
Sight of eye	150
Hearing one ear	50
Hearing both ears	150

For permanent disability from back injury or others not specifically listed above, compensation is for that proportion of 312 weeks which is represented by the percentage that such permanent partial disability bears to the body as a whole.

Permanent total disability – An employee who is totally and permanently disabled in terms of occupational capacity, or can no longer perform services of any kind, extent and quality for which a reasonably stable labor market exists, may be entitled to compensation at the weekly rate set forth in Section III-D during the entire period of disability. In addition, cost of living adjustment is provided. The benefits may, however, be subject to review by the Department.

Rehabilitation – An employee suffering disablement from an occupational disease or an injury, and unable to return to his/her usual and customary line of employment, is entitled to receive disability compensation at the rate provided by Section III-D during the period he or she is engaged in a program of rehabilitation which is reasonably necessary for restoration to suitable, substantial and gainful employment. An injured employee desiring rehabilitation services should contact the Division of Labor and Management for further information.

C. Death Benefits

If an injury causes death, compensation is payable to the employee's spouse at the rate of compensation shown in Section III-D for life or until remarriage. In the case of remarriage, a sum equal to two years of compensation will be paid to the spouse. Surviving children are eligible to receive equal shares of Section III-D compensation if the spouse dies or remarries. They must be under 18, under 22 if full-time students, or incapable of self-support. If any of the children are not in the custody of the spouse at the employee's death (and the spouse is eligible for benefits), half the benefit goes to the spouse, the other half to the non-custodial children. In addition to the above-mentioned weekly benefits, an additional $50 per month must be paid to each legally dependent child of the deceased employee from the date of employee's death until the child is 18. If dependents attend accredited South Dakota post-secondary schools, they can receive up to $2,000 a year towards their education for five years.

The employer or insurer must also pay up to $10,000 in burial expenses plus the cost of transporting the body if death occurs outside the community where the employee is to be buried.

D. Rate of Compensation

As of July 1, 2025, weekly compensation is two-thirds of the employee's average weekly wage (including overtime hours at straight time pay) up to a maximum of $1,108 per week. The minimum compensation is $554 unless the employee's average weekly wage is less than $554 In that instance, the amount of the employee's average weekly wage, less standard deductions, is paid as compensation. This rate is effective through June 30, 2026. The foregoing

amounts are used to calculate temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, rehabilitation and death benefits.

IV. Requirements of Employee

Immediately upon occurrence of an injury, or as soon as practicable, an injured employee (or a representative) shall give or cause to be given a written notice of injury to the employer. Written notice shall be provided no later than three business days after occurrence. No compensation will be paid unless written notice is given within three business days, unless reasonable excuse is made to the Department of Labor and Regulation. Therefore, the employee shall not be entitled to reimbursement of any medical practitioner's fee or any compensation which may have accrued prior to the time of giving notice, unless either of the following can be shown:

- The employer, or the employer's agent or representative, had knowledge of the injury or death
- The employer was given written notice after the date of the injury and the employee had good cause for failing to give written notice within the three business-day period, which determination shall be liberally construed in favor of the employee

If an employee is entitled to benefits and does not receive them within 20 days, direct contact should be made to the insurance company.

The employee must also inform his/her medical practitioner about which case management plan his employer uses.

V. Requirements of Employer

A. Record-keeping

Every employer coming under the provisions of this title shall keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. The record shall be completed within seven days, not counting Sundays and legal holidays, after any employer has knowledge of the occurrence of an injury. The record shall be on a form approved by the Department of Labor and Regulation. The employer shall preserve the record for a period of at least four years from the date of injury.

B. Reporting

If an employer is authorized to self-insure, a written report shall be made to the Department of Labor and Regulation within seven days, not counting Sundays and legal holidays, after any employer coming under the provisions of this title has knowledge of the occurrence of an injury which requires medical treatment other than minor first aid or which incapacitates the employee for a period of at least seven calendar days.

Failure to comply may result in a fine of $100. The employer must also report the injury to its case management plan within 24 hours of the injury.

VI. Requirements of Insurer

The insurer is required to send a copy of the injury report to the Department of Labor and Regulation within 10 days. Failure to comply may result in a fine of $100.

The insurer (or the employer if self-insured) shall make an investigation of the claim and notify the injured employee and the Department of Labor and Regulation in writing within 20 days if denying liability for the reported injury in whole or in part. This period may be extended up to 30 additional days if approved by the Department of Labor and Regulation. Failure to comply may result in a $100 fine. The insurer or self-insurer who denies liability in whole or in part must state the reasons and notify the claimant of the right to a hearing.

If the claim is denied, the injured employee has two years from the date of notification from the insurer or self-insurer to file a Petition for Hearing with the Department of Labor and Regulation.

VII. Mediation

If the employer/insurer and the injured employee do not agree as to compensability in whole or in part, either party may request the Department to conduct a mediation. Lawyers are not required.

VIII. Fraud

To report fraudulent collection of workers' compensation benefits contact the Department of Labor and Regulation, Division of Insurance.

IX. Lack of Insurance or Self-Insurance

If an employer fails to provide workers' compensation coverage under the provisions of South Dakota law, an injured employee or the dependents of a deceased employee may proceed against the employer in an action at law to recover damages for the personal injury or death, or may elect to proceed against the employer in circuit court under the provisions of the workers' compensation law as if the employer had elected to operate thereunder. The measure of benefits for the employee shall be all medical expenses and twice the amount of disability or death compensation allowed under the law.

X. Administration

Our state's workers' compensation law is administered by the Division of Labor and Management of the Department of Labor and Regulation. All work-related injuries and occupational diseases which require medical treatment, other than minor first aid, or which incapacitate the employee for a period of at least seven calendar days must be reported to the Division. In addition, the insurer or self-insurer must file the following:

- Calculation of Compensation (Form DLR-LM- 110)
- Monthly Payment Reports (Form DLR-LM-107)
- Payment for Rehabilitation (Form DLR-LM-113)

XI. More Information

Contact the Division of Labor and Management at:

South Dakota Department of Labor and Regulation
Missouri River Plaza
123 W. Missouri Ave.
Pierre SD 57501

Phone: 605.773.3681
Fax: 605.773.4211

Office Hours: Monday-Friday, 8 a.m. to 5 p.m. (Central time)

Visit dlr.sd.gov and click on the Workers' Compensation button.

Printed on recycled paper

Auxiliary aids and services available upon request to individuals with disabilities. State and federal laws require the Department of Labor and Regulation to provide services to all qualified persons without regard to race, color, creed, religion, age, sex, ancestry, political affiliation or belief, national origin, or disability.

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July 1, 2025, to June 30, 2026

SOUTH DAKOTA DEPT. OF **LABOR & REGULATION**

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