

# Temporary Disability FAQs

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## TD Time Calculation and Eligibility Determination

- 1. Does lost time on the date of injury count towards the three-calendar-day waiting period?**

No. Lost time on the date of injury should be paid as administrative time off (ATO). The date of injury is not considered the first day of disability for counting time towards the waiting period. Each calendar-day of disability following the date of injury is counted towards the waiting period regardless of whether the injured employee is totally or partially temporarily disabled.

- 2. Is the time used on the date of injury picked up as ATO only after the workers' compensation claim is approved?**

No. This time is ATO even if the claim is not approved for workers' compensation benefits.

## Special Pay Provisions

- 1. Is an injured employee entitled to receive a separate check from his or her department for special pay when he or she is on TD?**

No. Special pay (e.g., merit salary adjustment, shift differential, diving pay, or over-time) that is anticipated or scheduled to occur during the injured employee's known disability period is included in State Fund's calculation of his or her average weekly wages. This weekly wage is used to determine the weekly TD rate. Refer to Section 16 of the Pay Scales or Section G of the Payroll Procedure Manual (PPM) for additional information on special pay.

- 2. How is an injured employee compensated for holidays while receiving TD or wage loss?**

An injured employee earns holiday credit for all holidays that occur in the pay period while off on TD. The injured employee is entitled to use the holiday credit for supplementation or the credit can be carried on the books.

If the injured employee has been returned to work and continues to miss hours from work, which may entitle him or her to wage loss, then he or she will receive compensation for the holiday(s) in the pay period as regular pay. Consult the specific provisions of each memorandum of understanding (MOU) regarding treatment of holiday credit.

**3. Does an injured employee continue to make retirement contributions and earn full retirement credit while receiving TD?**

State Fund doesn't deduct retirement contributions from the injured employee's TD payment. If an injured employee wishes to make arrangements to pay his or her retirement contribution then he or she will need to contact California Public Employee's Retirement System (CalPERS).

If an injured employee has elected to supplement his or her TD payment then the retirement contribution will be deducted from supplementation pay based only upon the amount issued as supplementation. The amount of retirement contribution deducted from supplementation pay will not cover the injured employee's full retirement contribution. The injured employee will need to contact CalPERS if he or she wishes to make arrangements to pay the difference.

Retirement credits are earned based on the amount of retirement contributions the injured employee has paid to CalPERS.

**4. How are absences tracked for an injured employee who doesn't qualify for Industrial Disability Leave, but falls within Work Week Group E and SE and who is exempt from the Fair Labor Standards Act (FLSA)?**

Under the provisions of the FLSA, disability leave is a situation when an E or SE employee is required to track partial day absences. All lost time, including partial days of absence, must be tracked on the injured employee's timesheet. Lost time during the delay period needs to be charged to the injured employee's leave credits. If the claim is accepted and State Fund pays TD benefits, you should restore leave credits used for absences and if required establish an accounts receivable. You also need to provide the injured employee the option to supplement his or her TD payment with available leave credits. If the claim is not accepted, or the time is not paid by State Fund, leave credits for partial days of absence need to be restored. Refer to PML 1995-023 for more information regarding employees exempt from FLSA.

## **Coordination with Other Benefits**

**1. If an employee is injured prior to becoming a CalPERS member and becomes a member while on TD, can he or she elect to go on IDL?**

No. The injured employee must remain on TD for the duration of the disability because he or she was not eligible for IDL on the date of injury.

**2. Can an injured employee who has reached maximum medical improvement (MMI) use TD for isolated days of disability or medical appointments?**

No. Once an employee has reached MMI, he or she is typically not eligible to receive TD for the same injury. TD is never paid for time lost to attend medical appointments.

Is it possible for an injured employee to receive TD and Non-Industrial Disability Insurance (NDI or SDI) benefits on the same date assuming that he or she qualifies for both benefits?

Yes. If the NDI or SDI benefit is greater than the TD benefit that the injured employee is due for the day, then he or she receives TD and the balance due for NDI or SDI.

Example: the TD benefit is \$10 and the NDI benefit is \$19; the injured employee receives \$10 TD and \$9 NDI. This is not common.

### **3. Can an injured employee take bereavement leave while on TD?**

Yes. An injured employee is entitled to bereavement leave while on TD. The appropriate substantiation for the bereavement leave must be submitted to the department and kept for auditing purposes. Bereavement Leave is not an earned leave (such as holiday credit) to be used for supplementation purposes. It is a benefit to be used if it meets the criteria as set forth in the MOU. Therefore, bereavement leave should be issued as regular pay.

If the injured employee is supplementing his or her TD payment, then supplementation would stop during the time period that he or she is eligible for bereavement leave. Bereavement leave would be used to provide the injured employee full pay for the period in which he or she was both temporarily disabled and also eligible for bereavement leave. State Fund will continue to issue the TD payment directly to the injured employee. The bereavement leave payment is issued by SCO as regular pay for the appropriate number of hours needed to provide the injured employee full pay. The total amount of TD and bereavement leave combined is not to exceed the injured employee's full monthly pay.

### **4. Is an injured employee eligible for catastrophic leave while waiting for TD to be approved or for supplementation of TD?**

Yes. An injured employee may be eligible for a department's catastrophic leave program if the nature of the illness or injury otherwise meets the criteria established by the department for catastrophic leave. Please check the injured employee's MOU and your department's Catastrophic Time Bank policy.

### **5. If an injured employee is off on TD and is eligible for a Merit Salary Adjustment (MSA), should the supervisor approve the pay increase?**

Yes. An injured employee should receive the MSA, unless there is pre-existing documentation history supporting performance problems prior to the injury.

### **6. Can an injured employee attend jury duty while on TD?**

Yes. If the injured employee's medical restrictions don't preclude participation in jury duty then he or she is able to attend. Should the injured employee serve on jury duty, he or she must decline the jury duty fees. If the injured employee fails to decline the jury duty fees, then he or she may be overpaid TD or TD/S resulting in an accounts receivable with State Fund or the department.

**7. Is an injured employee entitled to receive credit for informal time off granted by the governor while on TD?**

Yes. The injured employee is entitled to the number of hours granted. These hours can be used as supplementation or as time off when he or she returns to work. The time is not lost nor can it be compensated upon separation from state service.

## **Discipline, Layoff, and Denial of TD Benefits**

**1. If an injured employee demotes during the disability period, does his or her weekly TD rate get adjusted to reflect the new salary?**

No because California Labor Code Section 4453 requires benefits to be paid at the same rate throughout the duration of the injured employee's temporary disability period.

The only exception is for true seasonal workers who are entitled to a "two-tier" TD rate. One TD rate based on the injured employee's in season earning capacity and a second rate based on his or her off-season earning capacity.

If an injured employee is eligible to receive TD payments two or more years after the date of disability, the weekly TD rates shall be recalculated to the rates that are in effect two years after the date of disability using the injured employee's date of injury salary.

**2. Is an injured employee who is suspended or terminated because of an adverse action entitled to TD during the suspension or after termination?**

Yes. An injured employee who is suspended while on TD should continue to receive TD without supplementation during the period of the suspension as long as the employee is still temporarily disabled.

**3. How is an injured employee on TD to be treated if they are subject to layoff based on seniority?**

An injured employee on TD is subject to the same procedures as any other employee during a layoff. An injured employee on TD should be noticed at the same time as other employees and advised of his or her employment options. TD/S continues up until the actual date of layoff, after which the injured employee is only entitled to TD without supplementation.

## **Permanent Intermittent (PI) Employees**

**1. How do you calculate a permanent intermittent (PI) employee's average hours worked?**

If the PI employee is scheduled to work in the future, the department should compensate him or her for what he or she was scheduled to work. If the PI employee is not scheduled to work in the future, the department should use the average number of hours worked each month for the last 12

months. If the PI employee worked less than 12 pay periods, use the number of pay periods actually worked to find an average as follows:

Total the hours of all intermittent time paid for the previous 12 pay periods or pay periods available. Divide the total hours by the applicable number of pay periods to determine the average hours of pay each month. Here are some examples:

During the previous 12 pay period, the PI employee worked 1500 hours.

$1500 \div 12 = 125$  average hours per month

During the previous 12 pay periods, the PI employee worked a total of 1500 hours. However, the PI employee was furloughed and there were no hours worked during June and July of this period.

$1500 \div 10 = 150$  average hours per month

If the PI employee's current time base is intermittent but the previous pay periods worked were on a full-time or part-time basis, convert the full or part-time pay periods to hours on the basis of 173.33 hours for full-time or the part-time fraction of 173.33 hours for each pay period. Add these numbers to determine hours worked and divide by the applicable number of pay periods to arrive at the average hours of pay each month.

## **2. How is TD calculated for a PI employee with a variable work schedule?**

If the PI employee is not on a set schedule, apply the Intermittent IDL formula per Payroll Procedures Manual Section E409 to compute the average number of hours. You then multiply the average number of hours by the PI employee's hourly wage to determine his or her average monthly gross.

If the PI employee chooses full supplementation, the TD payment is subtracted from his or her average monthly gross. The difference can be supplemented to equal no more than the PI employee's established average monthly gross (average hours X hourly rate - TD payment = Supplementation Gross). The supplementation gross is then divided by the PI employee's hourly rate to determine the amount of leave credits to charge. Example:

$140$  (average hours) x  $\$20.00$  (hourly rate) =  $\$2,800.00$  (average monthly gross)

State Fund approved TD for 30 days (April 1-30, 2016) and paid the employee.

The PI employee would have earned  $\$2800.00$  in April 2016, so

$\$2,800.00$  minus  $\$1846.00$  (TD payment) =  $\$954.00$  supplementation gross

$\$954.00$  (supplementation gross)  $\div$   $\$20.00$  (hourly rate) = 47 hours of leave credits must be charged to achieve full supplementation (can only use whole hour increments).

## **3. How many hours should a PI employee be credited or paid if he or she is on TD?**

The PI employee should, at a minimum, be credited with the established average number of hours. The total number of hours credited should not exceed the maximum necessary to qualify a pay period (160 hours).

The California Leave Accounting System (CLAS) will offset automatically and will not post more than the 160 hours necessary to qualify the pay period. If your department does not utilize CLAS, then you may have to manually adjust the hours to ensure that no more than a total of 160 hours is posted.

**4. If a department calculated average hours for TD by going back 12 months and the PI employee worked some hours in the current month, can the combined regular pay and TD exceed the average?**

Yes. Time actually worked in the current month does not affect the average past hours calculated for the TD payment. The average number of calculated hours can be exceeded in a month in which the PI employee physically worked and is entitled to TD. For example:

The PI employee's average number of hours is determined to be 125 hours a month. The first five days of the month, the PI employee worked 40 hours. The PI employee is paid TD for the last 17 work days of the month. Average hours per day are 6 hours; 6 hours X 17 days = 102 hours. The 102 hours plus the 40 hours worked exceeds the 125-hour average.

The total hours can only exceed the calculated average if the employee is working and receiving TD during the same pay period.

## **Permanent Intermittent Employees Continued**

**5. If a PI employee has been off receiving workers' compensation benefits, then returns to work and suffers a new injury, should the time on IDL and TD be included when calculating a 12-month average?**

Yes. Both regular time paid and time paid as IDL and/or TD should be used to calculate the average.

**6. When a PI employee is approved for TD and has received SDI or NDI during some of the preceding 12 months being used to calculate the average hours, how do you calculate the average hours?**

You only add the hours actually worked (and/or paid as IDL/TD) and divide the total by the number of months in which the injured employee received regular pay or IDL/TD. Disregard the months the injured employee was on SDI or NDI.

**7. A PI employee is given a release to return to modified work for four hours a day. Should he or she be scheduled to work his or her regular shift or only a four-hour shift?**

The PI employee should be scheduled as though the work-related injury or illness had not occurred. However, the PI employee should only work the number of hours recommended by the doctor. The employee may be entitled to TD benefits for the remaining hours the employee is unable to work.

**8. For a PI employee, does TD count toward length of service, sick leave, annual leave, and vacation accrual?**

Yes. If the PI employee is receiving TD or IDL payments during a period of time he or she would have been scheduled for work (in-season) then TD counts towards his or her length of service, sick leave, annual leave, and vacation accrual.

**9. If you start paying a PI employee based on the 12-month average or projected number of hours that he or she would be working in the future, do you have to continue paying in that manner through the life of the claim?**

TD needs to be paid in the same way (12-month average or projected hours) through the life of a claim.

**10. When a holiday occurs in the pay period, how should the holiday credit be calculated for a PI employee or an injured employee on actual time worked?**

First determine the period of time the injured employee's TD payment covered. Multiply the number of work days covered by the TD payment less the holiday by the number of hours credited to the injured employee per day. The credited hours are based on your calculation of the injured employee's average hours per month. This calculation will provide you the number of compensable hours covered by the TD payment. Use the compensated hours to determine the injured employee's holiday credit in accordance with the data below:

0-10.9 hours on pay status during pay period = 0 holiday pay in hours for each holiday  
11-30.9 hours on pay status during pay period = 1 holiday pay in hours for each holiday  
31-50.9 hours on pay status during pay period = 2 holiday pay in hours for each holiday  
51-70.9 hours on pay status during pay period = 3 holiday pay in hours for each holiday  
71-90.9 hours on pay status during pay period = 4 holiday pay in hours for each holiday  
91-110.9 hours on pay status during pay period = 5 holiday pay in hours for each holiday  
111-130.9 hours on pay status during pay period = 6 holiday pay in hours for each holiday  
131-150.9 hours on pay status during pay period = 7 holiday pay in hours for each holiday  
151 and over hours on pay status during pay period = 8 holiday pay in hours for each holiday

Exclusive of holiday hours not actually worked.

For a PI employee, the holiday credit should be added to the hours worked or average hours worked in the last 12 pay periods. For actual time worked employees, the holiday should be counted as one of the 194 working days.

If the injured employee received TD and regular pay during the pay period, calculate the compensated hours covered by the TD payment as stated above and add to number of hours compensated for regular pay. Use the total compensated hours to determine the injured employee's holiday credit in accordance with the above table. For example:

For the September 2016 pay period, State Fund paid the employee for the period 9/1 through 9/7. A holiday fell on 9/5. Five work days less the holiday equals 4 work days. If you credit the injured employee 6 hours a day, you would multiply 4 work days times 6 hours which is 24 compensated hours. The injured employee received regular pay from 9/8/04 through 9/30/04 and was compensated for 102 hours. Twenty-four hours (TD) plus 102 hours (regular pay) equals 126 compensated hours for pay period. Based on the table the injured employee would be credited 6 hours for the holiday.

Once the injured employee's average hours per month are identified or he or she already has a pre-designated work schedule then the holiday hours credited are based upon the established average hours per month. The credited hours can be used towards supplementation.