

- **General TTD Considerations**

**ILLINOIS:**

***1. Is TTD owed where modified duty work is available but the restricted duty employee refuses to go to work due to personal concerns regarding COVID-19?***

- I do not recommend voluntary payment of TTD in this situation. The rejection of available work is a defense to the payment of benefits in this scenario.

***2. Is TTD owed where an injured worker is not able to receive an updated work slip from the treating physician where the practice has closed to non-emergency treatment due to COVID-19 concerns?***

- TTD benefits will likely have to continue where medical services have been disrupted by the pandemic. Although the burden is on Petitioner to show that he is on restrictions and not yet at maximum medical improvement, if petitioner had valid work restrictions prior to the interruption in medical services, the arbitrator will almost certainly find that those restrictions will be continued unless the Respondent has an independent basis (an IME) establishing that the restrictions are no longer warranted.
- This is a developing situation. Although some providers remain open, many have been closing for non-emergency / elective procedure. The best approach thus far has been carefully monitoring the situation on every case and close coordination between the case handler and defense counsel as to the current status and options. Where available, coordination with a nurse has been a great help in this situation.

***3. How do we handle a situation where an injured worker that is currently on TTD refuses to engage in continued treatment due to COVID-19 concerns?***

- If the doctor is willing to see the patient or the physical therapy facility is open, I recommend suspending benefits if the claimant does not treat accordingly. There will likely be some controversy here given the shelter in place order and I suspect that we can at least argue that the petitioner should have gone out for essential or important care on a case by case basis.

## **OHIO:**

### ***1. Is TTD owed where modified duty work is available but the restricted duty employee refuses to go to work due to personal concerns regarding COVID-19?***

- TTD is not owed when modified duty work within the claimant's medical ability is offered in good faith and the employee voluntarily refuses to go to work due to personal concerns regarding Covid-19.

### ***2. Is TTD owed where an injured worker is not able to receive an updated work slip from the treating physician where the practice has closed to non-emergency treatment due to COVID-19 concerns?***

- For TTD to be paid, it is incumbent on claimant to provide evidence of temporary disability by way of a Medco-14 signed by the treating physician wherein the period of temporary disability is set forth. Absent medical evidence setting forth a period of temporary disability, an employer need not pay TTD. However, Ohio law requires that, whenever an employer cannot pay TTD due to lack of evidence, the employer must immediately contact the claimant and advise the claimant of the evidence needed to initiate payment.

### ***3. How do we handle a situation where an injured worker that is currently on TTD refuses to engage in continued treatment due to COVID-19 concerns?***

- Absent the required medical evidence of temporary disability by way of a Medco-14, employer must immediately contact the claimant and advise the claimant of the evidence needed to initiate payment. The employer should file a Motion to Terminate TTD.

## **INDIANA:**

### ***1. Is TTD owed where modified duty work is available but the restricted duty employee refuses to go to work due to personal concerns regarding COVID-19?***

- It depends. Pursuant to Ind. Code 22-3-3-11(a), "if an injured employee, only partially disabled, refuses employment suitable to his capacity procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal unless in the opinion of the worker's compensation board such refusal was justifiable." Before compensation can be terminated, the worker must be notified on a form approved by the Board (38911 if TTD or TPD is being paid, or 54217 if no disability benefits are being paid). When considering whether the refusal was justifiable, it would be expected that the Board may consider factors

like the personal health conditions of the worker and that of their family members, Stay-at-Home Orders, Child care issues, etc.

***2. Is TTD owed where an injured worker is not able to receive an updated work slip from the treating physician where the practice has closed to non-emergency treatment due to COVID-19 concerns?***

- In many instances, a work status from the last office appointment will establish whether TTD should be paid. Where the work status does not provide a definitive end date for work restrictions, restrictions established at the last office visit will likely serve as evidence to support an ongoing disability. If the work slip places restrictions on a worker for a finite period of time and it cannot be determined if restrictions should remain in place, it would be reasonable for the injured worker or the adjuster (where authorized care is being directed) to contact the physician's office for guidance. In our experience, many providers are open on a part-time basis and may be able to address ongoing disability even where patient visits are not being scheduled.

***3. How do we handle a situation where an injured worker that is currently on TTD refuses to engage in continued treatment due to COVID-19 concerns?***

- Pursuant to Ind. Code 22-3-3-6, if the employee refuses to submit to or in any way obstructs a medical examination, the employee's right to compensation and his right to take or prosecute any proceedings under IC 22-3-2 through IC 22-3-6 shall be suspended until such refusal or obstruction ceases, unless in the opinion of the board, the circumstances justified the refusal. Before benefits can be suspended, the worker must receive notice of the consequences of refusal on a form prescribed by the Board. When considering whether a worker's refusal to engage in treatment is justified, it is anticipated that the Board may consider factors like the personal health conditions of the worker and that of their family members, the urgency of the medical treatment, the operational status of the medical provider, whether alternative treatment options are available in lieu of in-person visits, Stay-at-Home Orders, Child care issues, etc.

\*\*\* As a general reminder, a notice to terminate TTD or TPD is handled via EDI. The Notice of Suspension of Benefits for Noncompliance (54217) is not an EDI transaction. In both cases, the Board forms must be served on the injured worker and/or their attorney by mail or personal service. EDI filing does not perform the service function for any forms completed.

## **MISSOURI:**

### ***1. Is TTD owed where modified duty work is available but the restricted duty employee refuses to go to work due to personal concerns regarding COVID-19?***

- Generally, if a genuine light duty job offer is made to the claimant within the work restrictions and the claimant refuses to return to work, TTD benefits may be terminated with appropriate notice. In the COVID-10 era, the claimant may choose not to return to work due to the potential increased exposure. Assuming that the employer directed treating physician agrees with the return to work, TTD benefits can be terminated with appropriate notice. The employee, or possibly the claimant, may want to consider having the claimant obtain an opinion from their primary care physician as to whether the claimant has pre-existing conditions that would make the claimant at a higher risk of getting severe symptoms of COVID-19. If there are increased factors, this should be considered when offering the light duty work position due to the possibility of increased exposure to include death and potential liability. Furthermore, I would expect that the Commission would look sympathetically at the claimant in this situation.

### ***2. Is TTD owed where an injured worker is not able to receive an updated work slip from the treating physician where the practice has closed to non-emergency treatment due to COVID-19 concerns?***

- Under §287.170, an injured employee is entitled to compensation during the continuance of TTD until MMI. Basis for termination of TTD benefits include a return to some type of work, MMI status, receipt of unemployment benefits, and termination for misconduct. TTD payments are unwarranted beyond the point at which the employee is capable of returning to work. *Boyles v. USA Rebar Placement*, 26 S.W.3d 418, 424 (Mo.App. W.D.2000). TTD benefits are limited to 400 weeks and there is a 3 day waiting period which is retroactive after 14 days of disability. Termination of TTD benefits further requires notice. As the employer controls medical treatment in Missouri, if the treating physician is unable or refuses to see the claimant, it would be expected that the Commission would rely on the most recent off work slip and find that TTD benefits are due. We would recommend that repeated efforts be made to attempt to obtain an updated opinion on the claimant's ability to work. For instance, the employer would have the option of finding a new treating physician who is willing to see patients. (Note that mileage costs may be necessary if the new doctor is located farther away from the respondent). Virtual visits may also be an option and possibly a nurse case manager could assist with arranging same.

**3. How do we handle a situation where an injured worker that is currently on TTD refuses to engage in continued treatment due to COVID-19 concerns?**

- Again, in Missouri the employer directs and controls treatment. Assuming that the treating doctor is willing to provide ongoing medical treatment, we would recommend looking into other options such as a virtual medical visit which could be arranged by a nurse case manager before terminating TTD. A nurse case manager may also help in relieving the fears of the claimant to attend the appointment by explaining the process that the doctor's office follows to see patients as safely as possible. If a virtual visit is not possible and the claimant continues to refuse to attend the appointment, TTD benefits could be terminated with appropriate notice. Yet, I expect that the Commission will look sympathetically at the claimant who is too frightened to attend the appointment. In addition, the employer must also consider the increased possibility of the claimant contracting COVID -19 while attending the medical appointment.

**IOWA:**

**1. Is TTD owed where modified duty work is available but the restricted duty employee refuses to go to work due to personal concerns regarding COVID-19?**

- From a substantive perspective, it depends on whether the facts of the specific light duty job offer would be considered "suitable work." The facts of a specific situation would dictate whether the employee's decision to refuse to go to work would be considered reasonable. The higher the risk of exposure to COVID-19, the more likely that the Commission would determine that the employee's refusal to attend work is reasonable, and thus, not "suitable work."

From a procedural perspective, under section 85.33(3)a, if the employer offers suitable work and the employee refuses, the employee shall not be compensated with (TTD) during the period of the refusal. Work offered at the employer's principal place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's principal place of business or established place of operation more than fifty percent of the time." Under section 85.33(3)b, the employer is required to communicate the detailed offer of temporary work in writing and indicate that the employee's refusal of the temporary work offer, and basis for the refusal, shall be made in writing to the employer. The employer must also indicate that the employee will not be compensated with TTD benefits unless the work refused is not suitable. If the employee refuses the offer of temporary work, the employee is required to communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused. Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of

the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

***2. Is TTD owed where an injured worker is not able to receive an updated work slip from the treating physician where the practice has closed to non-emergency treatment due to COVID-19 concerns?***

- Under section 85.32 and 85.33(1), TTD benefits are owed for the time period an employee/claimant is completely unable to perform his/her regular work because of a work injury. The most recent work restriction recommendations remain in effect until a new work status note is provided. However, it is also important to remember that the employer controls medical treatment in Iowa, so if a treating physician is unable or unwilling to see the claimant or provide an updated work status note, the employer can try to find a different, qualified doctor in the same specialty and (reasonable) location that would agree to provide a work status note and medical treatment to the claimant on an ongoing basis. The employer can also avail itself of Sec. 85.39 and schedule an IME, which the employee must attend or else benefits can be stopped.

***3. How do we handle a situation where an injured worker that is currently on TTD refuses to engage in continued treatment due to COVID-19 concerns?***

- There is no specific statute or case law that explicitly provides the employer with the right to terminate or suspend TTD benefits for a claimant's refusal to attend medical appointments. Termination or suspension of benefits solely for the refusal to attend a medical appointment could result in exposure for penalties and interest on the unpaid benefits. Therefore, inquiry with the treating physician regarding the refusal and its impact on whether the physician still considers the employee to be temporarily totally disabled, or whether the doctor might place them at MMI based on the refusal to treat, may be helpful. Additionally, the employer could schedule an IME under Sec. 85.39, and the employee's refusal to attend such IME permits the employer to stop benefits pursuant to the statute.

## WISCONSIN:

**1. Is TTD owed where modified duty work is available but the restricted duty employee refuses to go to work due to personal concerns regarding COVID-19?**

- No.

**2. Is TTD owed where an injured worker is not able to receive an updated work slip from the treating physician where the practice has closed to non-emergency treatment due to COVID-19 concerns?**

- Possibly. If other practitioners are available, petitioner should transfer his care there, or respondent can request he see company doctor for status.

**3. How do we handle a situation where an injured worker that is currently on TTD refuses to engage in continued treatment due to COVID-19 concerns?**

- If treatment is available, the employee has to avail himself of it or risk termination of benefits.

## MICHIGAN:

**1. Is TTD owed where modified duty work is available but the restricted duty employee refuses to go to work due to personal concerns regarding COVID-19?**

- No.

**2. Is TTD owed where an injured worker is not able to receive an updated work slip from the treating physician where the practice has closed to non-emergency treatment due to COVID-19 concerns?**

- In most cases, the prudent thing to do would be to rely upon the work status from the last office visit. Absent circumstances indicating that the facts have changed, this would be the evidence before the Agency on disability. There is some case-by-case analysis required, as some off work slips will keep the employee off until the next visit (or some event) and some keep the employee off for a certain period of time.

This is again a fact-sensitive issue involving considerations such as whether the passage of time is likely to improve the employee's condition. If an employee is unable to be seen because a provider is not seeing patients, employees may be able to contact those providers (many of whom are operating on a part time basis) to seek a work status slip that will apply until they can be seen.

***3. How do we handle a situation where an injured worker that is currently on TTD refuses to engage in continued treatment due to COVID-19 concerns?***

- If an employee refuses medical care, they can have their benefits suspended, but determination of whether benefits can be stopped is fact sensitive. Michigan has taken a pretty aggressive approach to its stay at home order, and it is possible this circumstance may not arise because people simply cannot go get treatment right now without violating the order, irrespective of their fear. However, this would likely also involve another case by case analysis based on the worker's injury and status in treatment to assess whether their treatment might be "essential" or "critical" and whether the employee's perception of treatment balanced against the risk of receiving a misdemeanor for willful violation of the order would occur. It should also be determined whether telemedicine is available at their provider and whether they have the electronic capabilities to be "seen".