

INDEMNITY BENEFITS

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OVERVIEW:

This section outlines the various indemnity benefits an injured worker may be entitled to under the Act. It details the specific benefits and proper forms that must be filed with the Department.

Once a claim has been determined to be compensable and medical evidence supports disability, the injured worker is entitled to indemnity benefits as compensation for any resulting disability from work. If the injured worker is totally disabled from work, he or she is entitled to **temporary total disability** (TTD) compensation. If he or she returns to part-time or light duty employment, is not receiving his or her pre-injury wage and has not reached a medical end result, he or she is entitled to receive two-thirds of the difference between the gross wages from the part-time or light duty employment and the pre-injury average weekly wage. These benefits are referred to as **temporary partial disability** compensation (TPD).

If the adjuster determines that the injured worker is no longer entitled to either temporary total or temporary partial disability benefits for reasons other than a successful return to work, it is required by law to notify both the injured worker and the Department of its intention to discontinue weekly

indemnity benefits by filing a Notice of Intention to Discontinue Payments (Form 27). If the adjuster has terminated disability benefits based on a successful return to work (see Rule 18.1600) DO NOT FILE A FORM 27. Instead, we recommend that a letter be submitted to the Department, copied to the injured worker, indicating what the successful return to work date is for the Department's file. (See Discontinuance Section of this Manual).

If an injured worker is left with a permanent impairment or loss of function as a result of the work injury, he or she is entitled to additional compensation, referred to as **permanent partial disability** compensation (PPD). An injured worker who is found **permanently and totally disabled (PTD)** is entitled to a minimum of 330 weeks of benefits (See Permanent Total Disability Section of this Manual). Those benefits continue unless and until the carrier provides evidence that the injured worker is able once again to obtain regular, gainful work.

If a work-related injury results in a death, the deceased employee's dependants are entitled to **death benefits**.

An injured worker receiving temporary total, temporary partial, permanent partial, permanent total, or dependents receiving death benefits on July 1 of each year may be entitled to an annual increase in the weekly compensation benefit rate. Notice is given annually by the Department of the July 1st adjustment via e-mail, similar to below:

The Form 28 and Form 28A for Fiscal Year 2013 are now available. You can find them on our forms page:
<http://labor.vermont.gov/Default.aspx?tabid=170>

Historical wage rates are available here:
<http://labor.vermont.gov/InfoCenter/Rules/WorkersCompensationRules/Rule16HistoricalWageRates/tabid/362/Default.aspx>

A Form 28 reflects the adjustment.

TEMPORARY DISABILITY BENEFITS:

TEMPORARY TOTAL DISABILITY

Temporary total disability benefits are payable when an injured worker has been totally **disabled for more than three calendar** days, including the date of injury if he or she was not paid in full by the employer for that date. The three days need not be consecutive. If the injured worker continues to be disabled after the third day, for a period of seven consecutive calendar days or more, he or she shall be entitled to retroactive compensation to include the first three days. ([21 VSA §642](#) and [§650](#))

Temporary total disability benefits are calculated based on the injured worker's average weekly wage and work week. If an injured worker's work schedule is five days a week, the daily rate must be calculated based on a five-day work week. If an injured worker's work schedule is 5 ½ days a week, the daily rate must be calculated based on a six-day work week. For example, an injured worker works 5-½ days a week and becomes temporarily totally disabled for five weeks and three days. His weekly compensation rate is \$229.00. Temporary total disability compensation owed would be for the five weeks ($5 \times \$229.00 = \$1,145.00$) plus the three days ($\$229.00$ divided by 6 = $\$38.17 \times 3 = \114.51) for a total of \$1,259.51.

The injured worker's weekly indemnity check must be made out in his or her name and sent to the address he or she has designated.

If there is a lapse of six months or more between the date of injury and the date of disability, the wages for both the 26 weeks prior to the date of injury and the date of disability must be requested from the employer and provided to the Department. These wages must be compared and the higher average weekly wage shall be used. Different wages also may need to be compared when there are intermittent periods of disability where temporary disability, either total or partial, does not occur in a continuous period but occurs in separate intervals, each resulting from the original injury. If the more recent wages are lower as a result of the injury, the earlier, higher wages likely will have to be used.

The form required by the Department for temporary total disability is the Agreement for Temporary Compensation (Form 32). In order to prepare the temporary total agreement, the adjuster must first obtain the following:

- Employer's First Report of Injury (Form 1)[from the employer]
- Wage Statement (Form 25) [from the employer]
- Certificate of Dependency (Form 10) [from the injured worker]

With the above information and forms, the agreement can be completed.

Agreement for Temporary Compensation (Form 32)

Complete the information in the upper right hand corner of the form. **The state file number must be included on every agreement/document submitted to the Department.** The day of the week that the indemnity payments are to be mailed or deposited must be indicated on the agreement as well [[21 VSA §650\(f\)](#)].

The form must be signed by a **VERMONT licensed** workers' compensation adjuster and the injured worker or his/her legal representative. If the injured worker refuses or fails to sign the Agreement for Temporary Total Disability, the adjuster should sign and submit the agreement to the Department along with copies of the correspondence showing that at least two attempts were made to obtain the injured worker's signature.

Wage Statement (Form 25)

This form is required to calculate the injured worker's pre-injury average weekly wage and shall include 26 weeks of gross wages **prior** to the week of injury, unless the injured worker was employed for less than 26 weeks prior to the date of injury. **DO NOT INCLUDE WAGES EARNED DURING THE WEEK OF THE INJURY.** If the employer includes the week of the injury on the Form 25, an additional week of wages must be requested from the employer to make a total of 26 weeks of wages.

If at the time of the injury, the worker was regularly being paid at a higher wage rate or grade than formerly during the 26 weeks preceding the injury

only the larger wages are taken into consideration in computing the average weekly wage. [See [21 VSA§ 650\(a\)](#)].

If a worker was employed for less than 4 weeks you must obtain the wages of a comparable employee. A comparable employee is someone who worked, in the 26 weeks prior to the injured worker's date of injury, in the same position and at the same rate of pay. Do not combine comparable wages with the injured worker's actual wages when computing the average weekly wage. For example, if an injured worker has only been employed for two weeks at the time of the injury and the average weekly wage cannot be determined by using the two weeks worked, the 26 weeks of wages from a comparable injured worker must be requested and used. Do not use the two weeks of actual wages and 24 weeks of comparable wages.

If there are no comparable employees, the injured worker's rate of hire will be used to determine the average weekly wage.

Please remember the intent of the law is to fairly reflect what the injured worker was earning at the time of the injury.

"EXTRAS" should always be indicated on the Wage Statement to include any bonuses and commissions paid to the injured worker. If the injured worker received room, board, lodging or other extras (electricity, fuel, etc.) during the 26 weeks prior to the date of injury, they should only be included if he or she does not continue to receive them after the injury. In some instances there may be other extras that would qualify as wages that may be included in the wage calculation. Example: A company vehicle is provided for work and personal use. If, following a work injury the employer takes the company vehicle away, the injured worker no longer has the benefit of that vehicle for personal use. Therefore, the value of the vehicle's usage must be determined and included in the average weekly wage calculation.

Exclude vacation weeks or other weeks where the injured worker worked less than half of the normal work week or when the employer had reduced operations. Example: If the injured worker was hired to work 40 hours a week and one week on the Form 25 indicates that only 18 hours were worked, that week would be omitted as it is less than one-half of the hours the injured worker was hired to work. The remaining weeks would be used

to calculate the average weekly wage. If an injured worker is scheduled for a week of vacation, but instead works and receives vacation pay as well as regular wages for the hours worked, **only** the regular wages shall be included in the calculation of the average weekly wage.

Tips. The Wage Statement must include tips earned during the 26 weeks prior to the date of injury.

On call, as needed, per diem, and temporary agencies. When calculating wages the adjuster must divide the total earned for the 26 weeks prior to the date of injury by the number of weeks worked. Do not include weeks where there were no earnings. Example: if the injured worker worked a total of 5 weeks during the 26 weeks prior to the injury, add the earnings and divide by 5.

For employees of a temporary agency be sure to include all earnings from all jobs during the 26 weeks.

In the case of National Guard wages, the adjuster takes the total earnings for the 26 week period and divides by 26 in every case.

Volunteer rescue, fire, or police personnel, who are not otherwise employed, are paid a compensation benefit based on the average weekly wage of a similar employee in a paid position. The injured volunteer who is employed elsewhere and is able to continue working his or her regular job would not be entitled to compensation for the inability to continue the volunteer work.

Commissions that are actually paid during the 26 weeks prior to the injury are included in the average weekly wage calculation. Do **not** include commissions that the injured worker receives after the injury date, even if they were earned during the 26 weeks prior.

Concurrent employment. When an injured worker holds jobs with two or more employers at the time of injury, the average weekly wage from each job must first be calculated separately and then added together. If an injured worker is self-employed, his or her business must be insured for workers' compensation in order for the wages to be included as concurrent employment. See [21 VSA §650\(a\)](#).

The Form 25 must be marked as concurrent employment and a separate Form 25 must be completed for each employer.

Certificate of Dependency (Form 10)

For the purposes of paying dependency benefits, a “child” is defined to include a stepchild, adopted child, posthumous child, grandchild and a child for whom parentage has been established pursuant to 15 VSA Chapter 5, but does not include a married child unless the child is a dependent [See [21 VSA §601\(2\)](#)].** For example, if an injured worker has a child living at home who is 19 years old and attending school, the child is considered a dependent. **NOTE: The injured worker is entitled to the dependency allowance provided the weekly benefits do not exceed 90 percent of the average weekly wage and provided no other injured worker is receiving the same benefits on behalf of the dependent child or children.**

****For the purposes of death benefits please see [21 VSA §634](#).**

TEMPORARY PARTIAL DISABILITY

Often an injured worker regains the ability to return to work gradually. An employer is strongly encouraged to offer reasonable transitional and/or light duty work to those injured workers. If the work injury results in a reduction in wages the injured worker is entitled to temporary partial disability compensation. The Department requires that an Agreement for Temporary Compensation (Form 32) be filed.

If the injured worker requires continued medical treatment for the work injury after he or she has returned to work, the employer may not withhold any wages for his or her absence from work for medical treatment or to attend a medical examination. The employer may request the injured worker make reasonable efforts to schedule medical appointments around his or her light duty work schedule.

The Employer's First Report of Injury (Form 1) and the Wage Statement (Form 25) must be obtained before completing the Agreement for Temporary Compensation (Form 32).

PERMANENT PARTIAL DISABILITY

Permanent partial disability (PPD) is an additional monetary benefit that the injured worker may be entitled to under Vermont's workers' compensation act. PPD is intended to compensate an injured worker for any permanent loss of function that results from the work injury. Compensation is payable for a specific period of time dependent upon the degree of impairment.

Impairment is assessed when an injured worker reaches a medical end result (MER) or maximum medical improvement (MMI) for the work injury or condition. Impairment must be determined by a medical expert and pursuant to the *AMA Guides to the Evaluation of Permanent Impairment* (5th ed.). It is the adjuster's responsibility to take the steps necessary to determine if the injured worker has a permanent impairment once MER or MMI has been reached. Benefits are paid in accordance with [21 VSA §648](#).

The medical expert providing an impairment rating should always indicate how it was calculated. For example, the medical expert should specify which chapter, table and page and/or other specific criteria from the *Guides* were followed in arriving at the rating. If no explanation is provided, the adjuster should request more specific information from the medical expert.

Once the parties have reached an agreement on the percentage of impairment, they should sign and file an Agreement for Permanent Partial Disability Compensation (Form 22) with the Department. A Form 22 is not a final settlement agreement and does not necessarily close out the injured worker's right to future medical and/or indemnity benefits.

For all injuries occurring before April 1, 1995 permanent partial disability benefits must be calculated according to the specific body part injured.

Example: An injured worker hurts his knee and is rated with a 10 percent impairment of the lower extremity, which is equates to a 4 percent whole person impairment. The permanency benefits to be paid will be based on the 10 percent impairment to the knee, not the 4 percent whole person impairment. Thus, the injured worker is entitled to 21.5 weeks (215 weeks x

10% = 21.5 weeks) (see Rule 11). **Whole person ratings do not apply to injuries before April 1, 1995.**

For all injuries occurring on or after April 1, 1995 permanent partial disability benefits must be calculated using the whole person rating system. Spine injuries must be calculated based upon 550 weeks. All other injuries are calculated based upon 405 weeks.

Vermont's workers' compensation statute, [21 VSA §648\(d\)](#), requires apportionment of impairment where a prior impairment of the same body part/system **has been both rated and paid**. Absent those specific circumstances, the Commissioner retains discretion whether to apportion or not.

IMPORTANT: If you have evidence that the injured worker had a prior injury to the same body part or system that was rated and paid, you should provide the medical expert who is assessing permanent impairment with that information so that the apportionment issue can be considered and addressed.

To calculate the number of weeks due for a spine injury together with an injury to another body part, the whole person rating for the spine must first be multiplied by 550 weeks. Then the whole person rating for the other body part is multiplied by 405 weeks and the two are added together. (For example, 15% whole person impairment for the spine x 550 weeks = 82.5 plus 20 percent whole person impairment for the lower extremity x 405 = 81, for a grand total of 163.5 weeks of permanent partial disability benefits due the injured worker. See Rule 11a.

The insurer must inform the injured worker of his or her right to obtain at least one permanency examination and impairment rating, at the carrier's expense. See Rule 11.2400 (for injuries prior to 4/1/95 Rule 11.1530 applies). The insurance carrier may request that the injured worker attend an examination with its own medical expert at reasonable times and places.

The 90 percent compensation rate applies **ONLY** to temporary total disability benefits. If the injured worker's temporary total compensation rate

is 90 percent of his or her average weekly wage, the permanent partial disability benefits must be recalculated to reflect the appropriate permanent partial compensation rate instead. For example, the average weekly wage is \$200.00 and the injured worker is receiving 90 percent compensation rate of \$180.00 for temporary total purposes. Permanent partial benefits would be paid at the rate of \$200.00. If the average weekly wage is \$500.00, the permanent partial disability compensation rate would be paid at the current minimum compensation rate in effect or two-thirds of the average weekly wage, whichever is higher. See Rule 15.0000.

Permanent partial disability benefits should be initiated after the injured worker has reached medical end result and permanent impairment has been assessed. If the injured worker lost time from work, has reached a medical end result and a Notice of Intention to Discontinue Payments has been properly filed, temporary total disability benefits cease and permanent partial benefits begin.

When paying permanent partial disability benefits through July 1 of each year, the compensation rate must be adjusted to reflect the annual cost of living adjustment (COLA) on the Notice of Change in Compensation Rate (Form 28).

Example: Permanent partial benefits begin on May 1, 2010, for a total of 25 weeks. On July 1, 2010, the compensation rate would increase by the annual COLA and the remaining weeks are paid at the new rate. ([21 VSA §650\(d\)](#), Rule 16.0000) See [memorandum from J. Stephen Monahan dated June 3, 2011](#), see also *Theresa Morin v. Essex Optical* Opinion No. 03-502 (Jan. 28, 2005).

Prior to preparing the Agreement for Permanent Partial Disability (Form 22), the following Forms must be sent to the Department:

For “no lost time” claims, it is necessary to have the Employer's First Report of Injury (Form 1), Wage Statement (Form 25) and the medical documentation supporting the percentage of permanent impairment.

For lost time claims, it is necessary to have the Employer's First Report of Injury (Form 1) and the appropriate forms submitted for lost time wages,

which may include the Certificate of Dependency (Form 10), Wage Statement (Form 25), Agreement for Temporary Compensation (Form 32), Notice of Change in Compensation Rate (Form 28), as well as the medical documentation supporting the percentage of permanent impairment. If temporary disability ended for any reason other than a successful return to work then the effective date of the Notice of Intention to Discontinue Payments (Form 27) must be noted. Please note that if the Department has not approved the Form 27 then we cannot approve the Form 22.

Agreement for Permanent Partial Disability (Form 22)

Complete the information in the upper right hand corner of the form. The State File Number must be included on every agreement or document submitted to the Department. The day of the week that the indemnity payments are to be mailed or deposited must be indicated on the agreement [21 V.S.A § 650\(f\)](#).

Note: In the event there is more than one injury in the claim it is important to specify each injury. Even if there is more than one injury only one Form 22 is filed. The form should specify the different injuries and permanency for each.

In the section marked "PERMANENT PARTIAL DISABILITY," enter the beginning date of permanency benefits. This will either be a full duty return to work date or the effective date of the approved Notice of Intention to Discontinue Payments (Form 27).

The form must be signed by a **licensed** workers' compensation adjuster and the injured worker or his/her legal representative. If the injured worker fails or refuses to sign the agreement, the insurance carrier needs to submit an agreement with the adjuster's signature, along with copies of the correspondence showing the two attempts made to obtain the injured worker's signature. **NOTE:** If the injured worker fails to sign the agreement, the carrier must continue payments up to the amount that it deems correct. Generally this is the amount of permanency determined by the insurer's independent medical examiner.

LUMP SUM REQUESTS: Upon written notice from the injured worker permanent disability benefits may be paid in a lump sum. See [21 VSA §652](#) and Rule 19.0000.

The injured worker's request should specify the benefit, the lump sum amount requested and the reason(s) for the request. Rule 19 details when lump sum awards are approved. All parties must have an opportunity to be heard on this issue. The adjuster should write to the Department and indicate whether or not the carrier agrees to a lump sum payment and the amount agreed to. The Department generally approves of lump sum payments when both parties are in agreement.

A lump sum may be ordered without the carrier's agreement in limited circumstances. Factors that are positively considered include:

1. the injured worker (or his or her household) has another regular source of income;
2. the lump sum can hasten or improve the injured worker's rehabilitation or recovery;
3. the lump sum can hasten or improve the injured worker's return to employment;
4. the lump sum is otherwise deemed to be in the injured worker's best interest.

If the injured worker dies from any cause other than the accident, the remaining permanent partial benefits due shall be paid to his or her dependents, as defined in 21 VSA [§§635](#) and [636](#). If there are no dependents, the remaining amount, but not exceeding \$5,500.00 for burial and funeral expenses and expenses for out-of-state transportation of the deceased to the place of burial, not exceeding \$1,000.00, shall be paid in a lump sum to the proper person.

If the injured worker dies from any cause other than the accident during the period of temporary total disability, and if the injured worker's physician is able to determine a percentage of permanent impairment resulting from the

work-related injury, the injured worker's dependents as defined in [VSA 21 §§635](#) and [636](#) are entitled to the payment of permanent partial disability benefits.

PERMANENT TOTAL DISABILITY

Benefits for permanent total disability are automatically payable for the following injuries under [21 VSA §644](#):

1. total and permanent loss of sight in both eyes;
2. loss of both feet at or above the ankle;
3. loss of both hands at or above the wrist;
4. loss of one hand and one foot;
5. injury to the spine resulting in permanent and complete paralysis of both legs or of both arms or of one leg and of one arm; and
6. a head injury resulting in "incurable imbecility or insanity."

The Commissioner shall consider other specific characteristics of the injured worker, including the injured worker's age, experience, training, education and mental capacity when determining a claim for permanent total disability.

Permanent total disability benefits may be payable for other injuries if the injury or the combination of the injury and other characteristics render the injured worker unable to perform regular gainful employment (See Rule 11.3100 for Odd Lot Doctrine). A vocational rehabilitation assessment and a functional capacity examination typically are required to establish that the disability is total. An injured worker who is found permanently totally disabled (PTD) is entitled to a minimum of 330 weeks of benefits.

After the carrier has paid 330 weeks of benefits it may obtain an evaluation of the injured worker's medical condition and/or vocational prospects. If the carrier obtains evidence that supports the injured worker is now capable of obtaining regular gainful employment it may discontinue benefits by filing a

written request with the Department and attaching its supporting evidence. Copies must be submitted to the injured worker and his or her representative.

DEATH BENEFITS:

If a work-related injury results in death, the employer shall pay compensation to the dependents as defined in [21 VSA §634](#). The employer shall file the Employer's First Report of Injury (Form 1), Report of Fatal Accident (Form 4) and the Wage Statement (Form 25).

If there are no dependents, the personal representative shall receive burial and funeral expenses not to exceed \$5,500.00 and expenses for out-of-state transportation of the deceased to the place of burial, not to exceed \$1,000.00. (See 21 VSA [§632](#) & [§635](#)).

If there are dependents, benefits are paid as follows:

1. To the spouse, if there are no dependent children, sixty-six and two-thirds percent (66-2/3 percent);
2. To the spouse, if there is one dependent child, seventy-one and two-thirds percent (71-2/3 percent); or if there are two or more dependent children, seventy-six and two-thirds percent (76-2/3 percent);
3. If there is no spouse, but a dependent child or children, then to the child or children, the amount or amounts payable to a spouse with the same number of dependent children, to be divided equally among the children if more than one;
4. If there is neither spouse or child, but there is a dependent father or mother, then to the parent, if wholly dependent, thirty percent (30 percent) or if partially dependent, twenty percent (20 percent) or if both parents are dependent, then half of the foregoing compensation to each of them. If there is no such parent, but a dependent grandparent, then to every such grandparent the same compensation as to a parent;

5. If there is neither dependent spouse, child, parent nor grandparent, but there is a dependent grandchild, brother or sister, or two or more of them, to the dependents fifteen percent (15 percent) for one dependent and five percent (5 percent) additional for each additional dependent, with a maximum of twenty-five percent (25 percent) to be divided equally between the dependents if more than one.

Compensation shall be payable during the following periods:

1. Compensation shall be paid to the spouse until the age of 62 if at that time the spouse or reciprocal beneficiary is entitled to benefits under the Social Security Act;
2. until remarriage; or
3. until death, whichever occurs first; however, in no event shall the spouse receive less than a sum equal to 330 times the maximum weekly compensation at the time of the death except when compensation terminates due to death of the beneficiary.

Example. A spouse who is 30 years old at the time of the injured worker's death and never remarries. The spouse receives death benefits of 66-2/3 percent of the average weekly wage until he or she reaches age 62 and is entitled to benefits under the Social Security Act. However, in no event shall the spouse receive less than a sum equal to 330 times the maximum weekly compensation rate at the time of the death except when compensation terminates by reason of death of the beneficiary.

4. to a child, during dependency as defined in [21 VSA §634](#);

Example. A spouse 30 years old at the time of the injured worker's death has two dependent children and remarries five years after the accident. Death benefits are paid at the rate of 76-2/3 percent of the average weekly wage until the remarriage. However, if the spouse has not received an amount equal to 330 times the maximum weekly compensation rate, a lump sum

payment of the remaining amount (330 times the maximum compensation rate at the time of death) shall be paid to the spouse. The two dependent children continue to receive death benefits at the rate of $76\frac{2}{3}$ percent until they are no longer dependent as defined in [21 VSA §634](#).

Another example would be a spouse or reciprocal beneficiary of a deceased injured worker who has two dependent children and one of the children continues on to college following high school and the other child only completes high school. Death benefits will be paid at the rate of $76\frac{2}{3}\%$ of the average weekly wage until the child who completes only high school and reaches the age of 18 and is no longer dependent as defined in [21 VSA §634](#), at which time death benefits will decrease to $71\frac{2}{3}\%$ of the average weekly wage.

5. to a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed two hundred and sixty-four (264) weeks; and
6. to a grandchild, brother or sister during dependency as defined in [21 VSA §634](#), but in no case to exceed two hundred and sixty-four (264) weeks.

Agreement for Compensation in Fatal Cases (Form 23)

Complete the information in the upper right hand corner of the form. The State File Number must be included on every agreement and document submitted to the Department. The day of the week that the indemnity payments are to be mailed or deposited shall be indicated on the agreement [21 V.S.A § 650\(f\)](#).

The form must be signed by a **Vermont licensed** workers' compensation adjuster and the deceased's dependent or his or her legal representative.

NOTE: Death benefits must be updated each July 1 in accordance with a Form 28, with cost of living adjustments, death benefits **can** exceed the injured workers average weekly wage as of the date of injury.

ANNUAL ADJUSTMENT OF WEEKLY COMPENSATION (COLA):

The annual adjustment of weekly compensation is designed to reflect cost of living increases that occur after the injury, so that such compensation continues to bear the same percentage relationship to the average weekly wage in the state as before.

On or before July 1 annually, the Commissioner shall announce the annual change in compensation rate and new minimum and maximum rates for the coming fiscal year. Any injured worker receiving temporary total, temporary partial, permanent partial or permanent total disability benefits or dependents receiving death benefits, on July 1st, shall be entitled to an increase in the compensation rate in accordance with [21 VSA §650\(d\)](#) and Rule 16.0000. Temporary total or temporary partial disability compensation shall first be adjusted on the first July 1st following the receipt of 26 weeks of benefits.

Prior to preparing the Notice of Change in Compensation Rate (Form 28), **the following forms should already have been filed with the Department but if not, you must submit** the Employer's First Report of Injury (Form 1) and the appropriate forms submitted for lost time wages, which may include:

Certificate of Dependency (Form 10)

Wage Statement (Form 25)

Agreement for Temporary Compensation (Form 32)

Agreement for Permanent Partial Disability Compensation (Form 22)

Agreement for Permanent Total Claims (modified Form 22)

Agreement in Regard to Compensation in Fatal Cases (Form 23).

Notice of Change in Compensation Rate (Form 28)

Complete the information in the upper right hand corner of the form. The state file number must be included on every agreement or document submitted to the Department.

Note:

Temporary Total Benefits: The cost of living increase is applicable to all compensation rates (including the 90 percent compensation rate) but only insofar as it does not cause the compensation rate to exceed the average weekly wage.

Temporary Partial Benefits: The cost of living increase must be adjusted **weekly** if the injured worker's wages vary from week to week. Do not include dependency benefits in these calculations.

If the injured worker is receiving either the minimum or maximum rate, it is not necessary to use the multiplying factor when determining the cost of living increase. The new minimum and maximum rates are set by the Commissioner each year and will be indicated on the Form 28.

In cases where death benefits are being paid, the benefits **CAN** exceed the average weekly wage.

In cases involving death benefits, when a child is no longer considered a dependent as defined in [21 VSA §634](#), the rate needs to be recalculated and reflected for each year that an annual increase has occurred since the date benefits commenced. For example, consider a spouse with two dependents who are 15 years old and 8 years old at the time of the injured worker's death on June 15, 1994. Over the course of the next three years, annual increases are received on July 1st. On July 1, 1997 the older child turns 18 and is employed. As of July 1, 1997 that child is no longer dependent and the spouse and one remaining dependent will begin to receive 71-2/3 percent of the average weekly wage. The adjuster needs to complete and file new Forms 28 for the years beginning July 1, 1994 - July 1, 1996 to reflect the new rate of 71-2/3 percent to be paid beginning July 1, 1997 for the spouse and one dependent.

The form must be signed by a **Vermont licensed** workers' compensation adjuster.