

(In effect as of January 1, 2006*)

TABLE 17. OFFSET PROVISIONS IN STATE WORKERS' COMPENSATION LAWS

ALASKA

Section 23.30.224--When public employees receive total disability compensation, compensation is coordinated with employer-paid disability benefits. Workers' compensation payments are reduced if combined total disability and employer-paid disability benefits exceed 100% of employee's spendable weekly wage.

Section 23.30.225(a)--When periodic retirement of survivors' benefits are payable under Title II of the Social Security Act (42 U.S.C., 301 et. seq.), the weekly compensation for total disability or death shall be reduced by an amount equal to one-half of the Federal benefits for such week. (b)--When a claim has been filed under this chapter, any weekly disability benefits payable shall be offset by benefits in accordance with 42 U.S.C., 401 et. seq., by an amount which exceeds 80 percent of the employee's average weekly wage at the time of injury. (c)--When employer contributions to a pension or profit sharing plan are included in the calculation of the compensation rates, any pension or plan payments during a week are offset.

ARKANSAS

Section 11-9-522(f)--Permanent total disability benefits shall be paid during the period of such permanent total disability until the employee reaches the age of 65; provided, with respect to permanent total disabilities resulting from injuries which occur after age 60, regardless of the age of the employee, permanent total disability benefits are payable for a period of 260 weeks.

CALIFORNIA

Section 4753--Additional compensation for subsequent injuries shall be reduced by any monetary payments from any source, except for a pension or a service-connected disability which was incurred in the U.S. armed forces.

Section 4904--Permits liens to be made against temporary total disability indemnity for any unemployment compensation disability benefits being received.

Section 4903--Permits liens for child support payments.

COLORADO

Section 8-42-103 and 8-42-114--Temporary total, temporary partial, permanent partial, permanent total and death benefits, shall be reduced by 50 percent of any Federal OASDI payments and by the percentage of contribution made by the employer to any retirement, pension or disability plan. In the case of permanent total disability benefits, all contributions made by the employer pursuant to a collective bargaining agreement shall be considered to have been made by the employee. Further, offset of permanent total disability benefits by federal OASDI or employer paid retirement benefits shall only apply if the award on which

TABLE 17. OFFSET PROVISIONS (cont.)

COLORADO (cont.)

permanent total disability was based occurred after the individual reached the age of 45.

Section 8-42-103-Periodic temporary and permanent total disability benefits shall be offset by 100% of any workers' compensation benefits received from another state or federal government.

CONNECTICUT

Section 31-307(e)--An employee's total incapacity shall be reduced while the employee is entitled to receive old age insurance benefits pursuant to the Federal Social Security Act. The amount of each reduced workers' compensation payment shall equal the excess, if any, of the workers' compensation payment over the old age insurance benefits.

FLORIDA

Section 440.15(9)(a)--Weekly compensation benefits for disability are offset by the amount of any Federal payments under 42 U.S.C. sections 402 and 423 so that the claimant's total benefits do not exceed 80 percent of his/her average weekly wage.

Section 440.15(10)(a)--No weekly compensation payments are made for temporary or permanent total disability under the workers' compensation law for any week in which unemployment compensation benefits are paid.

Section 440.15(10)(b)--Offsets wage-loss or temporary partial disability benefits by the amount of any unemployment compensation benefit payments.

Section 440.39(3)(a)--Provides that workers' compensation benefits received by a migrant worker will be offset 100 percent against any benefits recovered under the Migrant and Seasonal Agricultural Worker Protection Act.

GEORGIA

Section O.C.G.A. §34-9-243--Provides a credit for payments made to an employee pursuant to a disability plan, a wage continuation plan, or a disability insurance policy.

KENTUCKY

Section 342.730(5)--Benefits shall be offset by unemployment insurance benefits paid during period of temporary total or permanent total disability.

LOUISIANA

Section 1225--Permanent total disability benefits payable under the Act will be reduced for those recipients who are also receiving Federal OASDI benefits. This reduction is to be made only to the extent that the amount of the combined Federal and State workers' compensation benefits would otherwise cause or result in a reduction of the Federal benefits pursuant to the Social Security Act (42 U.S.C., Section 424a).

TABLE 17. OFFSET PROVISIONS (cont.)

LOUISIANA (cont.)

Section 1225-B--No compensation will be paid for temporary or permanent total disability or supplemental earnings benefits during any week in which the employee is receiving or entitled to receive unemployment compensation benefits.

MAINE

Section 222--Offsets benefits for personal injury or disease under an insured disability or medical payments plan against payments for workers' compensation.

Section 220--Reduces benefit payments by the amount of any concurrent unemployment compensation benefits, excluding lump sum settlements and scheduled permanent partial disabilities.

Section 221--Reduces total and partial disability benefits by:

- (1) fifty percent of the amount of old age insurance benefits received under the Federal Social Security Act;
- (2) the after tax amount of the payments received under an employee benefit plan provided by the same employer, if the employee did not contribute directly to the plan; and,
- (3) the proportional amount, based upon the ratio of the employer's contributions to the total contributions, if the employee did contribute directly to the plan.

MARYLAND

Section 9-638(e)--Cost-of-living increases for employees who are entitled to compensation for permanent total disability under this section and for disability under the Federal Social Security Act will be reduced to avoid a diminution of the Federal benefits.

MASSACHUSETTS

Section 36 B(1)--No benefit shall be payable for temporary total and permanent total disability for any week in which the employee has received or is receiving unemployment compensation benefits.

Section 36 B(2)--Any unemployment compensation benefits received will be credited against partial disability benefits for the same period or credited against any future partial disability benefits which are or may become payable.

MICHIGAN

Section 418.354--Temporary total disability benefits will be reduced by 50 percent of any Social Security benefits; and by amounts received after taxes under any self-insurance plan, wage continuation plan, pension or retirement plan provided by the employer to which the employee does not contribute.

Section 418.354(1)(f)--Temporary total disability benefits will be coordinated with those from employer contributions to a qualified profit sharing plan where the employer does not provide

MICHIGAN (cont.)

a pension plan.

Section 418.358--Offsets temporary total, permanent total, and permanent partial disability benefits under the Workers' Compensation Act dollar for dollar by unemployment compensation benefits.

MINNESOTA

Section 176.101, Sub. 4--After \$25,000 is paid for permanent total disability, benefits paid by any government disability program, or any old age and survivors' insurance benefits program are credited against workers' compensation benefits, if such disability benefits are occasioned by the same injury.

Section 176.111, Sub. 21--Death benefits shall not exceed 100 percent of the deceased employee's weekly wage at the time of the injury causing his death, when the total weekly government survivor benefits and the State workers' compensation benefits are combined, nor be payable for any week in which the government benefits exceed such percentage.

MONTANA

Sections 39-71-701(5) and 39-71-702(4)--If periodic disability benefits are payable to the worker under the Federal OASDI, weekly temporary total and permanent total disability benefits resulting from both injury and occupational disease shall be reduced by an amount approximating one-half (but not below zero) of the Federal benefit for such week which amount is to be calculated from the date of the Social Security disability entitlement.

NEVADA

NRS 616C.405 provides that if a person is receiving compensation for permanent disability, he is not entitled to permanent partial disability while receiving PTD; if he is receiving temporary total disability, he is not entitled to PPD during the period of TTD; lastly, if he is receiving temporary partial disability, he is not entitled to PPD during the period he received TPD.

If a person is incarcerated he is not allowed to receive temporary total disability (NRS 616C.475(1)) or permanent total disability (NRS 616C.440(2)) during the period of incarceration. If a person retires or otherwise "voluntarily removes himself from the workforce," and then reopens his claim, he is not entitled to temporary total disability or vocational rehabilitation services. NRS 616C.390(6).

NEW JERSEY

Section 34:15-29--Workers' compensation benefits may be offset against disability pension benefits or payments.

Section 34:15-95.4--Supplemental benefits for permanent total disability and death shall be offset by Federal survivor or disability benefits, black lung, or disability pension benefits.

TABLE 17. OFFSET PROVISIONS (cont.)

NEW JERSEY (cont.)

Section 34:15-95.5--Reduces permanent total disability or subsequent injury benefits of individuals under age 62 by Social Security benefits where the period of disability began after December 31, 1979.

Section 34:15-40--Entitles the employer and/or their insurance carrier to receive a credit for amounts recovered from a third party causing the compensable work related injury.

NEW MEXICO

Section 52-1-70 A&B--Offsets unemployment compensation benefits against total disability benefits. If a worker is concurrently entitled to both types of benefits, the unemployment compensation benefits shall be primary and total disability benefits shall be supplemental only, and the sum of the two benefits shall not exceed the amount of total disability benefits otherwise payable.

Section 52-47.1A--Unless otherwise contracted for by the worker and employer, workers' compensation benefits shall be limited so that no worker receives more in total payments, including wages and benefits, from the employer by not working than by continuing to work. Compensation benefits under the Workers' Compensation Act shall accordingly be reduced, if necessary, to account for any wages and employer-financed disability benefits a worker receives after the time of injury. For the purposes of this section, total payments shall be determined on an after-tax basis. This section does not apply to Social Security payments, employer-financed disability benefits, benefits or payments a worker received from a prior employer, payments for medical or related expenses, or general retirement payments, except it does apply to disability retirement benefits.

NEW YORK

Section 16(1-c) and(7)--Applies a statutory offset of a sole surviving spouse's compensation by up to 50 percent of his or her Social Security Survivor's benefits, if any. Further, provides that in computing the offsets, any increase in benefits under the Social Security Act that occurs after the date of death shall not be considered; and any such offset shall be equally applicable to payments under the Social Security Act which are received retroactively, but shall not apply to increases for such benefits received retroactively.

NORTH CAROLINA

Section 97-42.1--Provides that compensation for temporary total or permanent total disability benefits may be reduced by the amount of any unemployment insurance benefits received for the same period.

NORTH DAKOTA

Section 65-05-08--Offsets wages earned against disability benefits. Any worker who fails to report wages received from any part-time or full-time employment is required to repay benefits overpaid due to injured worker's failure to report wages.

Section 65-05-09.1--Social Security offset. The aggregate benefits payable for temporary total or permanent total disability shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half of the benefits payable under Title II of the Social Security Act (42 U.S.C. 423) and will not be affected by any increase or decrease in Federal benefits. Any escalation of temporary or permanent total disability benefits, which would adversely affect the bureau's right to offset workers' compensation benefits against Social Security benefits, shall not be applicable to persons whose benefits are offset, as provided for in this chapter.

Section 65-05-09.2--Retirement Offset. If a claimant is entitled to permanent total disability benefits and Social Security retirement benefits under 42 U.S.C. sections 402 and 405, the aggregate wage-loss benefits payable under this title must be determined in accordance with this section. The employee's Social Security retirement offset must equal 40 percent of the calculated ratio of the employee's average weekly wages, as calculated on the commencement of the first, or recurrent, disability to the current State's average weekly wage. Any offset calculated cannot exceed 40 percent of the employee's weekly Social Security retirement benefit. If a claim has been accepted on an aggravation basis and the worker is eligible for Social Security benefits, the bureau's offset must be proportionally calculated.

OHIO

Section 4123.56--Applies an offset against temporary total disability payments in the event of concurrent and duplicative benefits under an employer funded non-occupational benefits plan.

OKLAHOMA

Title 85, Section 45(B)--Prohibits an employee from receiving temporary total disability benefits covering the same period of time as unemployment compensation benefits received by the employee as provided by the Oklahoma Employment Security Commission.

OREGON

Section 656.209--Provides for a Social Security offset against permanent total disability benefits determined and authorized by the Department in each case. Such offsets must not result in a reduction of benefits to an amount less than the greater of the workers' compensation benefit, the total family benefit under Social Security, or 80 percent of the average current earnings as determined by Social Security.

PENNSYLVANIA

Section 204(a)--Provides that 50 percent of Social Security old age or retirement benefits, and 100 percent of severance benefits and the benefits from an employer-funded pension plan and unemployment compensation shall be offset against workers' compensation benefits.

RHODE ISLAND

Section 28-33-45(a)&(b)--Offsets retirement benefits against workers' compensation benefits so that the sum is equal to the greater of the compensation or retirement benefits for which employee is eligible. Offset provision is not applicable to employee collecting retirement benefits while collecting compensation for an injury sustained before age 55 and more than five years prior to retirement.

SOUTH CAROLINA

Section 42-7-67(A)&(C)--Compensation for an injury or death of a member of the State National Guard will be reduced by the amount of any Federal benefit payments; however, if the State benefits are greater than the Federal benefits due, the member may elect to receive the State benefits and thereby not be subject to any offset of benefit payments.

SOUTH DAKOTA

Section 62-4-7--Permanent total disability benefits are limited to the difference between 150 percent of weekly benefits and amounts received for social security retirement benefits.

TENNESSEE

Section 50-6-207(4)(A)(i)--Provides for a reduction of permanent total disability (PTD) benefits by the amount of old age benefit payments attributable to employer contributions which employee may receive under the Social Security Act. By case law, employer contributions are deemed to account for one-half of old age benefit.

UTAH

Section 34A-2-413(4)--After the first 312 weeks of permanent total disability payments have been made, future payments will be reduced by the dollar amount of 50 percent of the Social Security retirement benefits received by the employee during the same period.

Section 34A-2-414(2)(A)(ii)--Reduces weekly death benefits to wholly dependent spouses after the first six-year period following an employee's death by 50 percent of any Federal Social Security death benefits.

WASHINGTON

Section 51.32.225--Reduces temporary and permanent total disability benefits to allow an offset for Social Security retirement benefits under the Federal OASDI, in a manner similar to Section 51.32.220.

Section 51.32.220--Reduces temporary and permanent total disability benefits for persons under age 65 by an amount equal to the benefits payable under the Federal OASDI, under certain conditions.

WISCONSIN

Section 102.44(5)--Reduces disability benefits under this section when the employee also receives Social Security disability benefits. Combined workers' compensation and Social Security disability benefits are limited to 80 percent of the employee's average current earnings. However, such benefits may not be reduced to an amount less than the benefits payable under this chapter.

WYOMING

Section 27-14-404(iii)--Prohibits an employee who is receiving unemployment compensation to receive temporary total disability benefits under the Workers' Compensation Act.

The following jurisdictions **DO NOT** provide a statute in their workers' compensation law applicable to *offset provisions*: Alabama, Arizona, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Mississippi, Missouri, Nebraska, New Hampshire, Puerto Rico, Tennessee, Texas, Vermont, Virginia, Virgin Islands, and West Virginia.