

LUMP SUM ADVANCEMENTS

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Introduction:

A lump sum advancement, an often underutilized tool, can be an effective way for an injured worker or dependent to acquire compensation during a difficult time. Pursuant to OAC § 4123-3-37, an injured worker or dependent can get an advancement on certain types of ongoing compensation, and in return, the injured worker's or dependant's compensation would be eliminated or reduced until the advancement is recouped.

Effective November 13, 2015, the law on lump sum advancements has changed. As will be discussed in more detail below, the new law has significantly increased the amount of compensation available to an injured worker, however, it has drastically reduced the ability of a dependent to obtain a lump sum advancement.

Summary Of Changes To OAC § 4123-3-37:

There are several significant changes from the prior version of OAC § 4123-3-37 to the current version:

- An injured worker can now receive a lump sum advancement on a Permanent Partial Disability or Loss of Use award up to the entire amount of the balance that remains to be paid.
- An injured worker can now obtain an advancement on PPD awards under ORC 4123.57(A).
- A surviving dependant cannot obtain a lump sum advancement on a loss of use award made pursuant to ORC 4123.57(B).
- The new version of OAC § 4123-3-37 requires that the application provide "proof" that the advancement is advisable for purposes of providing financial relief or for rehabilitation.
- Any lump sum advancement will now be paid based on the net present value of the amount advanced.
- The BWC will not permit an advancement on a Loss of Use award or PPD award while the allowance of the award is under an administrative appeal or an appeal into court.

Detailed Discussion Of OAC § 4123-3-37:

The purpose of OAC § 4123-3-37 is to provide an avenue for an injured worker, or surviving spouse, to obtain an advancement of workers' compensation benefits. A lump sum advancement is only available in two specific situations. The administrator will only commute compensation to a lump sum when it is proven that the compensation is for financial relief or to aid in the injured worker's rehabilitation.¹

The types of compensation from which an injured worker may obtain an advancement differ from the types of compensation from which a surviving spouse may obtain an advancement. An injured worker may obtain an advancement only from an award of Permanent Total Disability ("PTD") benefits, under ORC 4123.58, or from a Permanent Partial Disability ("PPD") award or Loss of Use award pursuant to ORC 4123.57(A), (B).² It is worth noting that an injured worker is precluded from obtaining a lump sum advancement against a Loss of Use

award or PPD award when the allowance of the award is under an administrative appeal or has been appealed into court.³

Importantly, an injured worker can now receive a lump sum advancement on a Permanent Partial Disability or Loss of Use award up to the entire amount of the balance that remains to be paid. Under the prior version of OAC § 4123-3-37, an injured worker could not get an advancement of a Loss of Use award that would result in a rate reduction of more than one-third of the rate of compensation.

On the other hand, a surviving dependent may only obtain a lump sum advancement from death benefits, pursuant to 4123.59, and not from a Loss of Use award or PPD award.⁴ Moreover, the surviving spouse may not obtain an advancement in excess of the amount of death benefits payable to that surviving spouse over a two year period.⁵

As mentioned, the applicant requesting a lump sum advancement must show proof that the advancement is for financial relief or for rehabilitative purposes.⁶ The code does not contain a discussion as to what constitutes “proof” for purposes of obtaining an advancement. However, the BWC has created a form called C-32 “Application for Payment of Lump Sum Advancement.”

The C-32 form requires that the applicant request an exact amount of compensation. Next, the applicant must “[p]rovide a complete list of creditors, financial institutions or vendors and the amount owed or anticipated... Please note that the total amount owed or anticipated must match or exceed the Exact amount requested...” As such, the applicant must be able to justify the amount requested. This prevents an injured worker or surviving dependent from obtaining an advancement simply because he or she would prefer to have the compensation up front as opposed to being paid out over time.

Another factor to consider when discussing a lump sum advancement with a client is that now all lump sum advancements are subject to being paid at the net present value of the future payment amount.⁷ The BWC currently utilizes a 4% discount rate to determine the net present value. The discount is subject to change by the BWC. The net present value calculation can result in a significant reduction in compensation.

For advancements of death benefits or permanent total disability benefits, the Bureau determines the biweekly rate reduction to offset the lump sum advancement, and once an injured worker or surviving spouse agrees to the time period for the rate reduction, that time period cannot be changed.⁸

An advancement of death benefits or permanent total disability benefits cannot result in a reduction of more than one-third of the biweekly payments.⁹ As mentioned, this maximum rate reduction does not apply to advancements made on Loss of Use or PPD awards.

Conclusion:

The changes to OAC § 4123-3-37 reflect a give and take for injured workers and surviving dependents. An injured worker can now receive an advancement up to and including the entire amount of the balance that remains to be paid on a Loss of Use or PPD award, but the surviving dependents now cannot receive any advancement on such awards. Moreover, the question of what constitutes “proof” for the purpose of showing the need for financial relief or injured worker’s rehabilitation remains unanswered. Even though the present value calculation can result in a significant reduction in compensation, a lump sum advancement can be a beneficial tool to injured workers or dependents.

1. OAC § 4123-3-37(A)
2. Id., at (A)(1)
3. Id., at (A)(4)
4. Id., at (A)(2)
5. Id.
6. Id., at (B)(1)(a)
7. Id., at (B)(3), (4), (5)
8. Id., at (B)(3)
9. Id., at (C)(1)