

Workers' Compensation Frequently Asked Questions (FAQ)

Thank you for taking the time to look over this booklet. The lawyers of the Workers' Compensation Law Clinic have prepared this to answer the questions posed to us most often by our clients. While we are always happy to discuss individual workers' compensation cases, we felt that this comprehensive and portable resource would be helpful to injured workers and their families. This booklet, however, is not intended to be a substitute for legal advice. We are always happy to provide a free consultation for those with questions beyond those covered here. We also invite you to post questions or issues on our public Workers' Compensation forum at www.Princelaw.com.

Please note that this booklet addresses questions regarding work injuries suffered after June 24, 1996, which is the date when the most recent amendments to Workers' Compensation law went into effect.

What is Workers' Compensation?

Workers' Compensation is an insurance policy your employer is required to have in the event you are hurt on the job. The Pennsylvania Workers' Compensation Act (Act) requires that your employer either maintain insurance to cover injuries suffered by its employees, or apply for and become self-insured.

When you file a claim for Workers' Compensation, you are filing an insurance claim, very much as if you were in a car accident. You are not *per se* suing your employer, but rather are making a claim against its insurance policy.

Workers' Compensation is a "no fault" insurance policy, which means that an injured worker is covered whether or not the employer feels the injury was his or her fault. However, not every claim for benefits is simply paid by the insurance company.

Although private insurers administer claims, the Bureau of Workers' Compensation - a Commonwealth agency - determines the outcome of disputed claims through litigation before Workers' Compensation Judges (WCJs).

What is a work injury?

Work injuries can be broken down into four separate categories:

- 1) **Actual injury:** This is defined as an injury occurring during the course of employment. For example, an obvious work injury occurs if you fall down the stairs and break your arm while working. An actual injury includes an aggravation of a preexisting condition. For instance, a minor

back condition that later becomes disabling after a work-related incident is compensable.

- 2) **Repetitive trauma:** Not all compensable injuries need to be pinpointed to a specific event. For example, engaging in the same task at work, over and over again for lengthy periods of time, can cause carpal tunnel syndrome and other repetitive motion injuries.
- 3) **Occupational Disease (OD):** When an employee contracts a disease from work, such as an infection from hospital work or Black Lung from coal mining, it is covered by Workers' Compensation.
- 4) In rare cases, an employee can be compensated for psychological injuries, such as a psychological disability brought on by a physical work injury. In *very, very* rare cases, Workers' Compensation may cover a psychological injury brought about by abnormal working conditions.

Always remember that if you have had any sort of work injury, it is *important* that you tell your employer about it within 21 days, and *critical* that you give notice within 120 days of the injury. When you have a repetitive motion injury, such as carpal tunnel syndrome, you must advise your employer as soon as you suspect it's work-related. One of the most common causes of claim denial is that an employee "stuck it out" and thought the problem would go away, then told the employer about it weeks or months later. If you do not give timely notice that you have a work injury, your claim may be forever barred.

Insurers have 21 days from the date of notice to investigate the incident. Before the 21 days are over, the employer is required to either file a Denial or accept the claim by mailing the injured worker an official Workers' Compensation Bureau document. Sometimes, while the claim is being investigated, your medical bills will be paid. Please note that payment of the bills *does not* automatically make the employer liable for the injury.

What benefits are payable?

The Act specifies that injured workers may get four types of benefits: wage loss, medical, specific loss, and death benefits.

Wage loss

Workers' Compensation wage loss benefits are only paid when you suffer a loss of earning power. Namely, you get wage loss benefits only when your earnings are directly affected by the work-related injury. If you were paid weekly by your employer, the insurer must pay you weekly; if you were paid bi-weekly, compensation benefits must be paid on the same schedule. The two types of wage loss benefits are:

- a) Temporary Total Disability (TTD)
Weekly wage loss checks payable to injured workers when they are entirely out of work. Generally, you are paid, tax free, at 66 2/3% of your pre-injury average weekly wage.
- b) Partial Total Disability (PTD)
If you are back to work, but earning less than your pre-injury average weekly wage, you receive 66 2/3% of your earnings loss. These benefits last for a cumulative 500 weeks.

Medical

The insurer must pay all reasonable and necessary medical bills related to the treatment of the work injury.

Specific Loss

On occasion, an injured worker loses a part of his body, or its use. He may be entitled to specific loss benefits. This type of injury is compensable under very detailed rules established in the Act. Once a loss is established, the employee is entitled to a specific number of weeks of compensation. Specific loss injuries fall into four categories:

- 1) Appendage
Compensation is payable for amputation, or permanent loss of a body part. For example, losing a finger in a construction site accident.
- 2) Hearing
If you have a hearing loss due to exposure to long-term hazardous occupational noise, you may be entitled to an award. To determine the amount of the award, which is directly tied to the percentage lost, we rely on the American Medical Association's (AMA's) *Guides for the Evaluation of Permanent Impairment*. The AMA test is based on hearing loss levels in decibels of 500, 1,000, 2,000, and 3,000 hertz. The results are then calculated to establish the total percentage of impairment.
- 3) Sight
Compensation is awarded if the eye does not contribute to overall vision when combined with your uninjured eye.
- 4) Disfigurement
If serious and permanent disfigurement occurs to the head or neck, it is compensated for a period not to exceed 275 weeks of benefits. As an

example, if you have surgery on your neck that results in a scar, you may be entitled to specific loss benefits

Death benefits

Widows, widowers, children and a limited group of other surviving family members may be entitled to benefits in the event an employee's death results from a work injury or illness.

At what rate are weekly workers' compensation benefits paid?

Generally, you are paid 66 2/3% of your pre-injury average weekly wage, tax free. There are several ways to determine this figure, the most common being the average of your three highest earning quarters in the year preceding your work injury. Of course, your overtime wages or room and board are included in this calculation. Wage loss benefits are subject to caps, which change every year. The caps are directly tied to the Bureau's yearly determination of the statewide average weekly wage. For example, the Bureau determined that the average wage in the Commonwealth (statewide average weekly wage) in 2004 was \$690. Therefore, a person injured in 2004 can receive no more in workers' compensation than \$690 a week. For 2005, that number is \$716. The statewide minimum compensation rate is exactly half of these figures, unless you earned less than these amounts before your injury. In that case, your benefit is 90% of your average weekly wage.

If you worked for more than one employer at the time of your injury, your wages from all of your employers are used to calculate your pre-injury average weekly wage.

The insurance company won't pay my medical bills. What can I do?

You should speak to a lawyer as soon as possible and have the bills and legal records ready for review. A petition may need to be filed against the insurance company if they are related to the work injury and are being ignored. Competent legal counsel will work with your medical care providers to get the bills paid in such situations.

Do I have to treat with the company doctor?

Good question. Chances are you do not. While the law allows your employer a "captive period" in which you must treat with their doctor for 90 days, in most cases this cannot be enforced. The only way they can impose a doctor on you is if: a) your employer posts a list of six physicians to choose from in a public place; and b) your employer gets your signature on an Acknowledgement form *before* and *after* you are injured. Unless your employer has complied with

these prerequisites, you are free to choose your own doctor. In addition, even if your employer meets both of the above requirements, they cannot force to treat with one particular provider on the list. You have an absolute right to choose any provider from the posted list.

Can I sue my employer for pain and suffering?

No. This is the question posed most by our clients and certainly deserves a detailed explanation.

This rule stems from a conflict that started during the Industrial Revolution. As the Commonwealth transitioned from an agricultural economy to one of industry, more and more residents suffered work-related injuries. With this increase came an increase in lawsuits against employers, some of which were successful and resulted in large awards for pain and suffering. Unfortunately, these lawsuits are time consuming and expensive to litigate, leaving many injured workers in dire straits. On the other hand, employers were facing the possibility of devastating jury awards. The legislature stepped in to resolve this conflict: employers were now required to carry insurance that compensated injured workers, and employees were prevented from suing for pain and suffering.

It should be noted that there is one exception to this immunity: if your employer did not have insurance at the time of injury, you may sue them in a Court of Common Pleas.

You may have the right to sue a third party if you were injured by unsafe equipment or an automobile accident. For example, a worker injured by a table saw shipped without a guard may be able to sue the manufacturer. You will need an attorney with experience in these matters to pursue such a claim. Please note, however, that if you are successful in such a suit, the Workers' Compensation insurer may assert its right to be reimbursed the money it has paid you. This concept is known as "subrogation".

Can I collect Unemployment Compensation, social security, retirement, short- or long-term disability, or sickness & accident benefits while getting Workers' Compensation?

Yes. While certain conditions exist, you can collect other benefits while collecting Workers' Compensation. These benefits may decrease the Workers' Compensation benefits you receive. Likewise, the receipt of Workers' Compensation benefits may decrease the amount of other disability benefits you may be entitled to collect. Because the rules regarding benefit offsets are very complex and subject to change, you should always advise your lawyer of the benefits you receive.

Does my employer have to keep my job open if I get hurt?

The Act does not address this. The only law that *may* protect your job is the Family and Medical Leave Act (FMLA). If your employer is large enough, the FMLA may require them to keep your position open, without pay, for 12 weeks. The only other way to ensure that your employer keeps your job open for you is through a collective bargaining agreement or a voluntary employer policy.

What if my employer or the insurer goes bankrupt?

If your employer, insurance carrier or self-insured employer goes bankrupt, the legislature has included in the Act provisions to insure that you will still receive benefits through either a State guaranty fund or a specialized insurance policy. Unfortunately, if your employer is not insured, there is no such guarantee.

I received a Denial of Workers' Compensation from the insurance company. What do I do next?

This is a point at which you need an attorney to file a Claim Petition as soon as possible.

I got a Notice of Temporary Compensation Payable (NTCP) in the mail. What is this?

This means that your employer or the employer's insurance carrier can pay compensation benefits to you for a maximum period of 90 days without admitting liability. During those 90 days, however, the carrier can revoke the NTCP by filing a Notice of Workers' Compensation Denial and a Notice Stopping Temporary Compensation. However, after those 90 days ends, if the carrier has not revoked the NTCP, it will automatically convert to a Notice of Compensation Payable (NCP).

I got a Notice of Compensation Payable in the mail. What is this?

This is good news. Without issuing this document, the carrier is not bound to pay any benefits associated with your work injury. If you got one, the carrier is now "on the hook". However, it is still important to verify that your average weekly wage, compensation rate and injury description are correct. If you question any of these, you should consult an attorney immediately to discuss options to correct it.

I got a Verification Form in the mail. What is this?

The carrier has the right to send you these forms twice a year. You *must* complete the forms and return them signed to the carrier. Otherwise, your benefits may be suspended until the forms are received. We recommend that you return the forms via USPS certified mail, with a return receipt, so you can prove that you sent the forms back.

I got a Notice of Ability to Return to Work. What do I have to do?

If your treating physician or another doctor opines that you can return to work in some capacity, the carrier may issue a Notice of Ability to Return to Work. It must specify, in detail, your capabilities and limitations. General statements, such as, “patient has improved” are not acceptable. The Notice informs you that you are now required to look for work. The form does not actually obligate you to look for jobs within your limitations, nor does it require you go back to work. It is, however, wise to consult with an attorney if you receive one of these forms.

The insurance company wants to send me to an “Independent” Medical Examination (IME). What is this?

We put quotation marks around the word “independent” because the doctors the insurers choose to examine you are *not* independent. The insurer has chosen the IME doctor who often gets paid hundreds - if not thousands - of dollars for every injured worker examined. Your employer is allowed to request a physical examination for you as frequently as twice a year. Generally, they send you to these doctors to obtain an opinion in the insurer’s favor.

The insurance company wants to send me to Impairment Rating Evaluation (IRE). What is this?

In order to determine whether you remain entitled to temporary total disability, the insurer can send you to an IRE after you have received 104 weeks of TTD benefits. There are very specific rules and time constraints for when this exam can be requested. If, however, the IRE request is timely, an American Medical Association-certified doctor will examine you to gauge your percentage of whole body impairment resulting from the work-related injury. The degree of impairment is based on the most recent edition of the AMA guidelines.

If the doctor finds that your impairment to be equal to or greater than 50 percent, then you are presumed to be totally disabled and benefits continue. If you are determined to be less than 50 percent impaired, your TTD benefits will be limited to 500 more weeks. This “ticking clock” can only be stopped if it can be proven that you are more than 50% disabled. This is extraordinarily difficult. To put things into perspective, there are some injured workers who are limited to wheelchairs who have been gauged to be less than 50% disabled.

What if the insurer hires a vocational counselor to interview me?

A vocational counselor is someone hired by the employer to either: a) determine your hypothetical “earning capacity”; or b) find a new job for you within your current physical capabilities. This usually occurs after an IME or treating doctor releases you to return to work in some capacity. This is the insurer’s first effort to reduce your workers’ compensation benefits. You should therefore not consider the vocational counselor your friend. The assignment of a vocational counselor is often the first sign that you need an attorney.

It should be noted that there *are* vocational counselors that work for independent agencies who *are* looking out for your best interests. Our attorneys, for example, often refer clients to the Office of Vocational Rehabilitation, a Commonwealth agency that does not have a bias favoring insurers.

What if my employer offers me a modified job?

Your employer must first present you with a Notice of Ability to Return to Work before making the offer. If you’ve received one, first think long and hard as to whether you can attempt to do the offered position. It is often wise to ask your treating doctor if the offered job is acceptable. Present your doctor with a written job description before he can make that decision. It may be best to rely on your doctor’s opinion as to your ability to return to an offered job before going back to try it. If you do indeed go back, the insurer will likely reduce your weekly benefits and pay you partial disability based on your earnings. Unfortunately, if the job does not go well from a physical perspective, you may have to go back to court in an attempt to reinstate your total disability benefits. If your doctor advises against going back to work, you should immediately send a doctor’s note to that effect to your employer.

Can my wage loss benefits be reduced?

Remember that if you accept a modified job, your total disability benefits can be reduced to partial disability benefits, or even stopped.

There is another way the insurer will attempt to reduce your benefits. A vocational counselor may conclude that you have a hypothetical “earning power”, based on your physical limitations and job listings, job placement agencies, and classified advertisements. This is called a “Labor Market Survey”. The insurer may file a petition against you asking a Workers’ Compensation Judge to reduce your benefits by that hypothetical “earning power”.

Again, if you are contacted by a vocational counselor or if you receive such a petition in the mail, consult an attorney immediately.

Can the insurance company hire a private investigator to follow me?

Yes. If you are “radiating” your image to the public, you can be observed and videotaped. Be aware that it is completely legal for a private investigator to record videos or take pictures of you. While we do not want to encourage paranoia, we do encourage awareness of the possibility that you are being watched.

Do I get reimbursed for my travel expenses?

Generally not. There is a 1992 appellate case called *Helen Mining Company v. Workers' Compensation Appeal Board* that severely limits your ability to be reimbursed for travel expenses incurred for medical treatment. This case changed the law for the worse, holding that, if treatment is available in your locale, travel expenses are not reimbursed.

IME travel will be reimbursed. Your employer is required to pay travel costs for medical treatment in accordance with the IRS rates. Better yet, the insurer must provide transportation for you to go to an IME and reimburse you for any lost wages.

Do I have to settle my case?

Absolutely not. There is no petition the insurance company can file against you to force a settlement. Likewise, there is no petition that you can file against an insurer to force them to settle your case.

In some instances, it is acceptable to settle your case. However, whether or not you settle *should* be one of the most important decisions you ever make.

Remember to choose your lawyer carefully. One who advertises that your case can be settled, or who only receives a fee if you settle may be motivated to settle your case even if it's not truly in your best interests.

What if I want to settle my case? What's a Compromise and Release (C&R)?

Just because you don't *have* to settle your case, doesn't mean you *can't*. You can agree to settle by way of a C&R, a lump sum settlement that ends your case. These Agreements must be approved by a WCJ after a hearing in which you testify. Please note that C&Rs are increasingly technical and must be crafted *very* particularly in order to protect your rights.

What happens when a case goes to court?

The party who files the petition must meet its “burden of proof”. This is done by presenting evidence in the form of testimony and documents. This evidence may include reports, your testimony, fact witness testimony from both sides, and doctors’ depositions.

Is there one hearing where the Judge makes up his or her mind?

No. All of the parties will get a copy of the WCJ’s Order in the mail after the evidentiary record has closed.

How long does it take to litigate a case?

While the time it takes to litigate a claim varies from case to case, there are generally several hearings held and medical depositions that must be taken before the WCJ can issue a decision. On average, it takes approximately ten months for a WCJ to finally reach a conclusion.

Can I appeal a Judge’s Order if I disagree with it?

Yes, but the chances of success on appeal are generally slim. We often meet clients for the first time only after a WCJ has ruled against them. Unfortunately, the news we often have to deliver is that the Judge is the final finder of fact; the Order cannot be overturned unless the WCJ made a serious mistake in the law. The WCJ’s choice of believing one witness over another is entirely his choice: that’s what WCJs do.

Even worse, appellate courts have recently held that an injured worker who appeals a decision can be held liable for the insurance company’s attorney fees if the appeal is without merit.

I’m getting workers’ compensation. Do I need an attorney?

No, not unless the insurer is preparing to challenge your rights, or you suspect that something is wrong with your claim. Trust your instincts: if you suspect the insurer is trying to influence your rights, they probably are. When in doubt, call an attorney to discuss your concerns at no charge.

What is the amount I am expected to pay my attorney?

Lawyers are limited to collecting 20% of your wage loss benefits.