



## **A GUIDE TO WORKERS' COMPENSATION IN NEW YORK**

If you live or work in New York State and suffer a work-related injury, illness or disability, you may be eligible for workers' compensation benefits. This summary outlines many of the workers' compensation benefits and answers some basic questions about the Workers' Compensation Law.

### **ABOUT WORKERS' COMPENSATION**

The Workers' Compensation Law was passed by the New York State Legislature in 1914 as a compromise between employee and employer interests. As part of the compromise, employees in most instances lost the right to sue their employers for negligence resulting in injury, illness or disability. In return, employees generally receive payment from workers' compensation without regard to fault as long as the injury, illness or disability was related to work. The question of what is work-related is not always simple. Even horseplay at work may be considered work-related in some instances.

Any time a serious injury occurs while at work, it is advisable to talk to a lawyer. Some workplace accidents may permit the injured party to sue a third party (e.g., product manufacturer, land owner or someone other than the employer who contributed to the injury). There are also special laws in New York that offer additional protection to certain workers such as workers at a construction site. Consultation with a lawyer is essential any time there is a serious injury. The lawyers who represent injured persons do not charge any consultation fee and do not charge the client a fee for their efforts unless money is recovered for the injured person.

In most instances, employers are required to have workers' compensation insurance or to meet self-insurance requirements. The employer is required to pay for the insurance, and employees cannot be

required to contribute to the cost of the insurance policy. A workers' compensation insurance company may accept a claim, contest a claim, or contest part of a claim filed by an injured worker.

The Workers' Compensation Board is the state agency that decides claims filed under the Workers' Compensation Law. The Board has offices throughout New York State. In New York City, Workers' Compensation Board offices are located at 125th Street in Manhattan, Livingston Street in Brooklyn, 89th Avenue in Jamaica, Queens and Bay Street in Staten Island (see appendix for the addresses and phone numbers of these offices). The Board functions similar to a court, providing Workers' Compensation Law Judges to decide disputes between injured workers and insurance companies. The Board does this either by holding hearings or by issuing written decisions based on paperwork filed by the injured worker, the treating doctors, the insurance company, and the insurance company's medical consultants.

Hearings are held at the Workers' Compensation Board before a Workers' Compensation Law Judge. The insurance company will be represented by an attorney or other insurance company lawyer who is trained to appear at hearings. A court reporter will be present to take down what is said at the hearing. Many injured workers retain attorneys to represent them in workers' compensation claims. A workers' compensation attorney is not permitted to charge a fee or to take money directly from a workers' compensation claimant. If the claim results in an award of benefits, the attorney will generally request that a fee be approved by the Workers' Compensation Board. If the fee request is approved, the money will be deducted by the insurance company from the benefits due to the injured worker and sent directly to the attorney.

## **INJURIES, ILLNESS AND DISABILITY**

To receive workers' compensation benefits, an employee must prove that he/she has an injury, illness or disability arising out of and in the course of his/ her employment, that he/she gave adequate notice to the employer. A claim for an accident must be filed by the injured worker with the Workers' Compensation Board within two years of the incident or condition that caused the injury, illness or disability, unless the failure to file is excused for certain limited reasons. A person may seek workers' compensation and also bring a lawsuit against other parties who contributed to causing the injury.

### **What is an "accident"?**

To be covered under the Workers' Compensation Law, an accident must arise out of and in the course of the employment. "In the course of the employment" means that you must be on the job at the time of the accident. By way of example, accidents suffered while traveling to and from work are generally not covered, subject to certain exceptions. "Out of the employment" means that the cause of the accident must be work-related.

### **What is "notice"?**

The law requires the injured worker to give the employer a written report of the accident within 30 days of the accident. This requirement is often excused by the Workers' Compensation Board where it is shown that the employer had knowledge of the accident within the 30-day time period.

### **What is causal relationship?**

In order to establish a case, the injured worker must have a medical report stating that a work-related accident or condition was the cause of the injury, illness or disability. Without a medical report stating this, the Workers' Compensation Board will not consider the case.

## **OCCUPATIONAL DISEASES**

**Occupational diseases** are also covered by workers' compensation. An occupational disease is a condition which is caused by the specific type of job over a period of time. For example, a person who works as a typist may, after a period of weeks, months, or years, develop a problem with their hands or wrists. The problem may be related to doing the same thing over and over, as opposed to one specific incident. An occupational disease may also result from being exposed to a substance typical to your job over a long period of time. An example of this type of occupational disease would be bakers' asthma, which occurs from being exposed to flour dust over a long period of time.

The notice and claim filing time limitations in occupational disease cases are very technical, and depend on factors including the date of first medical treatment, the date of first lost time from work, and the date that you knew or should have known that your problem was work-related. It is up to the Workers' Compensation Board to decide whether any particular claim for an occupational disease was filed timely.

GENERALLY, WHEN YOU FIRST BECOME AWARE THAT A MEDICAL CONDITION IS WORK-RELATED YOU SHOULD CONSULT WITH AN ATTORNEY ABOUT FILING A CLAIM.

## **COMPENSATION BENEFITS**

The amount of compensation that an injured employee may receive while out of work depends on two things. One is **average weekly wage**. What your average weekly wage is generally depends on what you earned with your employer in the year before your accident, although adjustments may be made if you were under the age of 25 when injured, if you did not work for a full year for the employer before your accident, or if you had more than one job. The most that an employee can receive in workers' compensation is two-thirds of his/her average weekly wage up to the maximum compensation rate as of the date of accident. If you were injured after July 1, 1992, the maximum compensation rate is \$400 per week.

The amount of compensation to which a person may be entitled also depends on his or her **degree of disability**. A person may be either **totally** or **partially** disabled. Under workers' compensation, total disability is an inability to do any kind of work whatsoever. Partial disability means that a person can do some type of work, even if they cannot do the type of work they were doing at the time of the accident. For example, a concert pianist who loses a finger may be totally disabled from working as a musician, but only considered partially disabled because he/she still has the ability to do other kinds of work.

A person who is partially disabled may receive compensation in an amount less than the maximum rate. There are different degrees of partial disability, and the precise rate to which a person is entitled depends on the degree of their disability. If a partially disabled person returns to work earning less than his or her average weekly wage, then there may be a valid claim for compensation for reduced earnings. To claim **reduced earnings**, you must prove (1) that you have a partial disability; (2) that you are earning less than your average weekly wage; and (3) that the reduction in earnings is caused by the disability. The compensation rate for reduced earnings is two-thirds of the difference between your average weekly wage and the amount you are now earning.

While it is not illegal to work at reduced earnings and collect workers' compensation benefits, it is illegal to conceal or fail to report work activity to the workers' compensation insurance company. Therefore, all work after an injury, whether at reduced earnings or not, should be reported promptly.

## **MEDICAL TREATMENT**

Once a compensation case is accepted by the insurance company or established by the Compensation Board, medical expenses related to the accident are covered. Only doctors and chiropractors who are **coded** by the Workers' Compensation Board may treat compensation patients. Doctors and chiropractors are not permitted to bill a compensation patient directly but must send their bills and

reports to the insurance company and the Workers' Compensation Board. If there is a dispute regarding a medical bill, the insurance company must file a form with the Compensation Board advising it of the dispute. The bill will then be addressed at a hearing or sent to arbitration, but while it is pending the health care provider must wait to be paid. A workers' compensation claimant should never pay a health care provider for a medical bill for treatment related to the workers' compensation case.

If a doctor or chiropractor requests a test or procedure which will cost less than \$500, no advance approval from the insurance company is required. If the test or procedure will cost \$500 or more, the insurance company is entitled to obtain an opinion from one of their own medical consultants as to whether the test is necessary. The insurance company is required to obtain the examination within 30 days of the date it receives the request for authorization from the treating doctor.

### **INJURIES TO AN EXTREMITY**

If you have injured an extremity, such as an arm, leg, finger, or toe, if you have a facial scar, or if you have a hearing or vision loss as the result of an accident on the job, you may be entitled to an award of compensation even if you lose no time from work. With awards of this type, weekly benefits paid while you are out of work may be deducted from your final compensation award.

Depending on the type of injury, you may only be entitled to compensation for time out of work or lost earnings. In either event, you must see a doctor at least once every six weeks in order to prove that you are still disabled.

### **WHAT AN INJURED WORKER SHOULD DO**

- If your disability prevents you from working, you must see a doctor on a regular basis. Disability can only be proved with medical reports. The general rule is that each medical report is sufficient to prove disability for six weeks after the date of the visit.
- You should keep track of your mileage to and from doctors, therapists, etc.. You are entitled to be reimbursed by the insurance company for travel to and from your doctor and therapist. The reimbursement rate is set by the Workers' Compensation Board.
- You should keep receipts for your out-of-pocket expenses for prescriptions, bandages, etc.. You are entitled to be reimbursed by the insurance company for these expenses.
- If you return to work after an accident and are making less money as a result of your injury or disability, you should keep careful track of your earnings. You should keep all of your pay stubs in an envelope and make extra copies of your tax documents.
- Whenever the Compensation Board schedules a hearing in your case, you should bring with you a copy of your most recent medical report and proof of your current earnings.

We hope that this summary has been helpful. If you have been injured and do not know which lawyer to call in the New York Metropolitan Area, you may call (212) 626-7373 or press the following link <https://www.abcny.org/lrs.html> to make an internet request for an experienced lawyer who has been screened by the Legal Referral Service of The Association of the Bar of the City of New York and the New York County Lawyers' Association.

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## **APPENDIX**

Workers' Compensation Board Offices:

**Manhattan:**

Counties Served: Bronx, New York  
215 West 125th Street  
New York, NY 10027  
Phone: 1-800-877-1373  
Hours: Monday-Friday : 8:30am-4:30pm

**Brooklyn:**

Counties Served: Kings, Richmond  
111 Livingston Street  
Brooklyn, NY 11201  
Phone: 1-800-877-1373  
Hours: Monday-Friday : 8:30am-4:30pm

**Queens:**

Counties Served: Queens  
168-46 91st Avenue  
Jamaica, NY 11432  
Phone: 1-800-877-1373  
Hours: Monday-Friday : 8:30am-4:30pm

**Staten Island Service Center**

60 Bay Street  
Staten Island, NY 10301  
Phone: (718)-720-4466  
Hours: Monday-Friday : 8:30am-4:30pm

Source: New York City Bar