



THE BASICS OF WORKERS' COMPENSATION

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NYS Workers' Compensation Law of 1914



Employers: Promised speedy payment for lost wages and medical bills for occupational accidents and illnesses, without regard to fault and without a formal legal process.

Employees: Gave up the right to sue.

The Parties

NYS Workers' Compensation Board

Employee

- Treating Doctor
- Attorney

Employer

- Insurance Company
- Defense Attorney
- Independent Medical Examiner
- Investigator
- Nurse Case Manager

Why should you file for Workers' Compensation?

- Workers' Compensation provides long-term protection for lost wages and medical treatment
 - Lost wage benefits are payable for weeks, months, years, or even life
 - Medical coverage is provided for life
 - Some injuries can result in money awards even if there is no time lost from work
- Protect union funds – avoid cost transfer!
- Motivate employer to fix the hazard
- **Failure to file can result in the permanent loss of all benefits**

Who is covered?

Employee vs. Independent Contractor

The factors that determine whether or not a person is an **employee** include:

- Right to Control
- Type of Work
- Method of Payment
- Who Provides the Equipment
- Right to Hire/Fire

Where
Should the
Claim Be
Filed?



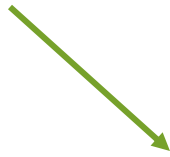
What is covered?

- 1. Accidents** arising out of and in the course of employment
- 2. Occupational Diseases**



What is covered?

1. Accidents arising out of and **in the course of** employment



Can Include:

- **Specific Event**
- **Repetitive Trauma**
- **Exposure over a specific period of time**

What is covered?

1. Accidents arising **out of** and in the course of employment

Due to the work

- Workplace Violence
- Heart Attacks/-strokes
- **COVID**

What is covered?

1. Occupational Diseases

- Peculiar to and characteristic of the employment



What About Pre-Existing Conditions?

Do NOT disqualify someone from coverage.

- If the pre-existing condition was not symptomatic or not disabling, it may not be relevant at all.
- If the work activity or event aggravated a pre-existing condition, WC covers the work-related exacerbation

What About Mental Health?

- Four types of psychological claim in WC:
 - Consequential – mental health problem resulting from physical injury
 - Routinely covered
 - Traumatic – exposure to or involvement in a specific traumatic event
 - Often covered
 - Stress beyond the usual workplace stress
 - Rarely successful
 - Reaction to a good faith employment determination
 - Excluded from coverage by law

What is the standard for a COVID claim?

1. Specific Exposure

- Symptoms/diagnosis develop a reasonable time afterwards

2. Public-facing job

- High degree of exposure to the public

3. COVID-Prevalent environment

- outbreak in the workplace

“Consequential” Injuries

- Medical Problems that develop later on as a result of the original injury
 - Left knee injury, limp causes problem with right knee, or back
 - Consequential mental health problem
 - **Long COVID**
 - Death cases

The Claim Filing Process



The Claim Filing Process



- **Accident Claims:**
30 days from date of accident
- **Occupational Disease Claims:**
2 years from “date of disablement”

The Claim Filing Process



- C-3 Form must be filed within 2 years of the date of accident or disablement.

The Claim Filing Process



- Medical provider completes a medical report with an history, diagnosis, opinion about causal relationship, work status, and level of disability.
- Ongoing medical proof is needed at least once every 3 months for wage loss payments.

Time Limitation Issues: Example

- 3/13/20: Exposure
- 4/25/20: Symptoms develop
- 5/15/20: Employer notified
- 4/2/22: Claim filed

Problems:

1. Late Notice – 30-day time frame
 - a. Can be excused and might be on these facts.
2. Late Claim filing (beyond 2 years)

Outcome:

Claim denied, all benefits lost





Temporary Disability

- One Week Waiting Period
 - Waived if disability extends 2 weeks
- Benefit rate is based on:
 - Average Weekly Wage
 - 52 weeks before the accident
 - Degree of Disability
 - Date of Accident
- Reduced earnings
 - You can collect workers' compensation and work!



Permanent Disability

- Limb Injuries
 - Money is payable for permanent loss of function **even if there is no time lost from work**
 - Any payments for time out are deducted from the award
- Other Permanent Injuries
 - Permanent partial disability – inability to do the at-injury job but can do other work
 - Payment for up to 130 weeks of temporary disability PLUS 4 to 10 years of permanent disability benefits
- Permanent Total Disability
 - Payment for life

Medical Treatment

- Regulated by the Workers' Compensation Board's Medical Treatment Guidelines and Drug Formulary
- Medical Reports are filed with both the insurance carrier and the Workers' Comp Board
- No out-of-pocket costs for the worker
- Treatment and Prescription requests are submitted through the Medical Portal
 - Unless there is a legal issue, the doctor must push through Level 1, 2 and 3 review before a hearing can be requested.

Lawyers

- Cannot be paid directly by the injured worker
- Fees are set by the Workers' Comp Board
 - Either at hearing or by non-hearing decision
 - Deducted from any increased or continued award in excess of what the employer or carrier previously paid
 - So if no additional benefits, no attorney fee
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Questions?

