

THE ILLINOIS WORKERS' COMPENSATION ACT

Frequently Asked Questions



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Fire Fighters Local #2, #3074
Glazers Local #27
Graphic Communication Workers Local #458
Heat and Frost Insulators Local #17
Iron Workers Local #1
Laborers Local #1, #2, #4, #5, #6, #1092
Lathers Local #74
Machinists Local #126
Operating Engineers Local #150
Painters Local #14, #21
Pipe Fitters Local #597, #2
Plasterers Local #5
Plumbers Local #130
Roofers Local #11
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...and many others.

In addition to representing injured workers in Workers' Compensation claims, the Healy Law Firm also concentrates in the following areas of consumer litigation:

- **PERSONAL INJURY**
- **PRODUCTS LIABILITY**
- **INTERSTATE TRUCKING,
AUTO & RAILROAD ACCIDENTS**
- **CONSTRUCTION INJURY**
- **AVIATION INJURY**
- **WRONGFUL DEATH**
- **MEDICAL MALPRACTICE**
- **WORKERS' COMPENSATION**

If you have a question regarding any of these areas, call our office for a consultation.

ABOUT THE BOOKLET

This booklet answers some commonly asked questions about job injuries. It is general in nature and does not address all aspects of the Workers' Compensation Act. It is not meant to be a substitute for competent legal advice and representation. If you have any questions after you read this booklet, please call our office.

ABOUT THE FIRM

The Healy Law Firm concentrates its practice in Workers' Compensation and all areas of injury litigation including products liability, interstate trucking, construction, vehicle accidents, and medical malpractice.

Our firm has long represented injured union members. In fact, members of the firm and their families have belonged to various building trade unions.

Members of the firm have also been officers and leaders in the Illinois Trial Lawyers Association (ITLA), Illinois State Bar Association (ISBA), the Chicago Bar Association (CBA), the Association of Trial Lawyers of America, and the Workers' Compensation Lawyers Association (WCLA).

If you have questions about Workers' Compensation, or any other aspect of injury law, our experienced staff would be pleased to answer your questions. There is no charge or fee for the consultation.

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On July 20, 2005, the Governor signed legislation which made several important changes to the Illinois Workers' Compensation Act. Most of these changes will provide greater protection for the working men and women of Illinois. The date these changes apply to injuries vary.

Some of the changes include:

- Allowing for a charge of 1% interest per month to employers on all workers' compensation medical bills which remain unpaid for more than 60 days
- Prohibiting a medical provider from billing an injured worker for the balance of charges not paid by an insurance company
- Increasing penalties for the unreasonable delay of workers' compensation benefits from \$10.00 per day to \$30.00 per day and from \$2,500.00 per claim to \$10,000.00 per claim
- Increasing benefits for a worker killed on the job to the greater of \$500,000.00 or 25 years of death benefits
- Increasing burial benefits to \$8,000.00 for fatally injured workers from \$4,200.00
- Increasing the value of injuries to certain designated body parts and disfigurement by 7½%

1. What is Workers' Compensation?

Workers' Compensation is an Illinois Law which requires most employers to provide benefits to employees who have been injured on the job.

2. Who is covered?

Most employees who are hired and injured in the State of Illinois are covered by Workers' Compensation. However, some types of employment are not covered. These include some farming jobs, certain firemen and policemen, some sales commission jobs and federal workers.

3. What injuries are covered by Workers' Compensation?

Most job-related injuries that occur at work are covered even if the accident was the employee's fault. The injuries must occur "in the course" of employment and must "arise out of" the employment. Workers may also be compensated for an aggravation of a pre-existing condition if they are re-injured while performing a job-related duty. However, the fact that an employee is hurt on the job site does not always guarantee a recovery. In addition, an employee may be compensated for injuries caused by the repetitive use of a part of the body as well as strokes, heart attacks and some other medical conditions caused by work.

4. Who provides the benefits?

The employer is required to provide benefits directly or through a service or insurance company. No part of the Workers' Compensation premium can be charged to an employee.

An employer must post a notice in the workplace stating the name, address and phone number of the person, service company or insurance company in charge of handling Workers' Compensation benefits.

5. What benefits is an Employee entitled to under the Workers' Compensation Act?

(a) Medical Expenses - Treatment

An injured employee is entitled to have all necessary first aid, medical and surgical services reasonably required to cure or relieve the effects of the injury. The employer is also required to pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee.

(b) Temporary Total Disability - T.T.D.

Employees who must lose time from work to recover from injuries are entitled to receive weekly payments until they are able to return to work that is reasonably available to them. The employee should obtain a doctor's prescription indicating inability to work. The T.T.D. payments represent $66\frac{2}{3}\%$ of the employee's average weekly wage during the year before the accident or last exposure, subject to certain minimum and maximum amounts.

(c) Permanent Disability (PPD), Disfigurement and Death Benefits.

If an employee has sustained an injury that results in permanent disability, scarring or other disfigurement, he or she will be entitled to permanent partial disability benefits. The circumstances under which these benefits are available and the method of determining the amount is generally the subject of professional legal advice.

Some injuries, including hernias and fractured ribs, may result in no permanency recovery.

Members of the employee's family are entitled to certain benefits when an accidental injury results in the employee's death.

6. What is balance billing and why is it prohibited?

Previously, workers' compensation carriers would only pay medical providers a percentage of their bill based on what the carrier deemed to be a "reasonable" charge. The provider could then charge the injured worker for the balance of the bill, often resulting in collection notices, credit reports and in some cases lawsuits. The new law prohibits medical providers from charging the injured worker for the balance of the bill for a compensable injury. If the employee informs the provider that a claim is on file at the Commission, the provider must cease all efforts to collect payment from the employee.

7. Do I need an attorney to handle a Workers' Compensation claim?

Representation by an experienced Workers' Compensation attorney will ensure your rights are protected and allow you to receive the maximum recovery under the law.

It is important to recognize that once you are injured, you become involved in a legal claim, even if you have not hired an attorney. Your employer and its insurance company have a competent staff of attorneys representing their interests. They are not required to advise you of your rights under the Workers' Compensation Act.

A Workers' Compensation claim involves not only compensation for your injury, but future protection if you are not able to return to work.

8. What must an injured Employee do to receive benefits?

The employee must notify his or her employer of the injury within 45 days of the accident. Even if the injury does not appear to be serious, the employee should immediately report the date and place of the accident to his or her supervisor, foreman or other person in charge and ask to fill out an accident report, if available. Notice to a fellow employee is not notice to the employer. If notice is not given within 45 days, the employee may lose the right to claim Workers' Compensation benefits.

9. Must the notice be in writing?

No, it may be oral; however, written notice is preferable, especially if a dispute arises.

10. Should an Employee seek immediate treatment?

Yes, prompt medical treatment is essential for the employee's maximum recovery.

11. May an Employee be treated by his own doctor or a doctor of his choice?

Yes, the employee can go to his or her own doctor at the employer's expense so long as the treatment is reasonable and necessary to cure or relieve the effects of the injury.

The employer is not obligated to pay expenses for travel to and from doctor appointments.

The employee may choose, but is not obligated to receive treatment from a doctor selected by the employer or choose a doctor from a list kept by the employer. We recommend an employee seek an independent doctor.

12. Is there a limit to the number of doctors an Employee may choose?

Yes. The employer's responsibility is to pay for all first aid and emergency services, two treating doctors of the employee's choice and any additional providers to which the employee is referred by the two treating doctors.

If an employee wants to see a third doctor, he or she may at their own expense. The employer may approve a third doctor but is not obligated to pay for the treatment.

NOTE: Emergency first aid is not considered one of the employee's two choices of doctors.

If the Commission finds that a doctor selected by the employee is rendering improper or inadequate treatment, the Commission may order the employee to select another doctor qualified or certified in the medical field for which treatment is required.

13. Must the Employer pay all medical bills?

The employer must pay 100% of all reasonable charges for necessary medical treatment related to the injury. However, the employer is not always obligated to approve payment before the employee receives treatment.

14. What does the 1% interest per month on unpaid medical bills mean?

Compounded annually this is a 12% penalty per year for any medical bills that remain due past 60 days. Essentially, it provides an incentive for the carrier to pay the medical bills on time. Previously, there was no incentive and many injured workers had their credit history unnecessarily harmed.

15. Must an Employee be examined by the Employer's doctor?

Yes, the employee is required to submit to an examination by a doctor selected by the employer for the purpose of determining the nature, extent and probable duration of disability. The employer must pay for the examination and travel expenses to and from the exam and reimburse the worker for lost wages. The examining doctor is not a treating doctor.

16. When are P.P.D. benefits paid?

An attempt to obtain P.P.D. benefits will not usually be made until the employee's medical treatment is completed or the employee's condition has reached a point of maximum improvement, and may be paid in a lump sum. It usually takes six months to a year after the employee is discharged from treatment to recover P.P.D. benefits.

17. How are P.P.D. benefits computed?

An employee should consult with a lawyer because P.P.D. benefits are difficult to quantify. The amount each individual will recover depends upon that individual's percentage loss of use of a body part or

body as a whole. Some of the factors considered include age, skill, occupation, training, inability to engage in certain kinds of work or activities, objective medical tests results, permanent pain, stiffness, loss of motion and past Industrial Commission decisions.

The Workers' Compensation statute provides a certain number of weeks of compensation for the percentage loss of use of a body part or body as a whole.

P.P.D. is paid at the rate of 60% of the employee's average weekly wage subject to certain minimum and maximum amounts multiplied by the number of weeks of compensation for the percentage loss of use of a body part or body as a whole.

18. What does the increase by 7½% of certain designated body parts mean?

It means that the value in weeks of compensation for certain body parts has been increased by 7½%. For example, 100% loss of one arm was previously worth 235 weeks will now be worth 253 weeks of compensation. Using the maximum partial permanent disability rate under the old law, an injured worker who lost 25% of an arm for a shoulder injury would receive \$33,362.36. Under the new law, the same worker would receive \$35,860.99.

19. How is disfigurement covered under the Workers' Compensation Act?

To be compensable, the disfigurement must result in permanent scarring on the hands, head, face, neck, arms, legs below the knee, or chest above the

armpits. An injury may result in both disability and disfigurement; however, compensation is not usually paid for both.

Disfigurement cases may not be tried or settled until after a six-month waiting period from the date of the injury.

20. What happens if the Employee cannot return to the same job?

The employer may be required to pay for treatment, instruction and training for the physical, mental and vocational rehabilitation of the employee including all maintenance costs and incidental expenses. The employee may be entitled to vocational rehabilitation to find a job within his or her medical restrictions. If the employee is unable to return to his or her usual job, the employee may be entitled to a wage differential in the amount of two-thirds of the difference between the amount the injured employee is able to earn and the amount that he or she could have earned in their former occupation.

21. What are Permanent Total Disability benefits?

An employee is entitled to Permanent Total Disability benefits when he or she is permanently incapable of work. Permanent Total Disability benefits are also awarded when an employee has lost the use of both hands, both arms, both feet, both legs, or both eyes. In addition, any combination of two singles also constitutes Permanent Total Disability.

If an employee returns to some form of employment after being declared P.T.D., or is able to return to work, benefits may be terminated or modified.

22. How much are Permanent Total Disability benefits?

P.T.D. compensation shall be paid according to the T.T.D. rate which is $66\frac{2}{3}$ of the employee's average weekly wage. Persons who are totally disabled may also be entitled to additional payments from the Rate Adjustment Fund.

23. What are death benefits?

If the employee dies as a result of a work-related injury, his or her spouse and/or children are entitled to benefits. Children may receive benefits until age 18; or until age 25 if a full-time student; or if physically or mentally incapacitated, for the duration of the incapacity. If there is no eligible spouse or child, the benefits will be paid to totally dependent parents. Other persons who were at least 50% dependent on the employee, such as grandparents or grandchildren, may be entitled to benefits if there is no eligible spouse, child or parent.

If a spouse remarries and there are no eligible children at the time of the remarriage, the spouse is entitled to a final lump sum payment equal to two years of compensation. All rights to further benefits are extinguished.

Death benefits under the Act shall not exceed the greater of \$500,000 or 25 years. The rate of the benefits shall be $66\frac{2}{3}\%$ of the employee's average weekly wage computed in accordance with Section 10 of the Act and subject to certain minimum and maximum amounts.

24. Are Workers' Compensation benefits taxable?

No. Workers' Compensation benefits are not subject to State or Federal income tax.

25. Can an Employee be fired for filing a Workers' Compensation claim?

It is against the law for the employer to terminate or discriminate against an employee for exercising his or her rights under the Workers' Compensation Act. However, an employer is under no obligation to offer an alternative job to an employee who is released to return to work with restrictions that prevent a return to the employees' original job.

26. Is there a time limit to file a claim?

Yes. Generally the claim must be filed within 3 years of the date of the injury or within 2 years of the last payment of benefits, whichever is later. Failure to file within the time required by law may result in a loss of all benefits. It is strongly advised that the employee should contact a lawyer and initiate a claim as soon as possible to expedite a recovery of benefits and protect your rights.

27. Who presides over Workers' Compensation claims?

An Arbitrator of the Illinois Industrial Commission acts as the initial fact finder and judge, conducts the hearing, and decides the amount of benefits to which the employee is entitled.

28. Do I have to testify?

The majority of claims are settled without an employee's testimony at a hearing. However, if the

parties cannot reach an agreement without a hearing, the employee must appear and testify before an Arbitrator at the Industrial Commission.

29. May an Arbitrator's decision be appealed?

Yes, both the employee and the employer may appeal. The appeal or review is initially decided by a panel comprised of three Commissioners and may continue up to the Supreme Court of Illinois. The appeal process can take several years.

30. Is there any way to get an emergency hearing?

Yes. However, emergency hearings are only available in cases where an employee is not receiving T.T.D. or medical benefits.

31. What are the attorneys' fees for a Workers' Compensation claim?

Generally, attorneys' fees for services rendered in obtaining compensation for an employee or his dependents, whether secured by agreement, order, award or a judgment in court, are 20% of the recovery, subject to further provisions in Section 16(a) of the Act.

32. Are there any other claims that are available to an injured Employee?

Yes. If a third party other than the employer or a co-worker is partially responsible for the accident, the employee may be able to file a third-party lawsuit. Some third-party cases may result from a motor vehicle accident, products liability, or other types of negligence. Our office can represent you in

both the Workers' Compensation claim and in a lawsuit against a third party who may be potentially liable for your injuries.

33. What is meant by a Workers' Compensation lien?

If there is a recovery in the lawsuit from a third party responsible for the injury, the employer has a statutory lien and may be entitled to reimbursement of up to 75% of the total Workers' Compensation benefits from the proceeds of the third party recovery. However, if there is no recovery, there is no responsibility on the part of the injured person to pay back the employer.

34. What are the attorneys' fees for a third-party recovery?

If there is a recovery from a third party responsible for the injury, generally the attorneys' fees are one-third of the recovery.

IMPORTANT INFORMATION REGARDING YOUR INJURY

Accident Date _____

Job Site/Location _____

Description of Accident _____

Notice Date _____

Notice of Accident Given To _____

Co-Workers/Witnesses _____

Medical Treatment Provided At _____

Weekly Wage _____

Were Pictures Taken? _____

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