

LAYMAN'S GUIDE TO WORKERS' COMPENSATION

What is workers' compensation?

Workers' compensation provides certain specific benefits to compensate individuals who are injured during the course and scope of their employment in the Commonwealth of Pennsylvania. Compensation is provided for all injuries and diseases caused or significantly aggravated by work activities.

What workers' compensation does.

When an injury or disease is found compensable, workers' compensation benefits available in Pennsylvania are as follows:

Wage loss and/or partial disability benefits. In most instances, total disability benefits represent two-thirds of the injured workers average weekly wage (AWW) up to a maximum provided by law. Partial disability benefits are paid to injured worker when they return to work with a wage loss.

Payment of medical expenses. Reasonable and necessary medical expenses are paid provided that the treatment provided is related to the work injury.

Specific loss/loss of use benefits. Specific loss benefits include amputations, loss of use of limbs or parts of limbs, as well as loss of vision and hearing. Benefits are paid pursuant to a set schedule that is incorporated into the workers' compensation statute.

Disfigurement benefits. Benefits are payable for permanent and unsightly disfigurement of the head, neck or face.

Death benefits. Dependents can file a claim for workers' compensation benefits if a work-related injury causes or substantially contributes to the death of the injured worker. In addition, a reasonable burial expense maximum is set by law.

What workers' compensation does not do.

Workers' compensation benefits do not pay for pain and suffering and disfigurement below the head, neck or face.

The Workers' Compensation statute does not guarantee job security in the event of an injury nor does it require the employer of an injured worker to pay for retraining. In the event that the injured worker is governed by a Collective Bargaining Agreement (CBA) the Act does not guarantee that certain contract benefits covered in the CBA will continue for the injured worker.

Types of injuries covered under the Workers' Compensation Act.

The Workers' Compensation Act covers an injuries or diseases that are caused or significantly aggravated by work activities. The existence of pre-existing conditions are not in and of themselves a bar to the receipt of workers' compensation benefits.

How is an injury defined?

Under the Pennsylvania Workers' Compensation Act, the word injury means more than how it is used in everyday language. For workers' compensation purposes the following are considered injuries:

- a. A **specific incident** that causes an injury. Examples would include a fall at work, lifting an item, concussions and heart attacks.
- b. A **series of repetitive activities** that ultimately leads to disability. Referred to as "repetitive trauma cases" these types of injuries are most commonly represented by such conditions as tendonitis, carpal tunnel, syndrome or epicondylitis. Obviously these types of conditions are commonly found in jobs where repetitive activities occur in the performance of the job duties. This would include typists (carpal tunnel), assembly line worker (epicondylitis) or carpenters (tendonitis).
- c. **Cumulative trauma** caused by long-time exposure to hazardous substances such as coal dust, silica, benzene, asbestos, etc.
- d. **Pre-existing conditions that have been aggravated** by work activities are also considered to be injuries. A person who had a pre-existing knee problem from an old football injury finds that condition aggravated by an on-the-job twist or slip. The pre-existing condition does not have to be work-related. However, the aggravating factor must be work-related.

NOTE: Work injuries occurring with one employer that are aggravated while working for a second employer are still compensable, provided that the injury with the second employer significantly aggravates the injury with the first employer. The second employer would be responsible for the medical conditions caused or made worse by employment.

NOTE: In order to be compensable the injury must occur in the course and scope of employment which means that the injury occurred while carrying out the interest of the employer. The injury does not have to occur on the employer's premises in order to be covered. An employee who is on an errand for the employer is covered even if they sustain an injury off the premises.

REMEMBER: Medical evidence is required in all cases to establish that the work activities either caused the injury or significantly aggravated a pre-existing condition to be compensable.

Reporting a work-related injury

An injured employee is responsible for communicating to his or her employer that an injury has occurred. In addition to advising the employer of the occurrence of an injury, the injured employee should also describe the nature of the injury and the time and place of the injury. Also, the injured employee should provide as much information regarding the circumstances of the injury as possible. Although preferable, it is not necessary that the injury be reported in writing. It can be verbal. In today's age of electronic communication, it is also possible to advise the employer via email or text. Photographs of the injury or where the injury occurred is quite helpful.

Remember that notice must be given to the employer or to someone acting on the employer's behalf such as a supervisor or personnel officer. It is always critical to report the injury as soon as possible. For work-related injuries occurring off-site or during unusual hours (such as when the employer's main facility is not operational) the use of email or text is recommended.

There are time limits for reporting an injury. In order to receive retroactive compensation benefits, the injured employee must give notice within 21 days of the date of the injury. In order to receive compensation for a work-related, however, all injuries must be reported no later than 120 days following the occurrence of the injury. If notice is not provided during this period of time, then the loss of workers' compensation entitlement will occur.

Types of benefits provided pursuant to the Pennsylvania Workers' Compensation Act

The Pennsylvania Workers' Compensation Act provides for the payment of disability benefits to replace lost wages when an employee loses earning power as a result of a work-related injury. Benefits are made by the employer or the employer's workers' compensation insurance carrier. Disability benefits are not designed to replace all lost wages. Workers' compensation disability benefits never compensate an injured employee for 100% of their wage loss. Certain limitations as more fully described below.

Total disability benefits: if you are unable to work as a result of a work-related injury then you would be entitled to receive what are known as total disability benefits. The amount of total disability benefits received is usually two-thirds of the injured employee's average weekly wage (AWW) up to a statewide maximum. Low wage earners may be able to receive up to 90% of their AWW.

Compensation rates are tied into the injured employee's AWW, so calculating the AWW is critical. The workers' compensation statute provides several methods for determining an injured workers' AWW. The good news is that the injured worker always gets the benefit of the most favorable AWW calculation.

Assuming that an injured worker returns to work without a wage loss, then total disability benefits will cease. Discontinuing the payment of total disability benefits requires that certain procedures be followed by the workers' compensation insurance carrier or a self-insured employer.

Partial disability benefits: when an injured employee returns to work at wages lower than the employee's pre-injury wages (AWW) the injured worker may be entitled to receive partial disability benefits. Returning to a lower paying job, or with restrictions, which results in the inability to work overtime may entitle one to receive partial disability benefits. If the injured worker has concurrent employment at the time of the injury (that is, has a second job) then the inability to return the second job post injury may trigger partial disability payments.

Compensation rates for partial disability benefits is two-thirds of the difference between the injured employee's AWW & the new AWW of the employee following return to work.

Total disability can follow partial disability and vice versa. For example, if an injured employee who was on total disability benefits returns to a job with reduced earnings then the employee would be eligible for partial disability. If the light duty position is abolished or if the injured worker is unable to perform the new job, then partial disability benefits will stop and total disability benefits will resume.

Note for all types of disability benefits medical evidence establishing that the injured workers' inability to work or work with restrictions is necessary.

Specific loss benefits: specific loss benefits are provided for loss (through amputation) or the complete loss of use for all practical intents and purposes of limbs or parts of limbs. This would include arms, hands, fingers, legs, feet and toes. The loss of vision and hearing loss is also covered. There are certain specific provisions that apply to hearing loss. What is important to know is that if the hearing loss is severe enough and if it is related to the cumulative effects from exposure to noise at work then benefits may be payable.

Disfigurement benefits: permanent and unsightly disfigurement of the head, neck or face is compensable under the Pennsylvania Workers' Compensation Act. Typically, the amount paid for disfigurement is agreed upon between the injured worker and the employer and/or its workers' compensation insurance carrier. If no agreement can be reached, then the matter can be decided by a Workers' Compensation Judge (WCJ).

Death benefits: death benefits are payable when a work-related injury results in an employee's death. Medical evidence, of course, must be established to show that the injury was the direct cause or was a substantial contributing factor among several causes of death. Persons entitled to receive death benefits would be the surviving spouse, provided that the spouse lived with the employee at the time of death and was financially dependent on him/her. Entitlement to death benefits by a surviving spouse terminates upon the death or remarriage of the surviving spouse.

Dependent children under the age of 18 would also be entitled to receive death benefits. Full time students may receive benefits until the age of 23. There is no age limit if a child is disabled and dependent.

Dependent parents or siblings may be entitled to receive benefits if the deceased employee had no spouse or dependent children and the parents and/or siblings are financially dependent on the employee at the time of death.