

GENERAL PURPOSE AND DESIGN OF THE ILLINOIS WORKERS COMPENSATION ACT

Simply stated, the Illinois Workers' Compensation Act is a "no fault", wage replacement system designed to pay the injured worker both medical benefits and lost wages during his or her period of incapacity from work. In many cases, an injured worker is also eligible to receive permanent partial disability benefits after completion of his or her medical treatment. Further, in some instances, if a person's injury prevents him/her returning to his/her previous occupation, him/her may be entitled to vocational retraining.

Under the Illinois Workers' Compensation Act, the injured employee gives up the right to sue his/her employer in court. In return, the employee receives compensation without having to prove fault but the employer's liability is limited to benefits specified in the statute. Not surprisingly, these amounts are almost always significantly less than what might be available if employees could sue in court as there is no recovery for pain and suffering in workers' compensation claims. There are only a few situations where an injured employee is not covered by the Workers' Compensation Act and may sue an employer in the civil court system.

At first glance, a "no fault" system sounds like a fair deal to workers who are hurt and have been taken care of without having to go through a costly process of assigning blame. Unfortunately, disputes between the injured worker, his or her employer and the workers compensation insurer often arise, which undoubtedly make an already difficult situation more troublesome. Further, the existing a system is complicated and hard to understand. It has evolved into what too often becomes a bureaucratic nightmare that commonly intimidates and hinders people with valid claims. And worst of all, insurance companies often fight an employee's legitimate claim every step of the way. **McCall Law Offices, P.C.** can assist you if you have been hurt on the job and ensure that you receive all benefits to which you are entitled to under the Illinois Workers' Compensation Act. If you were injured on the job, please call us today at 309-673-1200.

Types of Injuries

- **SPECIFIC INJURY** - A work injury that may be covered by Illinois workers compensation may be the result of a single incident such as dropping an object on your foot, or cutting your finger on a machine.
- **CUMULATIVE TRAUMA** - An injury may also be a result of work activities over a period of time. For example, a person whose job requires the lifting of heavy objects over a period of time may develop back or neck pain due to repetitive trauma on the job. An injury of this type may also be covered by Illinois worker comp. Another example would be a person whose job requires repetitive motion of the hands or wrists such as assembly work or typing at a computer. This worker might develop carpal tunnel syndrome or repetitive use syndrome of the hands or wrists, and this would also be a work injury entitling a person to the same benefits as if it had been a specific injury. Any good Chicago worker compensation lawyer should be able to facilitate these types of cases.
- **OCCUPATIONAL DISEASE** - A work injury may also be the result of an occupational disease or illness that the work place has produced. An example would be a worker who develops asbestosis due to exposure to asbestos products on the job.

- **AGGRAVATION OF PRE-EXISTING CONDITION** - An incident or activity on the job, which aggravates a previous injury or condition, is also considered a work injury. An example of this would be an employee who has had prior back problems and then re-injures the back while lifting on the job. That person is entitled to work injury benefits for the re-injury. If this has happened to you or anyone you know, they should retain an Illinois worker compensation lawyer.
- **OFF WORK SITE** - In some instances, a person may be entitled to Illinois workers compensation benefits even if the injury did not occur while at the work site. For example, if the injury occurred in the company parking lot on the way to or from work, it may be considered a work injury. A heart attack or stroke, which is due to work stress, may be a work injury, even if the heart attack or stroke occurs at home. The laws and regulations are flexible since workplaces are so different. Any question in benefits should be reviewed by an Illinois worker compensation lawyer

THE LEGAL BENEFITS AN INJURED WORKER INVOLVED IN AN INDUSTRIAL OR WORK RELATED ACCIDENT IS ENTITLED TO RECEIVE

- **Medical Treatment** - An injured employee is entitled to medical treatment, at no cost, to cure and relieve the effects of his/her work injury. The injured employee is not required to treat with a company doctor, but can seek out a doctor of his or her choice. We can assist the injured worker in finding doctors specializing in treatment, surgery, and rehabilitation. We also refer our clients to specialists and second opinions when necessary.
- **Temporary Total Disability Benefits** - If a doctor finds that an injured employee is unable to work while being treated for his/her injuries, he or she may be entitled to temporary total disability benefits. The employer's Workers' Compensation insurance carrier is required to pay the injured employee up to two thirds of their salary (with established maximums depending upon the date of injury) while they are at home recuperating from their industrial injury. **McCall Law Offices, P.C.** has experience in making sure our clients get the benefits they are owed.
- **Permanent Partial Disability Benefits** - Once an injured employee is released from a doctor's care, he/she may be entitled to permanent partial disability benefits. How much an injured employee will receive is determined by the part of the body that is injured, the extent of the injury, the average weekly wage the employee was earning for the 52 weeks preceding the accident and any work restrictions as determined by a medical professional. Once our clients have been released to return to work, we work with them and their doctor in determining the proper amount of permanent partial disability benefits to which they are entitled.
- **Vocational Rehabilitation** - If the doctor finds that an injured employee is not able to return to his or her pre-injury occupation, the injured employee may be entitled to

vocational rehabilitation at no cost to the employee. Vocational rehabilitation is a program designed to assist an individual in returning to gainful employment or by providing a retraining program designed to help an individual acquire the skills necessary to return to suitable employment.

- **Permanent Total Disability Benefits** - If an employee is injured to the extent that he or she is unable to return to any type of gainful employment despite an attempt at vocational rehabilitation, then the employee is entitled to weekly benefits (two thirds of the average weekly wage but capped by a scheduled weekly maximum) for life.
- **Death Benefits** - If you were a total or partial dependent (one who relied upon another for financial support) of an employee who died as a result of a work injury, you may have the right to recover certain benefits, including burial expenses and weekly benefits.
- **Third Party Personal Injury Claim** - If your injury at work was as a result of the negligence or fault of someone other than yourself, a co-worker or your immediate employer, you may have an additional cause of action, or a Third Party Personal Injury claim. Examples include an automobile accident in the course of your employment, a construction site accident when the General Contractor or a Subcontractor was at fault or a personal injury from a defective or dangerous product or piece of machinery. In a Third Party Personal Injury case, a civil cause of action can be filed against the negligent party, and may entitle you to civil damages, including pain and suffering, past, present and future lost wages, medical bills, and payment for loss of companionship or society of your family.
- **Social Security Disability** - If your injury results in Total Disability for 12 consecutive months or more, (or is expected to), you may have the right to receive Social Security Disability Benefits, in addition to the benefits you are receiving from the Workers' Compensation Insurer.

Unfortunately, it is not always easy to obtain benefits. There are several circumstances where it is particularly important that you contact an attorney for assistance.

- An employer has denied that you were injured while on the job;
- You have been refused medical treatment;
- You have received a denial from the insurance company;
- Compensation was promised but has not materialized,
- You are without income;
- Your employer does not carry compensation insurance;
- A third party has caused your accident.

POTENTIAL LEGAL PROBLEMS YOU MAY HAVE WITH YOUR CASE

- The Workers' Compensation Insurer has started to pay you weekly compensation benefits and medical benefits, and you suddenly receive a notification advising you that your benefits will be terminated. You are still under active treatment with your doctor and have not been cleared to return to work. What legal rights do you have?
- The Workers' Compensation Insurer has scheduled a medical examination with one of their doctors ("Independent Medical Exam"). Do you have to attend this examination? The Insurance Company doctor has cleared you to return to work, but your doctor

disagrees with this medical opinion. Are you required to follow the advice or opinion of the Insurance Company doctor? What will happen to your entitlement to receive benefits if you refuse to follow the advice of the Insurance Company doctor?

- Your doctor has cleared you to return to work with medical limitations or restrictions (for example, “no heavy lifting, or no repetitive bending, stooping or kneeling”); or your doctor has released you to return to work on a part-time light-duty basis. Are you legally required to return to work? Is your employer legally required to provide you with a light-duty or part-time job that is consistent with the limitations specified by your doctor? What are your legal rights if your employer cannot accommodate your physical limitations? Can the Workers' Compensation Insurer terminate or reduce your benefits if your employer claims to have no light-duty work available? If your employer has no light-duty work available, can you find light-duty work elsewhere and still receive a weekly compensation benefit from the Workers' Compensation Insurer?
- Your doctor or the Insurance Company doctor has released you to return to light-duty work, and your employer claims to have no light-duty work available. Because of your injury, you are unable to find light-duty work with another employer. Despite having no ability to obtain light-duty work, the Workers' Compensation Insurer has terminated or reduced your weekly compensation benefits. Can the Workers' Compensation Insurer legally terminate or reduce your benefits? Can the Workers' Compensation Insurer force you to apply for Unemployment Benefits? If you do receive Unemployment Benefits, what effect does this have upon your rights to receive Workers' Compensation benefits?
- Your doctor has requested that you undergo a certain course of medical treatment or surgery, and the Workers' Compensation insurer refuses to pay for the treatment. What legal rights do you have? The Workers' Compensation Insurer claims that your medical condition and/or need for treatment is not related to your accident at work and refuses to pay for the treatment recommended by your doctor. What legal rights do you have?

ATTORNEYS FEES

In workers' compensation, the attorney's fee is a contingent fee. A contingent fee agreement is an alternative to an hourly attorney's fee agreement. Under a contingent fee agreement, there is no attorney's fee charged, if the injured person does not secure a recovery. In Illinois, the amount that can be charged by your lawyer for your worker's compensation claim is set by the State of Illinois at 20% of the injured employee's recovery. Consult our office for further details.

How do I know whether I am covered by workers' compensation?

Generally, there are two main factors that determine your status: first, whether you are an employee, and second, whether your injury occurred as a result of your employment.

Do I have to be injured at work to be covered by Illinois workers compensation?

No. However, your injury must be job-related in order to be covered. For example, you will be covered if you are injured while running a work-related errand, traveling on business, or attending a required business-related social function. However, generally you will not be covered while traveling to and from work.

What benefits do I get if I am injured?

Workers compensation insurance provides replacement income, medical expenses and some rehabilitation benefits (job training, vocational schooling or job placement assistance). An injured worker is entitled to full payment for all medical treatment that is reasonable, necessary and related to the accident. There are certain guidelines that may restrict an employee's treatment however; workers will generally be able to obtain treatment. If they request, your employer can have you seen by its doctor as well. If you are temporarily unable to work, you should receive two-thirds of your average wage (up to a fixed amount). These payments are smaller but they are tax-free. If you are permanently disabled, you may receive long-term or lump sum benefits. These amounts of payment vary with the type and severity of your injuries.

Are workers' compensation benefits taxed?

Most states, including Illinois, do not tax workers' compensation benefits. The U.S. government does not tax workers' compensation benefits.

What types of injuries are covered by Worker's Compensation?

Any injury that arises out of and in the course of employment is compensable. If an injury occurs at work regardless of who is at fault, it will generally be covered unless the injured person is guilty of serious and willful misconduct. Employees who become disabled due to repetitive activities such as lifting are entitled to benefits under the law. In addition, cumulative trauma/repetitive motion injuries such as carpal tunnel syndrome and tendonitis are covered.

Who pays for workers compensation benefits?

Your employer is required either to carry workers' compensation insurance, or to be self-insured. Your employer's insurer is the one responsible for making payments to you.

Can I trust a doctor provided by my employer

It is reasonable to assume that this may not be in your best interest. It is best to choose your own doctor and not leave medical control in the hands on your employer or insurance company.

How much would a good workers compensation attorney cost?

In workers' compensation, the attorney's fee is usually based upon a contingent fee. A contingent fee agreement is an alternative to an hourly attorney's fee agreement. Under a contingent fee agreement, there is no attorney's fee charged, if the injured person does not secure a recovery. In Illinois, the amount that can be charged by your lawyer for your worker's compensation claim is set by the State of Illinois at 20% of the injured employee's recovery. Consult our office for further details.

Can I settle my case?

Yes. Worker's Compensation cases can resolve by way of a settlement. Settlements are reached after negotiation between the injured worker or his attorney and the insurance company.

Is it possible for me to receive a lump-sum settlement in the event I am found to be permanently and totally disabled from further gainful employment?

It is possible to receive a lump-sum settlement distribution rather than scheduled payments in such cases, provided such a distribution is approved by the Illinois Workers' Compensation Commission.

What happens when I settle my workers' compensation claim?

You may be closing out any further claim to workers' compensation benefits regarding your injury upon your acceptance of a settlement offer.

What happens if an offer of settlement is made to me by my employer and I choose not to accept it?

You may choose to go to an Arbitration hearing so that all of the evidence surrounding your claim may be heard by an Arbitrator. The Arbitrator's decision may be appealed by either party, and, depending on the facts regarding your injury, may go all the way to the Illinois Supreme Court.

What are my rights if my injury is caused by the negligence of someone other than my employer or co-worker?

If you are injured due to the negligence of a third party, that is someone other than your employer or a co-worker, then you may have the right to bring a civil lawsuit against that third party. Your right to bring a claim against the third party does not affect your right to receive workers' compensation benefits. The benefits available in a third party claim include the right to collect for lost wages, pain and suffering, medical costs and spousal rights.

Does a worker have a viable workers' compensation claim if they re-injure a previously injured part of their body or aggravates a pre-existing physical condition?

If a worker sustains a work-related injury to a previously injured part of their body, regardless of whether the previous injury was work-related, they are not barred from recovery under the Act. Similarly, if they sustain an accident which aggravates or accelerates a pre-existing physical condition, (arthritis, congenital back condition, etc.) they are still entitled to all the rights and benefits provided by the Act.

How long do I have to file a claim after I am injured?

The time deadline to file a Workers' Compensation claim is also called the Statute of Limitations. The Statute of Limitations to file a Workers' Compensation claim in the State of Illinois is three (3) years from the date of the accident or two (2) years from the date the injured employee last

received Workers' Compensation benefits, whichever is later. The Statute of Limitations on a "repetitive trauma" claim can be various dates. Consult our office for further details.

Under what conditions am I able to ensure that I will be able to receive future medical treatment for my work-related injury?

Having a hearing before an Arbitrator at the Illinois Workers' Compensation Commission is the only legal method for preserving your right to future medical treatment. When you settle your claim with your employer for a lump-sum payment of permanent partial disability, you forever close out your right to receive any future medical treatment for your work-related injury unless such a provision is specified in your settlement contract with your employer.