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NEW YORK STATE WORKERS' COMPENSATION CLAIMS

What is Workers' Compensation?

The New York State Workers' Compensation Law provides very important benefits to individual workers who are injured or develop a sickness/illness which arises out of and in the course of their employment.

What is a Workers' Compensation Claim?

Generally, there are two (2) types of Workers' Compensation claims: (1) accident; and (2) occupational disease. An occupational disease is term used for a condition which develops as a result of an individual's employment over time, not necessarily on one particular day, but rather over a period of time due to the nature of the work performed. For example, a factory worker who repetitively uses his or her wrists can develop a repetitive motion syndrome, such as carpal tunnel syndrome, if the wrist due to repetitive forceful motion required in his or her work.

How do I Provide Notice to My Employer?

In the case of an accident that occurs while you are working, you must provide written notice of that accident to your employer within thirty (30) days of the accident, (*unless the New York State Workers' Compensation Board determines that there is a valid reason why notice could not be provided within that time frame*).

In the case of an occupational disease, the time frame is different. If you have developed an occupational disease, you must provide written notice to your employer within two (2) years of the time that you knew (*or should have known*) that the disease/condition was due to your employment; or within two (2) years of the date you were disabled. This date is usually defined as the date you first received treatment, the date you first lost time from work, and/or the date

which a medical provider indicates that a specific diagnosis is related to your employment activities. Whichever of those dates is later, is the date that Notice is due.

How Do I File a Claim?

In addition to providing written notice to your employer, you must also file a claim with the New York State Workers' Compensation Board. In the case of an accident, your claim must be filed within two (2) years of that accident. In the case of an occupational disease, your claim for compensation must be filed with the New York State Workers' Compensation Board within two (2) years of the time that you knew (*or should have known*) that the disease/condition was work-related, **and** within two (2) years of the date of disablement. *The description of the "date of disablement" is provided in the answer above.*

You must complete a claim form (Form C-3) which you can do in one of three (3) ways:

- 1) If you have internet access, you can go to the NYS Workers' Compensation Board website (www.wcb.ny.gov) and complete a fillable form that can be submitted directly.
- 2) Also with internet access, you can print out a paper form that you can complete by hand and follow the instructions for mailing it in.
- 3) If you don't have access to the internet, you can phone the Workers' Compensation Board, toll-free, at 1-877-632-4996, and request that a form be sent to you.

What Kind of Monetary Benefits can I Receive?

When a Workers' Compensation Claim is established, an injured individual may be entitled to lost wages on a temporary or permanent basis. Temporary benefits are awarded during periods of lost time from work based on evidence of a continuing disability supported by medical reports. The benefit rate can never be greater than two-thirds of the individual's pre-injury gross average weekly wage. This rate cannot be more than the maximum Workers' Compensation rate in effect as of the date of the accident or disablement.

In order to be considered for permanent benefits, a timeline for establishing "permanency" is followed. Permanency can be awarded in different ways, depending on the type of injury. Injuries may be considered permanent after one year, or several years, depending on the type of injury. For example, if the injury is to an arm or a leg, the worker may be entitled to a permanent award based on the percentage of loss of use. Loss of use awards are usually addressed one (1) year after the date of injury, or if surgery is performed, one (1) year after the surgical date. Spinal injuries can result in a different type of permanency, referred to as a "classification". Spinal injuries are usually not considered for permanency until at least one (1) to two (2) years after the date of injury, and are often complicated by an individual's need for surgery, or in some cases, multiple surgeries.

The Workers' Compensation Board makes a determination of medical impairment after permanency has been established. This determination is based on the opinion of relevant medical providers. However, the Law Judge will also consider additional factors on a case by case basis. Additional factors can include age, education, past work history, and transferrable skills and can ultimately determine an overall percentage of permanent loss of wage earning capacity. Once this determination is made, a weekly compensation rate is established and paid to the injured worker.

Can I Receive Medical Benefits?

When an individual is injured in a work-related accident or develops a work-related disease, that individual is entitled to medical treatment for the resulting injury or condition, including reimbursement for miscellaneous medical and travel expenses.

Should I Hire an Attorney?

You should know that your employer will always be represented by an attorney whose focus is to represent the interests of your employer, not you. An attorney who practices in Workers' Compensation cases and who represents **your** interests will be able to guide your case.

What Will an Attorney Cost?

Attorneys who represent clients with their Workers' Compensation claims are only paid on a contingency basis. This means that if you do not win your case, you do not pay the attorney anything. If you win your case, the attorney's fee must be approved by the Workers' Compensation Board. Once the fee is approved, it is paid directly to the attorney out of the award. In New York State, an attorney cannot charge you directly for representation in a Workers' Compensation claim.

This information has been provided for use on the Rural Law Center's website by Alex C. Dell, Esq.