2nd EDITION

Injured
on the Job in New York?

A Guide to Help Injured Employees Get the Compensation They Deserve

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About the Author

William W. Crossett is a Workers' Compensation lawyer with over 30 years of legal experience. Mr. Crossett has represented injured workers throughout Central and Northern New York since 1982, with offices in Syracuse and Watertown. Mr. Crossett is the managing partner of Meggesto, Crossett & Valerino, LLP, also known as MCV Law. MCV Law's team of experienced lawyers also include personal injury lawyers, labor lawyers and Social Security Disability lawyers.

Mr. Crossett is an award winning Workers' Compensation lawyer, having been recognized by Super Lawyers and acting as a fellow in the College of Workers' Compensation Lawyers. Mr. Crossett also maintains a high Avvo rating.

Mr. Crossett graduated from Syracuse University and DePaul University College of Law in Chicago, Illinois. Mr. Crossett served as President of the Injured Workers' Bar Association of New York, the Central New York Workers' Compensation Bar Association, and as the chair of the New York State Bar Association Committee on Workers' Compensation.

Mr. Crossett would like to recognize his law partners, Gary Valerino and Kimberly Slimbaugh, his associates, Christopher Stringham and Bethany Nicoletti, and his qualified paralegals and assistants for their support with completing this book. Mr. Crossett lives in Central New York with his wife, Susan. The Crossett's have two adult children.

What Is Workers' Compensation?

Can I Sue My Employer for a Work Injury?

No. In New York State, Workers' Compensation is defined as the "exclusive remedy" for employees who are injured or develop a sickness while working in New York State. This "exclusive remedy" distinction means that injured or sick workers cannot sue their employer.

Rather than being able to sue an employer, injured or sick workers can apply for Workers' Compensation benefits.

Employees can, however, sue a third party whose negligence caused a work injury. For more information on suing a third party because of a work injury, see the Chapter "Third-Party Actions," on page X.

What Do NY Workers' Compensation Benefits Cover?

If an injured worker's Workers' Compensation claim is approved, the injured worker is entitled to both:

- Lost Wage benefits, and
- Related Medical Care

What Types of Workplace Health Issues Qualify Under NY Workers' Compensation?

There must be a direct connection between work and work duties for an injury or illness to qualify for New York State Workers' Compensation benefits.

There are two types of claims that qualify for Workers' Compensation:

- Accidental
- Occupational Diseases

Accidental Claims

An accidental Workers' Compensation claim relates to sudden, unexpected injuries. For example, slip and fall injuries, auto accidents, or falling from a ladder or other heights or other types of accidents that cause bodily injuries fall under the accident claims category.

Occupational Disease Claims

An Occupational Disease Workers' Compensation claim relates to injuries or illnesses that develop over time as a result of work duties. Examples of an Occupational Disease case include a secretary developing carpal tunnel syndrome from typing or a worker developing a chronic illness from exposure to chemicals.

There can be very small differences that distinguish between these two types of claims (accidents or occupational diseases). However, there are important differences between the types of claims. The statute of limitations, burden of proof and permanency must be considered carefully before choosing to file a Workers' Compensation claim as one type of claim rather than another.

The statute of limitations is defined as the length of time that a case is able to be litigated from the time the alleged incident occurred until a claim is made. For NY Workers' Compensation law, the statute of limitations for notifying an injured worker's employer of a work related accident is 30 days from the injury occurring, or 30 days from the time that the injured worker first knew that the injury was work related. For an occupational disease, a worker can initiate a claim within two years of discovering a chronic illness that's caused from their work.

The burden of proof refers to the legal requirement to prove what someone is claiming. For example, if an injured worker says that they broke their leg from a fall while on the job, the insurance carrier or Workers' Compensation doctors would have a burden of proof to prove otherwise if they were to contest or try to deny a Workers' Compensation claim.

Permanency refers to a standard that determines the level of disability for an injured worker. For example, if the Workers' Compensation Board rules that an injured worker's right leg is 20% disabled, this percentage of disability can be used to determine how many weeks of compensation an injured worker is entitled to. Permanency is also used to help determine if a worker is too disabled to return to work or not, as well as certain work restrictions (such as the type of work an injured worker may be able to pursue).

Don't Rush to File a Claim Before Knowing Your Rights

Often, people will file a claim before really considering if their claim would be considered an accident or an occupational disease. Workers' Compensation can be more complicated than most people may think, with lots of required documentation and paperwork that can significantly impact the outcome of a Workers' Comp. claim.

If a traumatic event happened on the job with multiple witnesses, and caused an injury or illness, it may be a good idea to file a claim as soon as possible. However, every situation is different, especially in regards to an Occupational Disease claim.

Who Is Involved in a Workers' Compensation Case?

Before we talk about how to file a Workers' Compensation claim, it is important to understand who the "players" are in the Workers' Compensation system.

The people involved in a Workers' Compensation case include:

- The injured worker
- The injured worker's Employer
- The Employer's insurance company or third-party administrator,
- The injured worker's medical providers, and
- The New York State Workers' Compensation Board

The Claimant

The injured worker is referred to as "the claimant" in the system. As the claimant, the injured worker has the burden to prove their case. The evidence required is typically the injured worker's testimony as to how the injury occurred or occupational disease arose, as well as medical evidence to support the link between the injured worker's physical infirmity and the injured worker's work. The medical evidence is also used to determine the injured worker's degree of temporary and permanent impairment. Sometimes additional witness or physical evidence is also offered when proving the case.

The Injured Worker's Employer

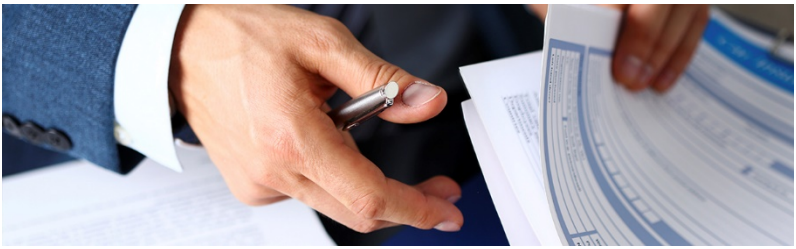
Employers are obligated to carry Workers' Compensation insurance. The Employer may also commence a Workers' Compensation claim by filing Form C-2. Sometimes, an injured worker's Employer's insurance company will initiate the claim after the Employer informs them of the injury or illness. An injured worker's Employer is also supposed to file various forms, so as to allow calculation of the injured worker's Average Weekly Wage and an accurate account of the injured worker's lost time.

The Carrier

The Workers' Compensation insurance company that an Employer purchased a policy from is referred to as "the Carrier." Some large

Employers are self-insured, others employ a third-party administrator to handle the day-to-day aspects of Workers' Compensation cases. Again, the third party administrator is often referred to as "the Carrier."

The Carrier must meet certain deadlines as set forth in the statute regarding whether to accept or deny a Workers' Compensation case initially. Generally, the Carrier has 25 days from formal knowledge of the claim to make that determination. The Carrier will also administer the claim and make payments from beginning to end.



Medical Providers

Medical providers in a Workers' Compensation case include the doctors, chiropractors, physical therapists, physicians' assistants, nurse practitioners, nurses and other associated medical professionals who provide care and treatment for the injured workers' injuries or disease.

Medical reports are evidence in a Workers' Compensation case.

The medical providers play an essential role in a Workers' Comp. case. Not only do medical providers treat injuries and facilitate an injured worker's return to work, but the medical reports constitute as evidence in a Workers' Compensation case.

The New York Workers' Compensation Board

The New York State Workers' Compensation Board is a NYS agency charged with administering the claims that are made. The Board is made up of a Chairperson and Commissioners. The Commissioners site in panels of three and hear the first level of appeals. The Workers' Compensation Board employs judges who handle the hearings. In some cases, a hearing is not held and the decisions are made administratively under the judge's review.

The New York Workers' Compensation Board has established a set of forms that the medical providers should use in reporting their findings and opinions. These forms are referred to as "the Family of C-4 Forms." The forms can be found on the New York State Workers' Compensation Board's website.

It's important for injured workers to be familiar with the NY Workers' Compensation Board's medical provider forms to understand what the doctors must report and how that affects the money benefits payable.

Additionally, the New York State Workers' Compensation Board has established Medical Treatment Guidelines for various body parts and injuries. It is important that an injured worker's medical provider follow the Guidelines and use the forms to seek authorization for treatments that vary from the Guidelines, as well as certain surgical procedures and requests.

A Step-By-Step Breakdown of the Workers' Compensation Process

First, An Injured Worker Should Give Notice to Their Employer

When an injured worker has, or suspects they have, a work-related injury, the first thing to do is give notice to the worker's Employer. This can be done either orally or in writing to a supervisor or someone else in management. MCV Law recommends giving notice in writing and keeping a dated copy that can be submitted as evidence.

Second, Seek Immediate Medical Treatment

Injured workers should immediately seek medical care. Often, an injured worker does not know they have a claim until learning from a doctor that their condition is related to their employment. When this happens, an injured worker should give notice after seeing a doctor. An example would be someone who has hand pain that wakes them up at night. After talking to their doctor, the person may learn that they have Carpal Tunnel Syndrome and their doctor thinks it is related to their job as a secretary.

When talking to medical professionals it is important to give a concise but comprehensive history of how the accident or illness occurred. If someone's condition is related to work, it is important to discuss this with their doctor so as to obtain his or her opinion on causal relationship.

> The history of an injured worker's accident or illness that is given to doctors must be accurate and complete.

In an occupational disease or illness case, it is important for the medical professional to understand the exact nature of the injured worker's job and the nature of their exposure. It is always helpful if the injured worker can identify the substances, chemicals or other items that they work with.

Sometimes, an injured worker can obtain the Material Safety Data Sheet (MSDS) of substances that they work with.

Third, Obtain Medical Reports

It is best practice for an injured worker to obtain copies of their medical reports. It is very important to know what the doctor has said as the injured worker prepares to file their claim. While it is possible, and sometimes necessary to file a Workers' Compensation claim before seeing a doctor, it is usually best to wait until the injured worker has the medical evidence that supports their case.

Fourth, File a C-3 Form

A case is formally commenced by the filing of a C-3, "Employee Claim" form.

The filing of a C-3 starts a Workers' Compensation case.

Many times a case is informally started by someone other than the injured worker, such as when an Employer or insurance Carrier reports the injury or a medical provider files a report with the Board. However, simply because the filing process has started does not obligate the insurance Carrier to pay.

What the Workers' Compensation Board Does

The Workers' Compensation Board has a 2-step process for commencing cases:

- Assembling – A Notice of Assembly is simply an acknowledgement that some information has been received indicating a work-place injury or illness. The importance of the assembly is that a Workers' Compensation case number is assigned (WCB case number).
- Indexing – A Notice of Indexing is the legal commencement of the claim, which starts the clock for the insurance Carrier to make a decision to accept or deny the claim.

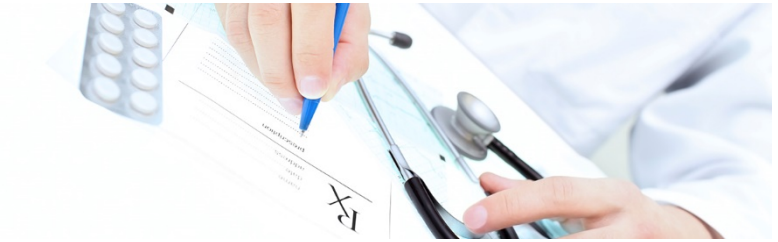
Sometimes, the Workers' Compensation Board will jump over Assembly and go directly to Indexing. In other times, the insurance Carrier may voluntarily accept the case before the Board issues a Notice of Indexing.

Electronic Case Folder

The New York Workers' Compensation Board uses an ever-evolving electronic filing system. This system is referred to as the "ECF" or "Electronic Case Folder." It is from the ECF that all parties, including the judges, make decisions. The Board is working towards an entirely electronic filing system. Until such time, however, it is important that claimants understand that some documents are submitted electronically and others on papers.

What Records an Injured Worker Should Keep

- A record of doctors' visits
- Copies of decisions from the Workers' Compensation Board
- A record of payments received, and
- Correspondence from the insurance carrier



Depending on whether the case has been commenced by the filing of the C-3 form or by some other document or process, the first thing to determine is whether the case has been indexed. Once the case has been indexed, the legal process has commenced. If the case has not been indexed, an investigation must be undertaken to find out why.

Accepting or Denying a Workers' Compensation Claim

Assuming the case has been Indexed, the insurance company or Employer must either legally accept or deny the case, which is often referred to as controverting the case.

The insurance Carrier has 25 days from the Notice of Indexing to accept or controvert the case.

If the insurance Carrier accepts the case, payments may commence if an injured worker is out of work for more than 7 days. However, if the injured worker is out of work for more than 14 days, benefits are payable from the first day of lost time.

Simply because the insurance carrier accepts an injured worker's case does not mean that all issues are resolved. Sometimes, a hearing is necessary to resolve issues, including:

- Injury sites
- Lost Time
- Degree of Disability or Impairment
- Average Weekly Wage
- Employer Reimbursement
- Denied medical requests
- Permanency

Hearings are scheduled by the New York State Workers' Compensation Board when they deem a legal controversy to exist. Often the Board attempts to resolve cases by Administrative Decisions or Proposed Decisions, which allow for a period to object. An objection may result in a hearing.

If an injured worker is considering legal representation, it is best to obtain a Workers' Compensation lawyer before the Board commences the adjudication process. This allows an injured worker's lawyer the opportunity to analyze the facts, file the correct documents, and explain the legal strategy to the injured worker.

Who is Eligible for Workers' Compensation Benefits?

In New York State, employees who are injured on the job or become sick from work duties are eligible for Workers' Compensation benefits. Independent contractors, such as freelancers, are not eligible for Workers' Compensation benefits.

Does My Employer Need to Have Workers' Compensation Insurance?

In New York State, the short answer is yes.

Anyone who has hired an employee is required to have Workers' Compensation insurance. If a company has only one owner or stockholder, the individual owner or stockholder isn't legally required to have Workers' Comp. insurance for themselves. However, even companies with one owner or stockholder are legally mandated to have Workers' Compensation insurance for employees. Owners or stockholders can opt in or out of Workers' Compensation insurance coverage.

What Happens if an Employer Doesn't Have Workers' Compensation Insurance?

In New York State, the Workers' Compensation system has an Uninsured Employers Fund. The Uninsured Employers Fund is essential for administering and paying Workers' Comp. benefits when an employer doesn't have Workers' Compensation insurance.

How Are Independent Contractors Legally Defined?

The requirements for Workers' Compensation insurance are different for independent contractors, however. By law, independent contractors with no employees do not need to have Workers' Compensation insurance.

Some people, such as freelancers, are not considered employers. Rather, some people who work for others are considered part of an "independent contractor relationship." Independent contractors who work for themselves do not need to carry Workers' Compensation insurance. This means that if an independent contractor who is working for themselves gets hurt while on

the job, the independent contractor is not entitled to medical and Lost Wage benefits from Workers' Compensation.

> Even if a contract says someone is an independent contractor, the Workers' Compensation Board can still deny this definition as it relates to Workers' Compensation benefits.

There are certain criteria that the Court considers to figure out if someone is truly an independent contractor.

After considering all of these factors, the Workers' Compensation Board can then make one of two possible decisions

- The work arrangement does meet the definition of an independent contractor relationship
- An employee-employer relationship exists, rather than an independent contractor relationship

If the Workers' Compensation Board rules that an employee-employer relationship exists, the injured worker is entitled to medical and wage benefits as part of Workers' Compensation.

Criteria To Determine if Someone is an Independent Contractor or Employee

To determine if a work agreement is part of an independent contract or an employee-employer relationship, the Workers' Compensation Board considers bargaining power, the control over the worker and other factors.

Some common examples of people who could be either an independent contractor or an employee include:

- Drivers
- Delivery workers
- Hairdressers
- Care givers
- And more

Depending on the nature of the work, certain industries are more likely to try to avoid Workers' Compensation law by defining workers as independent contractors.

What Do I Need to Tell My Employer When I Get Injured or Sick?

New York State Workers' Compensation requires an injured or sick employee to tell their employer about their work related injury or illness within a certain amount of time. This deadline to inform the injured worker's employer of a work injury or illness is known as the statute of limitations.

There are two different statutes of limitations for Workers' Compensation in New York State. These statute of limitations are as follows:

- An injured worker has 30 days from the day of an injury or knowing that they have a work-related illness to tell their employer. This is a legal requirement detailed in Section 18 of NY Workers' Compensation law, and is known as "notice"
- A worker who develops an illness has 2 years from the day of an injury or knowing that they have a work-related illness to file a claim with the Workers' Compensation Board

In brief, there are two statute of limitations that apply for Workers' Compensation: the first applies for giving notice to an injured worker's employer, and the second applies for filing a claim in an attempt to obtain Workers' Compensation benefits.

How Long Does a Injured or Sick Worker Have To File a Workers' Compensation Claim?

An employee has two years to file a claim for Workers' Compensation. This two year deadline begins from the day of the accident, or two years from knowing (or when the injured worker should have known) about an occupational disease. To file a Workers' Compensation claim, an injured or sick worker should use the C-3 Employee Claim form.

The employer is also legally required to report work injuries to the Workers' Compensation Board with Form C-2.

Many people believe that only an employer can report a work accident. This is not true.

An injured worker or their family member can initiate a Workers' Compensation claim on their own, meaning they do not need to have their employer file a claim.

MCV Law believes that it's best to file a claim as soon as there is evidence that a worker has a work injury or illness. However, it's important to complete the necessary paperwork carefully and completely. Injured workers can file a claim using Form C-3, known as "Employee Claim."

Almost all Workers' Compensation claims begin with completing the New York Workers' Compensation Board forms, but this is not required.

How is Notice Defined?

While the law states that workers have to notify their employer within 30 days of knowing about their work injury or illness, some employers have a policy requiring immediate notice for an injury. If this is the case, it's very important to provide this immediate notice. An injured worker failing to notify their employer immediately, when it is company policy for an injured worker to do so, could be used as a reason to deny Workers' Compensation benefits.

However, failing to immediately report a work injury (per company policy) does not necessarily mean that an injured worker's claim will be denied.

An injured worker can't just tell a co-worker about their injury. To give proper legal notice to an employer about a work injury or illness, the injured worker must give notice to:

- Someone who has the authority to receive the injury report
- The injured worker's supervisor, or
- Human Resources representative

Notice isn't necessarily required in writing. Notice can be given verbally, but it's best to document a work injury in writing. When the injury happens and

requires emergency care, it may be argued that this is considered implied or actual notice of the injury.

While some work injuries or illnesses are immediately obvious because they're an emergency, often people will get injured or sick at work and not know the exact cause until later. This is common with occupational disease claims. For example, if a worker becomes sick and has problems breathing, the worker may not realize that this is due to a work-related asthma condition until they've been evaluated by doctors or other medical providers.

When a doctor diagnosis a problem as being related to work, it's best for an injured worker to give written notice to their employer. This written notice is important for complying with Section 18 of NY Workers' Compensation Law. There isn't a specific form that should be used for this written notice. An injured worker can give notice to their employer in writing with an accident report, email, letter or memo.

Completing the C-3 Employee Claim Form

The C-3 Employee Claim Form includes questions about:

- the injury or sickness
- biographical information about the worker filing the claim
- biographical information about the employer of the worker filing the claim

The C-3 Employee Claim Form should be filled out completely and with attention to detail. This is especially important for the questions about the details of the accident or illness, and prior injuries or illnesses.

What Should an Employer Do When a Worker Gets Hurt or Sick on the Job?

In the event of a work injury or occupational disease, the employer should report the accident or sickness with form C-2, known as "Employers Report of Accident."

The ways in which an employer can complete the C-2 Employers Report of Accident form include:

- in writing
- online
- or calling the employer's Workers' Compensation insurance carrier

In addition to Form C-2, employers must fill out other Workers' Compensation claim forms, including:

- Form C-240, which shows the actual amount of money earned by the injured worker 52 weeks before their injury.
- Form C-11, which documents the injured or sick employee's lost time from work. Form C-11 also provides additional information that helps the Workers' Compensation Board administer the claim.

Can I Obtain Workers' Compensation Benefits if my Injury Happens off Work Premises?

Yes. In New York State, Workers' Compensation benefits are provided for injuries or illnesses that develop from or during employment. This means that the accident or illness does not have to happen at any specific place, such as in the office or on a job site.

A work injury does not necessarily have to occur at the workplace.

Many people don't work in a factory or an office for all of the time that they're on the job. Some people may work from their vehicles, or their work may require them to do their job at various locations. For example, home health aides, construction workers, delivery drivers or a sales person are all occupations that may require someone to work outside of a traditional workspace.

What is Portal to Portal Coverage?

Only certain employees are protected by Portal to Portal Coverage. Portal to Portal Coverage is essentially door-to-door coverage. For example, an exterminator who uses a company vehicle to pick up supplies and then travel to customers for service may be covered by Portal to Portal Coverage. In this example, the exterminator would be covered by Portal to Portal Coverage in the event of a traffic accident as he travels to a job.

A second example of a worker being covered by Portal to Portal Coverage is a home health aide who travels from patient to patient and gets hurt on the way from one patient to the next. In this example, the injured home health aide may be eligible for Workers' Compensation benefits. This is because it could be argued that the home health aide's injury happened during the course of employment.

Employers or the insurance carrier will likely argue that Portal to Portal Coverage does not apply. The insurance company may argue that the travel to and from one job to the next was for a personal reason and not part of job duties. For example, if the exterminator in the earlier example drives in the company vehicle to check on their child at school or home and gets in an accident, the insurance company may argue that the injury didn't happen during the course of employment.

Portal to Portal Coverage may also apply to people who work in an office, factory or other central location but get injured outside of this location. For example, if an employee gets hurt in the parking lot of their workplace, this is generally covered under Workers' Compensation. Workers' Compensation would also apply when an employee is injured in the lobby or elevator of a building that they work in.

The specific facts of an incident matter a lot in cases where Portal to Portal Coverage applies. When an injured worker has a Workers' Compensation claim for an accident that doesn't happen at their workplace (such as at the office), it's best to seek immediate legal help. This is because there may be other legal actions that are suitable for a Portal to Portal coverage situation, such as New York State No-Fault Benefits or a civil action against the owner of the property where the injury occurred. For more information, see Third Party Actions on page X.

Am I Eligible for Workers' Compensation if I am Injured in a Traffic Accident While Working?

If involved in a motor vehicle accident in the course of employment, New York State provides No-Fault Benefits in addition to Workers' Compensation Benefits.

> No-Fault Benefits are provided by the insurance company for the vehicle a worker is in during the time of his or her work injury.

There are exceptions to this rule for No-Fault Benefits. Other coverages may also apply depending on the particular circumstances of a case.

Workers' Compensation Is the Primary Source for Benefits

Workers' Compensation benefits are the primary means of compensation when hurt in a traffic accident during the course of employment. This means that the employer's Workers' Compensation insurance company pays medical and Lost Wage benefits first. No-Fault Benefits are secondary. Typically, there is a little bit of additional money from the No-Fault insurance Carrier, because Workers' Compensation pays 2/3 of an injured worker's average weekly wage and the No-Fault insurance company pays 80%. It's also typical for No-Fault policies to have limits that are reached before Workers' Compensation benefits are provided to an injured worker.

Because an auto accident is often the result of the negligence of a "third-party" (not an Employer or co-worker), the law allows an injured worker to bring a separate civil lawsuit against the negligent party. This is referred to as a "third party action."

Third-party: refers to another person involved in a claim. Specifically, a third-party is a person besides the two people or groups that are primarily involved in a claim. For example, a delivery driver gets in a car accident and is hit by another driver running a red light. In this example, the two primary people or groups involved would be the delivery driver's employer and their Workers' Compensation insurance company. This means that the other driver who hit the delivery driver would be known as the third-party.

Third-party action: refers to a lawsuit against a third-party involved in a case. In the example above, a third-party action would refer to when the delivery driver sues the driver who ran a red light for damages caused by the accident.

Third-Party Cases

Many third-party cases happen in automobile accidents. However, third-party cases may also arise from negligence of a third-party in the workplace or on sites where injured worker was working. New York State's Labor Law provides for some very important protections for construction workers and those working from elevated heights. Again, this type of case is very fact-driven and may have additional, short statutes of limitations.

Because of the short window of time that an injured worker has to file a claim for this type of Workers' Comp. case, an injured worker should immediately seek legal assistance in the event of either of the following:

- An injured worker believes their work injury or illness is due to the negligence of a third-party in the workplace. For example, if an improperly installed air conditioner falls on a worker at their work place, the company that installed and provided the air conditioner could be sued as part of a third-party action.
- An injured worker is hurt at work after falling from elevated heights. An example of this could be when a construction worker is injured in a fall while doing work on a building.

No Double Recovery

The law does not allow a double recovery.

Double Recovery: when an insured person files multiple claims for a single event with multiple insurance carriers. An example of this would be if a delivery driver was injured in a car accident and the delivery driver attempted to get paid both through Workers' Compensation and a separate insurance company, such as the delivery driver's car insurance.

This means that the injured worker will have to pay the Workers' Compensation insurance company from the proceeds of their third-party law suit. There is a credit for the cost of the recovery. It is very important that the Workers' Compensation insurance company agrees to a settlement in the event that a third-party case is settled.

Why Do I Have to Get the Workers' Comp. Insurance Company to Agree to a Third-Party Settlement?

Without the Workers' Compensation insurance company agreeing to a third-party settlement, an injured worker will have to forfeit their rights to future benefits under Workers' Compensation Law. This means that the injured worker may no longer have medical care or be entitled to Lost Wage payments. This is especially true in cases involving Motor Vehicle Accidents, as often the policy limits are much less than what is paid in a Workers' Compensation case.

It's very important that injured workers understand their rights and obligations when there is both a third-party case and a Workers' Compensation claim arising from the same injury. Because of lien provisions in NY Workers' Compensation law, getting the greatest benefit possible for an injured worker does not always involve bringing a third party suit.

Labor Market Attachment

A partial disability may prevent an injured worker from returning to their prior job. However, this doesn't necessarily prevent an injured worker from returning to all types of work.

New York State law requires injured workers with a Temporary Partial Disability (TPD) to look for work that's within their abilities.

If an injured worker fails to look for work within their abilities, the insurance company may claim that the injured worker has voluntarily removed themselves from the workforce, therefore allowing the insurance carrier to stop paying weekly wage benefits. This legal argument is known as "Labor Market Attachment."

Injured workers sometimes think that they do not have to remain attached to the labor market because:

- The injured worker is on Social Security Disability (SSDI),
- The injured worker collects Unemployment Insurance,
- The injured worker was told by their previous employer that they cannot return to work because of their disability,
- The injured worker has been fired because of their disability,

How an Injured Worker May Maintain Labor Market Attachment

There are many ways to show that an injured worker is attached to the workforce. Some common ways include:

- Completing a detailed job search,
- Working with ACCES-VR and/or a One-Stop Center, or
- Attending school full-time or a job training program

The most effective way for an injured worker to show attachment to the labor market is to submit an independent job search. The best way to do this is to use Form C-258, which can be obtained from the Workers' Compensation Board website http://www.wcb.ny.gov/.

In addition to completing Form C-258, injured workers should keep track of the following information:

- Date of the contact,
- Address of the contact,
- Position sought,
- Name of the person spoken with, and
- Save all cover letters, resumes, and emails used in the job search. Obtain copies of all completed applications.

What if An Injured Worker's Employer Offers Light Duty Work?

If an injured worker's employer offers a light duty job that's consistent with the injured worker's abilities and the worker denies the position, the Workers' Compensation insurance carrier is likely to challenge the injured worker's entitlement to benefits. This theory is based on the idea that the injured worker has "Voluntarily Withdrawn" from the workforce.

If an injured worker denies an offer for light duty work, the injured worker would have to offer a valid reason for denying the position. Sometimes, the light duty position is based on the opinion of the Independent Medical Examiner (IME), rather than the injured worker's doctor. In this case, the Court may find that declining a light duty position is justified. Typically, a hearing is requested and the dispute is resolved through the hearing or other litigation.

Independent Medical Exams

Independent Medical Exams, often referred to as "IMEs," are used by the insurance Carrier at various times in a case, such as:

- In controverted cases to obtain an opinion on what caused a work injury.
- To obtain an opinion on if additional body parts are affected or if other consequential conditions exist.
- To obtain an opinion on an injured worker's degree of impairment before permanency.
- To obtain an opinion about further treatment.
- To obtain an opinion on Maximum Medical Improvement ("MMI").
- To obtain an opinion on permanent disability and Loss of Wage Earning Capacity ("LWEC").

An Independent Medical Examiner must be approved by the New York State Workers' Compensation Board. However, the insurance Carrier may choose from the approved list of doctors as they see fit. The law requires that notice of the exam be given within eight days and that the location be reasonably convenient for the claimant.

The purpose of the Independent Medical Exam is to offer opinions only. The Independent Medical Exam does not treat injured workers.

Often, the insurance Carrier will have more than one IME throughout the case, and many times it is not the same doctor. The insurance Carrier will present certain questions to the Independent Medical Examiner, which are disclosed in a filing with the Workers' Compensation Board.

The law requires that the Independent Medical Examiner submit a report within 10 days of the examination. The report must be mailed to all parties at the same time. Failure to comply with the rules and regulations may result in the IME being excluded from the case.

Sometimes, the insurance Carrier will choose to have the Independent Medical Examiner do a Record Review only, meaning that there is no physical examination or meeting with the injured worker. Rather, the Independent Medical Examiner reviews the records submitted by the insurance Carrier and provides an opinion. This often happens where the issue is whether the injured worker should be allowed a specific type of treatment or medication. It must be remembered that the Independent Medical Examiner is working for the insurance Carrier or Employer, and despite the label of "Independent," brings a certain bias to the exam and the report.

My Case is Established. Now What?

Once a Workers' Compensation case is accepted or established, the injured worker is entitled to two things:

- Medical Care Causally related to the work injury, and
- Lost Wage Benefits

Medical Care

NY State Workers' Compensation law provides that an injured worker is entitled to medical care that is causally related to their work injury or illness. The injured worker may also be entitled to medical care for conditions that are consequential to the original work injury or illness. For example, if an injured worker injured their knee and fell down in rehab, injuring their hand while breaking their fall, the injured worker is entitled to medical care for their hand, as well as their knee.

Injured workers are entitled to choose their own Workers' Comp. doctor.

Injured workers are entitled to choose their own doctors in most circumstances, as long as the medical provider is authorized by the New York State Workers' Compensation Board. A list of authorized medical providers can be found at the New York State Workers' Compensation Board website (wcb.ny.gov). A doctor referral is not needed in a Workers' Compensation case.

An injured worker's medical provider is obligated to report their findings on the New York Workers' Compensation Board's prescribed forms, often referred to as "the Family of C-4s." The medical provider must follow the Medical Treatment Guidelines, seeking variances and approvals as necessary.

The medical provider will bill the insurance Carrier directly; there are no deductibles or out of pocket expenses for the injured worker.

As part of the medical care benefits from Workers' Compensation, the injured worker is entitled to prescriptions and reimbursement for medical goods like crutches or bandages. In addition, injured workers are entitled to mileage to and from the doctor or physical therapist, as well as parking costs, even after return to work. This does not include mileage to and from the Workers' Compensation Board, a meeting with a Workers' Compensation lawyer, or the pharmacy to fill prescriptions.

Lost Wages

Lost Wage payments (referred to as "benefits" or "awards" are typically paid to the injured worker within 2-3 weeks after the injury. The law says that the insurance company or Employer does not have to pay benefits for the first 7 days of lost time, unless the injured worker is out of work for more than 14 days. If an injured worker is out of work more than 14 days, benefits start as of the first date of lost time.

An injured worker's Average Weekly Wage determines the amount of their benefit.

The amount of Lost Wage benefits are determined after the injured worker's Average Weekly Wage is calculated, and is based upon an injured worker's degree of impairment or Reduced Earnings. Lost Wage benefits are typically paid bi-weekly but based upon an injured worker's weekly rate.

Lost Wage benefits continue while an injured worker is out of work or returns to work earning less than they did at the time of their injury. This is referred to as "Reduced Earnings."

Reduced Earnings: The Workers' Compensation benefits an injured worker is paid while out of work or after returning to work to compensate for the injured worker earning less than they did at the time of the work injury.

Lost Wage benefits stop or change when:

- An injured worker returns to work,
- An injured worker is awarded a Schedule Loss of Use,
- A Permanency finding is made,
- A Workers' Compensation case is settled, or
- An injured worker is found to have committed fraud under Section 114-a of the Workers' Compensation Law.

Schedule Loss of Use: A form of cash payment that is given to an injured worker because a work injury or illness has left the worker with less ability in a body part than the worker had before the injury.

Permanency Finding: A decision by the Workers' Compensation Board about how permanent a work injury or illness is. Work injuries or illnesses are rated on a scale of how permanent an injury is, with specific injuries to specific body parts being associated with specific permanency findings. This permanency finding is based off the maximum number of weeks that an injured worker can receive permanency payments for. For example, if a doctor gave an injured worker a permanency rating of 20% in their injured left leg, this would equate to 20% of 175 weeks, or 35 weeks of payments.

If an injured worker returns to work, with or without Reduced Earnings, the injured worker has an affirmative obligation to report this change in work to the insurance Carrier.

In addition to notifying the insurance carrier if an injured worker's work situation has changed, injured workers should inform their Workers' Comp. lawyer and the Workers' Compensation Board.

How an Injured Workers' Lost Wage Benefits Are Calculated

The primary form of Workers' Compensation benefits is Lost Wage benefits. If an injured worker is out of work, the injured worker is entitled to up to 2/3 of their average weekly wage.

The actual amount an injured worker is paid in Lost Wage benefits depends on the following factors:

- The date of the work injury,
- The injured worker's average weekly wage,
- The injured worker's medical impairment,
- Whether the injured worker has returned to work earning less money,
- Upon permanency, an injured worker's loss of earning capacity and age.

How Much Could an Injured Worker Be Paid for Lost Wages?

Depending on the date of the work injury, there are maximums and minimums set by law. From July 1992 until July 2007, the maximum benefit was $400.00 per week and the minimum was $40.00 per week. Starting on July 1, 2007, the maximum rate was increased to $500.00 per week and has increased each July; the rates for the last 5 years are as follows:

Year	**Maximum Lost Wage Benefit (weekly)**
7/1/2017	$864.32
7/1/2016	$844.29
7/1/2015	$808.65
7/1/2014	$803.21
7/1/2013	$792.07

The law now provides that the maximum rate be set at 2/3 of New York State's average weekly wage, as set forth by the Department of Labor. This means that an injured worker receiving Workers' Compensation benefits will get paid a maximum of 2/3rds of their average weekly wage.

Average Weekly Wage Calculation

An injured worker's average weekly wage is calculated by looking at their before-tax earnings for the 52 weeks prior to a work injury. If the injured worker did not work for 52 weeks at that particular job or for that particular Employer, a similar employee's payroll can be used instead. Both the money made from an injured worker's job(s) and the days worked are calculated and used in a mathematical formula to determine an injured worker's average weekly wage.

For a 5-day a week worker, the gross earnings are divided by the actual number of days worked to determine the average daily wage, which is then multiplied by 260 and divided by 52. Different multipliers are used depending on the number of days worked or for seasonal workers.

Confused? Make it easy. Estimate average weekly wage with the Average Weekly Wage calculator at mcvlaw.com/workers-compensation-lost-wage-benefit-calculator

How Does Concurrent Employment Impact Workers' Comp. Benefits?

Concurrent employment refers to having more than one job at the same time.

Earnings from other jobs may also be counted.

To be eligible for Concurrent Employment, an injured worker's other work must also be "Covered Employment." This means that an injured worker's other job is covered under New York State Workers' Compensation Law. The money an injured worker earns from another job is added into the average weekly wage.

Minor's Wage Expectancy

If an injured worker is under the age of 25 at the time of a work injury, a "Minor's Wage Expectancy" evaluation is completed at the time of

permanency. The idea is that an injured worker should be compensated for being under 25 at the time of a work injury. Typically, this increases the Average Weekly Wage, thereby increasing permanency awards.

The Minor's Wage Expectancy is determined by looking at what an injured worker would have earned at age 25 for the same Employer. Factors to be considered are education, advancement, and earnings of similar workers. The Minor's Wage Expectancy is often the subject of much dispute.

Calculation of Weekly Benefits

After an injured worker's Average Weekly Wage is set, an injured worker's weekly benefit is calculated based upon their degree of medical impairment while out of work. Medical impairment, also known as degree of disability, is expressed as a percentage.

Medical impairment (or degree of disability): A measurement of disability of an injured worker as it relates to a work injury. This is expressed as a percentage.

> On each C-4 form, the medical provider (doctor, physical therapist, etc.) establishes an injured workers' degree of temporary impairment.

If an injured worker has a 100% temporary impairment, often referred to as a temporary total disability, an injured worker is entitled to 2/3 of their average weekly wage, subject to the maximum and minimum limits. If an injured worker's disability is found to be less than 100% temporary

impairment, an injured worker is paid that percentage of the total disability rate.

The table below shows an example of an injured worker earning $900.00 per week. As demonstrated below, the injured worker in this example would receive $300.00 per week if the doctors considered the injured worker to have a 50% impairment, often called a “moderate” degree of disability.

Percentage of Impairment	**Average Weekly Wage (assuming the injured worker earned $900/week while working)**
100%	&600
87.5%	$525.00
75%	$450.00
66.6%	$399.60
62.5%	$375.00
50%	$300.00
37.5%	$225.00
33.3%	$199.80
25%	$150.00
15%	$90.00

What is Temporary Total Disability?

In order to be entitled to temporary total disability (100% impairment), an injured worker’s medical providers must indicate that an injured worker is unable to return to their former work and can do no other work.

Typically, a temporary total disability applies after:

- An acute injury occurs,
- An exacerbation, or
- A surgical procedure

What is Temporary Partial Disability?

Generally, after having time to heal, an injured worker’s doctor may decide that the worker’s degree of disability is less than temporary total disability, even when the injured worker is unable to return to work.

When an injured worker is considered to have a temporary partial disability, an injured worker's benefits will be reduced to the percentage given by the doctor.

Often, the insurance company will exercise their right to have an injured worker examined by their IME (Independent Medical Examiner) before an injured worker's doctor reduces the injured worker's degree of disability. If the IME says an injured worker's degree of impairment or disability is less than the treating doctor's evaluation, the insurance carrier may reduce the injured worker's benefits, unless there is an order from the Court directing payments. The amount paid when an injured worker has a temporary partial disability is typically a percentage of the total benefits as shown in the table above.

When an injured worker is found to have a disability that is less than a temporary total disability, it is recommended that the injured worker get written documentation from their doctor about their restrictions to perform certain physical activities.

This includes restrictions related to an injured worker's ability to:

- Sit at any one time,
- Stand and walk,
- Whether or not the injured worker needs an occupation that requires a shifting of positions from sitting to standing or walking,
- Whether the injured worker needs unscheduled breaks during an eight hour day,
- Whether prolonged sitting should require elevation of an injured worker's legs,
- The amount that the injured worker can lift and carry in a competitive work situation,
- Whether or not an injured worker can twist, stoop, crouch, climb a ladder, climb stairs,
- Other limitations with regard to reaching or handling

An injured worker should also have their doctor document the side effects of any medications that the injured worker takes, and how those side effects could impair the injured worker's ability to work.

Reduced Earnings

If an injured worker returns to work, either for the same employer or a new employer, and the injured worker earns less because of their injury, the injured worker is entitled to 2/3rds of the difference between their Average Weekly Wage before the injury and their new earnings. This is known as "Reduced Earnings."

A Reduced Earnings Example:

An injured worker's Average Weekly Wage is $900 per week. The worker then returns to work earning $300 per week because the worker is on light duty, making $600 less per week. Workers' Compensation would pay the injured worker an additional $400 per week on top of the $300 the employer pays. This is because $400 would be two-thirds of the $600 difference between the injured worker's Average Weekly Wage and what they earn after returning to work.

Average Weekly Wage	$900.00
New Earnings	$500.00
Difference	$400.00
Reduced Earnings Rate	$266.67

Medical Care

One of the most important things for injured workers to understand is that the Workers' Compensation system is driven by medical evidence.

Under New York State Workers' Compensation Law, an injured worker is entitled to choose their own doctor if the medical provider is authorized by the New York State Workers' Compensation Board. A list of authorized providers can be found at the New York State Workers' Compensation Board website http://www.wcb.ny.gov/.

An injured worker does not need a medical referral in a Workers' Compensation case. There are no deductibles.

Prescriptions are also paid for by the injured worker's employer's Workers' Compensation insurance Carrier. Most insurance Carriers use a third-party administrator to handle prescription issues.

Third-party administrator: An organization or individual that handles the processing of request who is not part of the organization that is responsible for resolving the request. An example of a third-party administrator would be an insurance benefits company handling the prescription paperwork for a Workers' Compensation case, rather than the insurance Carrier itself.

The use of a third-party administrator often leads to delays that are not typically experienced with private health insurance. Additionally, injured workers are entitled to be reimbursed for mileage to and from doctor or physical therapy visits, as well as other medical expenses, such as bandages or crutches.

Can an Injured Worker Choose Their Own Doctor?

While the law says that an injured worker is entitled to choose their own doctor, some employers, particularly large employers, have doctors on premises or have a relationship with a medical office that specializes in industrial injuries. While it may be a condition of an injured worker's

employment to attend an appointment with a physician chosen by the injured worker's employer, this does not generally prevent an injured worker from having their own, separate physician.

In some communities in New York, many doctors do not accept Workers' Compensation patients. The doctors who decline claim a variety of reasons, including availability, how they are paid and the paperwork requirements. The process continues to evolve in New York. Today, most injured workers are going directly to a specialist as opposed to a family doctor, where they otherwise would have started.

Typically at the beginning of a case, the injured worker is most concerned with getting better. The first doctor visit is usually accompanied with feelings of pain, fear, anxiety and uncertainty. It is important for an injured worker to give a concise, consistent history and develop trust with their medical providers.

What About Pre-Existing Conditions or Injuries?

It's very important to let the medical providers know of prior conditions, especially if they involve the same body area. Some injured workers are afraid that if they tell their medical providers that they have had a similar injury in the past, their claim will be ruined. This is not true and indeed may lead to further controversy and allegations of fraudulent conduct.

> An injured worker may have a Workers' Compensation case even if they have injured the same body part in the past.

When thinking about past injuries, the relevant inquiry is whether the prior injuries resulted in a permanent impairment. Also, it is important whether the prior injury prevented or limited an injured worker's ability to work.

For example, a person may have hurt their back when they were 25 years old while snowmobiling, recovering quickly and allowing the person to return to their job as a mechanic for 8-9 more years. Then, the same person hurts their back at work. It is important for the doctor to know that the injured worker had a prior back injury that resolved and that the current problem is a result of the new injury and not the old snowmobile accident.

Workers' Compensation Fraud

If an injured worker fails to tell a doctor about a prior injury, the Workers' Compensation insurance company may think the injured worker is defrauding them by hiding their injury. This is called a "Section 114-a violation."

Section 114-a Violation: A type of Workers' Compensation fraud where an injured worker fails to tell a doctor about a prior injury, or exaggerates an injury. This can be interpreted as the injured worker trying to hide their injury.

A Section 114-a violation often results in litigation, and can put an injured worker's case at risk. Because of this, it's best to be upfront with the doctor and the insurance Carrier.

Additionally, allegations of a Section 114-a violation arise from exaggeration of an injured worker's injury to a medical provider or IME. It is not unusual that the insurance Carrier will conduct surveillance to determine whether an injured worker's condition actually rises to the level reported to an injured worker's medical provider.

In addition, Section 114-a can be raised where an injured worker has not properly reported a return to work or when engaging in an activity that is like work.

A lot of injured workers get tripped up over their failure to answer questions about past injuries. This can be due to looking at the questions too quickly and not taking the time to complete the C-3 "Employee Claim" Form thoroughly and accurately.

Maximum Medical Improvement and The Importance of Permanency

As an injured worker's case evolves, there should be a strategic conversation regarding how the medical and Lost Wage portion of an injured worker's case will be concluded. This is especially important as an injured worker reaches Maximum Medical Improvement ("MMI").

Maximum Medical Improvement: Maximum Medical Improvement is defined as when an injured worker has recovered from a work injury to the greatest extent that is to be expected. Maximum Medical Improvement is also defined as when no further improvement in an injured worker's condition can be reasonably expected. Maximum Medical Improvement is determined by the New York State Workers' Compensation Board. Maximum Medical Improvement has a significant impact on the outcome of a case, and how an injured worker will receive benefits.

MMI does not mean treatment is concluded.

An injured worker is still entitled to certain work injury-related medical care, such as Chiropractic care and pain medications. There are, however, significant guidelines on future care and use of medications.

MMI is a medical determination, typically found one year from the date of injury or surgery in cases that involve the extremities. In cases involving the neck, back, and body systems or functions, MMI is usually found two years from the date of injury or surgery. If MMI is found, the Workers' Compensation Board places an injured worker's case on the Permanency calendar.

Once an injured worker is found to have reached MMI, the Court will impose a permanency proceeding that is likely to stop or limit an injured worker's benefits in to the future.

Permanency Proceeding: A legal hearing that is part of a Workers' Compensation case with the purpose of determining what benefits should be paid to an injured worker in the future.

It is around the time of the permanency proceeding that many injured workers start to think about concluding their case by one of three methods.

How is my Case Resolved?

The law allows for a Workers' Compensation case to be concluded in three, important, but separate, ways:

- A finding of a Schedule Loss of Use ("SLU"),
- A finding of a Permanent Partial Disability ("PPD") or a Temporary Total Disability ("TTD"), or
- A Section 32 settlement.

As an injured worker's case evolves, it is important to consider what resolution will best serve the individual needs and wants of the injured worker. It is important to have a strategic conversation with an attorney before a Workers' Compensation case reaches permanency, so the appropriate steps are taken.

The three separate ways in which a Workers' Compensation case can be resolved will be discussed in depth in the following chapters.

Schedule Loss of Use

A Schedule Loss of Use is awarded for injuries to the extremities, as well as injures to the eyes and ears. Generally, a SLU is awarded approximately one year after surgery or the date of injury. A SLU is meant to compensate an injured worker for loss of use of part of an injured worker's body, such as an injured worker's inability to use their arm.

Schedule Loss of Use is not necessarily meant to compensate for loss of earnings. Therefore, a SLU can be awarded even if:

- An injured worker has not lost time from work,
- An injured worker has returned to work without Reduced Earnings, or
- An injured worker is out of work.

A SLU does not mean a Workers' Compensation case is closed.

How is Schedule Loss of Use Calculated?

The New York State Workers' Compensation Law sets forth a schedule that establishes the number of weeks payable for a 100% Loss of Use of an extremity, eye, or ear. A SLU is calculated by determining what percentage use an injured worker has lost. An injured worker's doctor will file an opinion using the Board Form C-4.3 "Doctors Report of MMI/Permanent Impairment," when he or she believes an injured worker has reached Maximum Medical Improvement.

The doctor must follow the New York State Workers' Compensation Board Permanency Guidelines when completing the form. These Guidelines can be reviewed at the New York State Workers' Compensation Board http://www.wcb.ny.gov/content/main/hcpp/ImpairmentGuidelines/ImpGuideOverview.jsp.

The Guidelines take into account functional loss of use of a body part, not pain.

Often, once an injured worker's doctor comments on an injured worker's percentage of loss of use, the insurance Carrier will choose to have the injured worker examined by their Independent Medical Examiner (IME). If there is a difference of opinion, a hearing or other proceeding may be held to resolve the difference. Many times, the dispute is resolved by negotiation and compromise.

Understanding Calculating Schedule Loss of Use

Once the percentage loss of use is agreed upon, there is a mathematical calculation to determine the number of weeks of benefits that the loss of use equals. For example, the arm is worth 312 weeks. This means that if an injured worker is found to have a 10% SLU of the arm, the injured worker is entitled to 31.2 weeks worth of benefits (312 x 10% = 31.2). Then, multiply the total rate by 31.2 weeks to determine the gross amount of the SLU. From that sum, deduct what has been previously paid. The balance is then typically paid in one lump sum.

Example Calculation

Using the example of a worker with an Average Weekly Wage (AWW) of $900, 10% of the arm equals $18,720 ($600 x 31.2). The amount paid would be determined after deducting the amount of money paid during the period of disability. In this example, we will assume that the injured worker was out

of work for 10 weeks and paid the 100% rate for 7 weeks and the 50% rate for 3 weeks. The amount paid is $5,100.

$600 [temporary total] X 7 = $4,200

$4,200 + $300 [temporary partial 50%] x 3 = $900; Total of $5,100

Thus, the amount moving from the SLU would be $13,620 ($18,720 - $5,100 = $13,620). Again, this is typically paid in a lump sum.

What if an Injured Worker's Condition Gets Worse after Receiving an SLU?

The insurance Carrier remains liable for medical treatment that's caused by a work injury. If there is a material change in circumstances, such as further surgery, the injured worker may make an application to increase the SLU. The request must be made within 18 years of the date of injury and within 8 years of the last payment of Workers' Compensation benefits.

In the event that the same injury takes an injured worker out of work in the future, before an injured worker is entitled to further weekly benefits, the injured worker would have to exhaust the payment made to them in the sum of $13,620. In the example, the injured worker would have to be out of work with a temporary total disability for 22.7 weeks before being entitled to additional money.

A Permanent Partial Disability

A Permanent Partial Disability (PPD) refers to an impairment that continues to affect an injured worker's health and earning capacity.

Any injury that involves a permanent impairment to the neck, back or other body system or function is resolved by a finding of a PPD. The law does not provide for a Schedule Loss of Use (SLU) in a case involving the neck, back, or other body system or function.

A finding of a Permanent Partial Disability is also referred to as a "Classification."

Identifying a PPD or Classification often happens two years after the work injury accident or surgery, once an injured worker's doctor or an Independent Medical Examiner (IME) has concluded that an injured worker has reached Maximum Medical Improvement (MMI) [see the "Maximum Medical Improvement" section on page X for relevant info].

For injuries that occurred prior to March 10, 2007, there is no limit on Lost Wage benefits. In these cases, a finding of a Permanent Partial Disability (PPD) entitles the injured worker to lifetime Lost Wage benefits at the rate found at the time of permanency or Reduced Earnings.

Lost Wage benefits: refers to Workers' Compensation benefits that are paid to an injured worker as a form of compensation for the income an injured worker would otherwise obtain from working, if not for their inability to work due to their work injury.

Reduced Earnings: refers to the reduced income an injured worker makes after returning to work. When returning to work, an injured worker may make less than they did before they were injured. NY Workers' Compensation law states that injured workers can get benefits to make up for 2/3rds of the difference between what an injured worker earns post-injury compared to their pre-injury wage or salary.

For Workers' Compensation cases after March 10, 2007, there is a cap on how long an injured worker can receive benefits. The duration of benefits is based on an injured worker's "Loss of Wage Earning Capacity" ("LWEC"), which is expressed as a percentage. As shown in the chart below, how long an injured worker can receive Workers' Compensation benefits ranges from 225 weeks to 525 weeks.

Loss of Wage Earning Capacity (LWEC): a calculation used to determine how long an injured worker will receive Permanent Partial Disability benefits for. Specifically, Loss of Wage Earning Capacity refers to benefits that are paid to an injured worker based off a work injury's impact on an injured worker's ability to earn an income due to physical limitations and missed time at work.

Loss of Wage Earning Capacity (LWEC)	Maximum Weeks of Permanent Partial Disability Benefits (PPD)
> 0-15%	225 weeks
> 15-30%	250 weeks
> 30-40%	275 weeks
> 40-50%	300 weeks
> 50-60%	350 weeks
> 60-70%	375 weeks
> 70-75%	400 weeks
> 75-80%	425 weeks
> 80-85%	450 weeks
> 85-90%	475 weeks
> 90-95%	500 weeks
> 95-99%	525 weeks

Loss of Wage Earning Capacity

The Court determines the LWEC by first determining an injured worker's percentage of permanent medical impairment, and then takes into consideration vocational factors, including:

- Age,
- Education
- Experience, and
- An injured worker's residual capacity

The percentage of LWEC determines how much and for how long an injured worker will receive Lost Wage benefits. The legislature uses a chart to establish the number of weeks as they relate to Loss of Wage Earning Capacity percentages. As shown on the above chart, the number of weeks starts at 225 and goes to 525 for a 99% Loss of Wage Earning Capacity. Typically, this is referred to as a "cap" on Lost Wage benefits.

Permanent Total Disability

Workers' Compensation law allows for lifetime Lost Wage benefits if an injured worker is found to have a 75% Loss of Wage Earning Capacity. This is referred to as a "Permanent Total Disability" (PTD).

Permanent Total Disability: a condition of an injured worker's capacity to earn an income that applies when an injured worker has permanently and totally lost their ability to earn an income. When a Permanent Total Disability is found, there is no limit on the number of weeks that an injured worker may receive benefits.

The law also allows for an argument to be made for an "Industrial Total Disability" (ITD). An Industrial Total Disability is different than a Permanent Total Disability because there must be some other special factor which would support an ITD.

Industrial Total Disability: a condition of an injured worker's capacity to earn an income that applies to injured workers who have permanently and totally lost their ability to earn an income. However, an Industrial Total Disability is different from a Permanent Total Disability because it is only applicable for workers who meet certain conditions, such as workers with limited English language skills or workers who have mental disabilities.

An Industrial Total Disability most often happens with people who have problems with the English language or some sort of impairment to their mental abilities. There's a thin line between a permanent 100% Loss of Wage Earning Capacity and an Industrial Total Disability, but both result in a guarantee of lifetime Workers' Compensation benefits.

Both a Permanent Partial Disability finding and a Permanent Total Disability finding entitle an injured worker to causally related medical care.

Hardship

Workers' Compensation law also provides that if an injured worker's Loss of Wage Earning Capacity exceeds 80%, the injured worker may make a "Hardship Application" for ongoing benefits one year prior to the expiration of benefits. As this law did not come into effect until March 2007, there are no reported cases as to what constitutes a "hardship."

Permanent Partial Disability in Extremity Cases

A Permanent Partial Disability (PPD) may also be found in cases that otherwise would be applicable for a Schedule Loss of Use, if the condition is progressive, chronic and disabling. Sometimes, this happens in cases that involve both legs or both arms. There is often an important strategic decision to be made when deciding to pursue a Permanent Partial Disability (PPD) rather than a Schedule Loss of Use (SLU). This is often highly contested by the insurance Carrier.

The insurance Carrier, however, has many legal defenses at their disposal against payment of Permanent Partial Disability (PPD) benefits in all cases, regardless of the date of accident. When someone is found to have a Permanent Partial Disability (PPD), the law requires injured workers to show attachment to the workforce as discussed in the Chapter "Labor Market Attachment." It's important for injured workers to understand their legal obligations to avoid suspension of benefits.

Section 32 Settlements

Under Section 32 of NY State Workers' Compensation Law, an agreement may be reached to resolve forever the Lost Wage portion and/or the medical portion of Workers' Compensation benefits.

A Section 32 agreement is voluntary and cannot be mandated by the Court.

A Section 32 agreement must be a voluntary agreement between the injured worker and the insurance Carrier.

A Section 32 settlement is often discussed immediately prior to a finding of Maximum Medical Improvement (MMI), or the commencement of permanency proceedings. For more information on Maximum Medical Improvement and permanency proceedings, see "The Importance of Permanency" section starting on page X.

The amount of a Section 32 settlement dealing with Lost Wage benefits is typically calculated based on what the insurance Carrier is likely to pay in the future. Sometimes, the amount is based on the injured worker's Reduced Earnings payments, likely PPD payment, or a combination of the two.

As Workers' Compensation is a wage-replacement law, there is no legal consideration of pain and suffering. Rather, the amount of the Section 32 settlement is based on anticipated payments as a result of an injured worker's loss of earning capacity, or an injured worker's diminished or lost ability to earn an income from working due to a work injury.

What About Medical Benefits?

The amount of the medical portion of a Section 32 settlement is dependent upon an injured worker's past, present and future treatment.

Factors that are considered when determining the amount of medical benefits includes:

- Medical treatment
- Prescriptions
- Other durable medical expenses

If an injured worker receives Social Security Disability and is enrolled in or eligible for Medicare, additional considerations are made to ensure that an injured worker is not violating the law by transferring their medical care from the New York State Workers' Compensation system to the federal Medicare system.

Many times, a Section 32 agreement includes an allocation for future medical expenses. This allocation may or may not be approved by the Social Security Administration, depending on the amount and an injured worker's Social Security status. Sometimes, a Medicare Set-Aside (MSA) account is established to provide for payment of future medical expenses.

The decision to forever resolve a Workers' Compensation case by way of a Section 32 agreement is significantly different than a decision to pursue a Schedule Loss of Use, a Permanent Partial Disability, or a Permanent Total Disability.

How is a Section 32 Settlement Paid?

Once a Section 32 agreement has been reached, a written document is prepared for all parties' signatures. In addition, the New York State Workers' Compensation Board requires a disclosure form, and an attorney's fee request. All the documents are filed with the Workers' Compensation Board and a hearing is scheduled.

At the hearing, the Workers' Compensation Law Judge reviews the agreement to ensure that it is fair and reasonable, and voluntarily entered into. When the Judge is satisfied, the Section 32 agreement is provisionally approved. The law allows for both the injured worker and the insurance Carrier to have 10 days from the date of provisional approval to withdraw from the agreement. Once the provisional period has run, the Workers' Compensation Board issues a formal decision approving the Section 32 agreement. As a practical matter, this process typically takes about 3 weeks from the date of the hearing.

The insurance Carrier is obligated to make payment within 10 days of the formal decision, not the hearing date. The date of decision is set forth in the lower right hand corner of the Notice of Decision. The payment is made in a lump sum and is mailed to the injured worker, much like an injured worker's weekly benefits.

If the payment is late, a penalty may be imposed. If the injured worker believes the check is late, the injured worker should save the envelope in which the Section 32 settlement check came, as the postmark is evidence of the date the check was mailed.

What Other Benefits May Be Available to Injured Workers Who Are Unable to Work?

Sometimes, in the course of a Workers' Compensation case, other statutory benefits may be available. Examples include:

- Unemployment Benefits,
- Family Medical Leave Act,
- COBRA,
- New York State Retirement Benefits, or
- Social Security Disability.

Unemployment Benefits

If an injured worker has a partial disability, but their employer will not allow the injured worker to return to work or offer light work, the injured worker may be entitled to Unemployment benefits.

Alternatively, if an injured worker's doctor states that the injured worker is totally disabled, and the injured worker is receiving Workers' Compensation benefits at the total rate, the injured worker is likely not eligible for Unemployment benefits.

While an injured worker can collect both Unemployment and Workers' Compensation benefits at the same time, the injured worker cannot collect more than their Average Weekly Wage from both benefits. For example, if an injured worker's Average Weekly Wage is set at $500 per week, the injured worker's unemployment benefits will go down if the injured worker is collecting more than $500 from both Workers' Compensation and Unemployment. Workers' Compensation is set first and Unemployment benefits are adjusted accordingly. Therefore, injured workers must report Workers' Compensation earnings to the Unemployment office.

Family Medical Leave Act

Generally, the Family Medical Leave Act (FMLA) of 1993 provides eligible employees up to 12 weeks of unpaid, job-protected leave. FMLA can and often runs concurrently with New York State Workers' Compensation Benefits. While FMLA does not provide a money benefit, it does protect an injured worker's right to return to their job for the applicable 12 week period.

Typically, Employers that are subject to FMLA will provide written notice to injured workers of their rights about the same time the Workers' Compensation case is commenced. In addition to protecting an injured worker's job while out on Workers' Compensation, FMLA may also apply in situations of birth, adoptions, or serious health conditions of an injured worker or an injured worker's family member.

COBRA

The Consolidated Omnibus Budget Reconciliation Act of 1985, known as COBRA, allows employees to continue the health coverage they had while working. COBRA covers employees, their spouses, former spouses, and dependent children when group health coverage would otherwise be lost due to certain specific events. Typically, COBRA comes into play when an injured worker is terminated or unable to return to work because of the Workers' Compensation injury.

COBRA continuation coverage is often more expensive because the Employer no longer pays a part of the cost of employees' coverage. An injured worker's employer is required to give an injured worker notice of their COBRA rights.

New York State Retirement Benefits

If an injured worker is a member of the New York State Local & Retirement System, the injured worker may be entitled to a benefit if injured at work and unable to return to work.

The benefits vary depending on:

- the time the injured worker entered the State's system, and
- their type of work performed as part of their state job

It's recommended that anyone in the State's system should become familiar with benefits that they may be entitled to from the State Retirement System. A good place to start obtaining this information is the New York State Comptroller website, osc.state.ny.us/retire/index.php

Social Security Disability

Social Security Disability Insurance ("SSDI") is a part of the Federal Social Security Law. Injured workers who expect to be or are out of work for more than one year may consider filing for SSDI. Generally, to qualify for SSDI, the injured worker must prove that, given the injured worker's age, occupation, and disability, the injured worker is unable to return to their past, relevant work and, given the same factors, the injured worker is unable to perform substantial, gainful employment.

If an injured worker is granted SSDI, the injured worker is paid at a monthly benefit similar to what the injured worker would have otherwise received at their regular age of retirement. Workers' Compensation payments are taken into account when calculating an injured worker's monthly Social Security Disability benefits. This is called an injured worker's "offset." If an injured worker is on SSDI, it is important to keep the Social Security Administration up to date in regard to an injured worker's weekly Workers' Compensation benefit amount and any changes to that amount.

Two years after an injured worker's SSDI onset date, the injured worker becomes eligible for Medicare coverage. Medicare coverage is similar to health insurance. Injured workers should be careful when deciding which plan best suits their needs and their family's needs.

It is illegal for an injured worker to transfer their medical care from the Workers' Compensation system to Medicare under the Social Security system. Often, when considering a Section 32 settlement, questions arise regarding future medical treatment. Typically, an allocation or a formal Medicare Set-Aside account is established when settling a Workers' Compensation case to satisfy and protect the Medicare system.

Death Benefits

What Happens if a Family Member is Killed at Work?

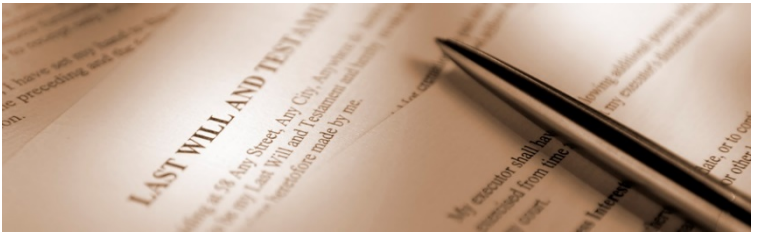
If an injured worker dies as a result of an on-the-job injury, the injured worker's spouse or dependent is entitled to bring a separate claim for the death.

A death claim is separate and distinct from a lifetime claim.

The spousal benefit is two-thirds of the deceased's average weekly wage, up to the maximum rate on the date of death, if there are no children. The spousal benefit lasts until remarriage. There is also a benefit to cover funeral expenses. The amount of this depends on where the injured worker's surviving spouse lives in New York State.

If the decedent had children, the benefit is divided between the children and surviving spouse. The child may receive benefits until age 23 if in college, or age 18 if the child is not in college.

If a person dies in a work-related injury or as a result of the injury without a spouse or dependents, the law provides a benefit for funeral expenses, as well as a one-time, monetary payment called "Non-Dependent Death Benefit" in the sum of $50,000. This payment is made to surviving family members as defined by the New York State Surrogate Court Act.



Many times, an injured worker suffers an injury but does not die as a result of the injury until later. Thus, two Workers' Compensation cases exist:

- The lifetime case, and
- The death case.

To have a successful death case, the medical evidence must support the proposition that a connection exists between the compensable injury and the death.

What Happens if the Insurance Company Denies My Workers' Comp. Claim?

If the Workers' Compensation insurance Carrier has controverted or denied your case, a process starts to adjudicate the issue(s). The insurance Carrier is obligated to file a Notice of Controversy within 25 days of the Notice of Indexing.

Notice of Controversy: Notice of Controversy is an insurance company's way to provide formal notice that a Workers' Compensation claim is denied. Notice of Controversy must be given within 25 days of the Notice of Indexing.

Notice of Indexing: A Notice of Indexing is an action taken by the Workers' Compensation Board that formally initiates a claim. Once Notice of Indexing occurs, the insurance Carrier has a certain amount of time from that point to choose to accept or deny the claim.

Typically, the Workers' Compensation Board will schedule a Pre-Hearing Conference shortly after receiving the Notice of Controversy.

Pre-Hearing Conference: A legal proceeding in the Workers' Compensation process where the Court determines whether there is enough medical evidence for a case to move forward.

After a Pre-Hearing Conference is scheduled, both the injured worker and the insurance company are required to file the documents necessary to prosecute or defend the case. The Workers' Compensation Board requires certain forms to be filed, including a PH-16.2, "Pre-Hearing Conference Statement."

In a controverted case, it is especially important to carefully prepare documents.

It is best to obtain your medical evidence before completing the C-3 Form. Without first obtaining medical evidence, a claim may be denied or delayed because of a lack of medical evidence.

The injured worker's PH-16.2 Form is essential for many reasons, including:

- Establishing the circumstances of the claim
- Identifying the names of witnesses
- Setting the legal theory which the case is based upon

The insurance Carrier will file an opposing PH-16.2 that details the reasons for denying the claim.

Pre-Hearing Conference

The purpose of the Pre-Hearing Conference is to determine if there is enough medical evidence for a case to move forward.

In a Pre-Hearing Conference, the judge will order the following:

- Testimony of relevant witnesses,
- Medical testimony of the doctors, which is often taken by deposition,
- Memoranda of Law from both parties, and/or
- Continue the case for a decision.

If an injured worker has a controverted case, it is important to seek legal assistance, as the process is complicated and includes many procedural requirements. It's important for an injured worker to understand the Workers' Compensation requirements, and to have the relevant evidence to support their case. Workers' Compensation attorneys have the power to obtain certain documents and records that otherwise may be very difficult to obtain.

The Judge

In a Workers' Compensation case, the judge hears the testimony of the witnesses, the insurance company and the injured worker. In some cases, testimony is taken by phone if the people involved in the case reside outside

of the area. Medical testimony is often taken by out of Court deposition to allow an expedited hearing without having to bring the doctors in to Court.

Independent Medical Exam

Especially in a controverted case, the Insurance Carrier is likely to have an injured worker examined by an Independent Medical Examiner ("IME"). The Workers' Compensation Law has requirements for IMEs.

One of the most important pieces of the IME, often overlooked by injured workers, is the opportunity to make sure that the IME doctor has a complete history of how the injury occurred and the consequences of the injury. This should be consistent with the initial history that an injured worker gave to the doctor that initially treated them for their work injury. If circumstances have changed, an injured worker should explain why. Injured workers are entitled to record the exam and bring others to the Independent Medical Exam if the injured worker gives notice.

Decision

Once testimony has been taken and depositions have been completed, the Workers' Compensation Board either schedules a hearing for the judge to hear arguments or the judge directs that the parties submit written arguments, often known as "Memorandum of Law."

Memorandum of Law: When a judge requests the injured worker and the Insurance Carrier to submit written arguments for the Workers' Compensation case.

Within a reasonable time period, the judge will issue a decision establishing or denying the Workers' Compensation claim.

If the decision is made after oral arguments, it is referred to as a "Bench Decision."

If the decision is made after Memoranda of Law, it is referred to as a "Reserved Decision."

Appeal

Both the injured worker and the Insurance Carrier have 30 days from the date of the decision to file an appeal. The initial appeal is filed with the Workers' Compensation Board and is heard by a panel of 3 Commissioners. There is no set time for the Commissioners to issue a decision. Sometimes, the wait is very long.

A decision from the Commissioners, called a "Board Order," may be appealed to the Full Board and/or to the Appellate Division of the Third Department of the New York State Supreme Court in Albany, NY. Appeals from the Appellate Division are made to the Court of Appeals, the highest Court in New York.

Board Order: A decision to approve or deny a Workers' Compensation claim that is made by a panel of 3 Commissioners from the Workers' Compensation Board. A Board Order denying a Workers' Compensation claim is not the end of a case, as this decision can be appealed to higher courts.

What are an Injured Worker's Rights for Occupational Hearing Loss?

New York State Workers' Compensation Law provides for two types of hearing loss claims:

1. Traumatic Hearing Loss – this typically results from a sudden event, such as an explosion, and
2. Occupational Hearing Loss – this typically results from exposure to industrial noise over time

In a Traumatic Hearing Loss case, the statute of limitations is two years from the date of the event.

In an Occupational Hearing Loss case, the statute of limitations is two years and ninety days after knowledge that the loss of hearing is or was due to the nature of employment.

Before an injured worker can make a claim for Occupational Hearing Loss, the injured worker must be removed from the noise causing the injury for 90 days.

If an injured worker has a traumatic or an occupational hearing loss, the law provides for medical treatment, including hearing aids.

In addition, injured workers may be entitled to a schedule loss of use award, depending on the percentage of hearing loss, which is calculated in the same manner as a schedule loss of use.

How Do I File a Claim for Hearing Loss?

Before an injured worker can file an Occupational Hearing Loss claim, the injured worker must be removed from the harmful exposure for 90 days. After these 90 days have passed, the injured worker needs to obtain medical

evidence that connects an injured worker's hearing loss to on-the-job exposure.

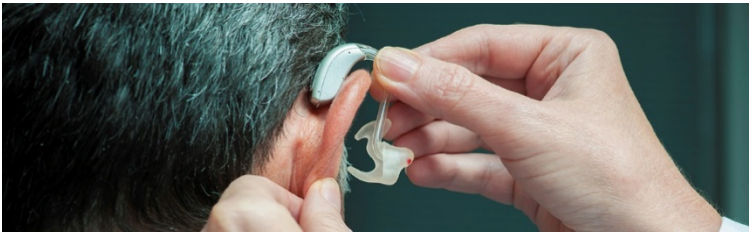
Typically, occupational hearing loss claims are filed after an injured worker is:

- Retired,
- Terminated,
- Disabled by another injury or condition, or
- The injured worker's place of employment closes.

Under New York State Workers' Compensation Law, an injured worker is required to be examined by an otolaryngologist. Otolaryngologists are doctors who specialize in providing medical care for conditions affecting the ear, nose and throat. The Workers' Compensation Board maintains a list of these qualified otolaryngologists that can be sorted by zip code here: http://www.wcb.ny.gov/hps/HPSearch.jsp.

When an injured worker visits the otolaryngologist, it's important to give an accurate history, including the approximate time the injured worker began their employment, the type of work the injured worker did and for how long, and what type of noise the injured worker was exposed to.

In addition, it is important for injured workers with hearing loss to tell the otolaryngologist about noise exposure that they may have had prior to starting work, such as military service, hunting, or other loud exposures.



With the history and the physical examination, the Ear, Nose and Throat doctor (also referred to as the otolaryngologist) will offer an opinion as to whether the injured worker has hearing loss that makes the injured worker eligible to receive Workers' Compensation benefits due to this hearing loss.

The doctor will complete a form that establishes an injured worker's hearing loss within the parameters of New York State Workers' Compensation Law.

It is important that injured workers with hearing loss file a claim within two years. For Traumatic Hearing Loss, where a sudden event causes hearing loss, an injured worker must file a claim within 2 years from the date of the event. For Occupational Hearing Loss, where hearing loss occurs over a period of time from noise exposure, an injured worker must file a claim within 2 years and 90 days from knowing that their hearing loss was due to work duties.

A Workers' Compensation hearing loss claim is started by filing a C-3 Form. This form can be confusing, as it is made for all injuries and not particularly hearing loss claims.

The Circumstances Under Which an Employee May Sue

Under New York State's Workers' Compensation Law, an injured worker may not sue their Employer unless:

- The Employer failed to carry Workers' Compensation Insurance
- The injury was an intentional act of the Employer

However, an injured worker may bring an action against a Third Party, who was negligent or caused the accident to occur.

Third Party: Refers to someone other than the injured worker, the injured worker's employer or the insurance Carrier who may have caused the work injury accident to occur. An example of a third party may be if a cleaning crew that the employer hired created an unsafe work environment by misplacing something that then became a hazard for an injury, such as a fall.

Simply, these lawsuits are brought in New York State or Federal Courts and are called "Third Party Actions."

Examples of typical Third Party Actions are:

- Automobile accidents occurring in the course of employment,
- Falls from elevated heights, typically in a construction setting,
- Injuries caused by an equipment failure,
- Injuries caused by the negligence of someone besides a co-employee, or
- A medical malpractice action arising from treatment in a Workers' Compensation case

Third Party Actions have their own set of rules and regulations. Most importantly, the Statute of Limitations is different than a Workers' Compensation claim. If the case involves a city or town government, a public authority, or some other public entity, an injured worker may be required to file a Notice of Claim in as little as 30 days from the event.

Notice of Claim: paperwork that formally grants a government body the opportunity to respond to an injured worker's claim of an injury prior to filing a lawsuit against the government.

It is important that an injured worker seek immediate legal assistance if there may be a potential Third Party Action, as delay may forever forfeit an injured worker's rights for Third Party cases.

Under Section 29 of the New York State Workers' Compensation Law, a lien is created against the proceeds of a Third Party Action. A lien means that an injured worker cannot have a double recovery, which means that an injured worker cannot collect damages (or compensation) for multiple claims related to a single incident. If an injured worker is successful in their Third-Party Action, the injured worker is required to pay back the Workers' Compensation Carrier from the proceeds. The injured worker will receive a credit for the cost of the Third-Party Action.

The law requires that the injured worker obtain the consent of the Workers' Compensation Carrier when settling a Third Party Action. If the case goes to trial, the trial judge will need to address the Workers' Compensation lien.

If an injured worker fails to obtain consent from the Workers' Compensation Carrier for a Third Party Action, and/or satisfy the lien, the injured worker will likely have forfeited their rights to future Workers' Compensation benefits, both medical benefits and Lost Wage benefits.

It's very important for injured workers to understand their rights and obligations when there's more than one action arising from the same injury. Getting the greatest benefit possible for an injured worker does not always involve pursuing a third party suit, due to lien provisions and fees associated with Third Party Actions.

Can an Injured Worker Get Laid Off or Terminated if on Workers' Compensation?

Yes. The New York State Workers' Compensation Law does not protect an injured worker's job. Sometimes, however, an injured worker's job is protected under the Family Medical Leave Act as discussed in the prior chapter.

> The New York Workers' Compensation Law alone does not protect an injured worker's job.

New York Law allows an injured worker's Employer to replace the injured worker if they're unable to perform their work. The law does not mandate that an injured worker's Employer take an injured worker back to work on light duty. The law also does not require an injured worker's Employer to hold the injured worker's job while disabled. Some people think that this is discrimination—under New York Law, it is not discrimination.

However, New York Workers' Compensation law prohibits an injured worker's Employer from terminating an injured worker solely because the injured worker filed a Workers' Compensation claim or are a witness in someone else's Workers' Compensation claim. New York Law calls this a discrimination claim, which is different than a discrimination claim under Federal Law.

These types of discrimination claims are called Section 120 claims. They are very difficult to prove, as most Employers understand the law and are careful when declining to allow an injured worker to work at light duty or terminate an injured worker's employment.

In some instances, if an injured worker has a partial degree of disability and their Employer cannot accommodate the injured worker's restrictions, the injured worker may be entitled to unemployment insurance benefits as discussed in the previous chapter.

Conclusion

Over the last 100 years, New York State Workers' Compensation Law has evolved. Today, the system administers almost 200,000 claims each year. As this book has demonstrated, the system is anything but simple.

At Meggesto, Crossett, and Valerino (also known as MCV Law), we use our collective experience and knowledge in an effort to maximize the injured workers' short-term benefits, while protecting the injured worker over the long term.

To schedule a free initial case consultation, contact us at MCV Law.com *https://mcvlaw.com/contact/*

“Throughout the course of a very long and complicated case Mr. Crossett and his team proved to be very professional and knowledgeable. They also always kept me up to date and treated me with respect whenever I had questions or concerns regarding my case. I cannot recommend them highly enough.”

- Hugh, a satisfied client

Injured on the Job in New York? A Guide to Help Injured Employees Get the Compensation They Deserve empowers injured workers to understand their rights in relation to their Workers’ Compensation claim. This book is an easy to understand guide to the New York Workers’ Compensation system.

About The Author

William W. Crossett, Esq. is a Workers’ Compensation Lawyer and partner at Meggesto, Crossett and Valerino, LLP (MCV Law). As a Workers’ Compensation Lawyer, Mr. Crossett has been helping to protect the rights of injured workers for more than 30 years.

Mr. Crossett has served as President of the Injured Workers Bar Association of New York. Mr. Crossett is also an active member of the Workers’ Compensation Law Division of the New York State Bar Association, and the Workers’ Injury Law and Advocacy Group. Mr. Crossett was inducted in to the College of Workers’ Compensation Lawyers in 2012.

“I was proud to have Mr Crossett as my lawyer. I felt comforted by his portrayal of experience and knowledge. Throughout this experience, Mr. Crossettt spent his evening hours preparing for the next day. He was protective, well prepared, thorough, convincing, and always accurate.”

- Joann, a satisfied client

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