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# HOW A WORKERS' COMPENSATION CASE PROCEEDS START TO FINISH

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# NO FAULT SYSTEM

- There is **no pain & suffering** payment in workers' compensation. Workers' compensation is a no fault system. There is a trade off: you do not have to prove fault on the part of the employer (and you can even be partially at fault) and in exchange you are only entitled to receive the compensation outlined below.

# NOTIFICATION

- EMPLOYEE MUST NOTIFY EMPLOYER of INJURY
- WRITTEN NOTICE (not strictly enforced if verbal report made to supervisor)
- WITHIN (30) THIRTY DAYS
- FILE FORM 18

# INJURIES COVERED

1. INJURY BY ACCIDENT (slip, trip or fall) w/ injury to body part other than back
2. BACK INJURY w/ “Specific Traumatic Incident” even where no slip/trip/fall
3. OCCUPATIONAL DISEASE

# INJURIES COVERED

## 1. INJURY BY ACCIDENT

- Interruption in the regular work routine;
- Introduction of unusual circumstances such as a slip, trip, fall or other unusual activity;
- Injury cannot occur gradually over time;
- Injury cannot occur in the regular course of doing the same thing you do every day;

# INJURIES COVERED

## 2. BACK INJURY:

- Can occur during normal job activities;
- No slip, trip or fall requirement;
- Must show “specific traumatic incident”
- Must pinpoint when & where back injury occurred
  - For example: At 11:30am on Thursday, February 12 while lifting a box, I felt a pop in my back.

# INJURIES COVERED

## 3. OCCUPATIONAL DISEASES:

- Employment significantly contributed to or was a significant factor in causing the disease
- The job exposed the employee to a greater risk of contracting the disease than the public generally.
- The job does not have to be the sole cause of the disease.



# DIFFERENCE BETWEEN INJURY BY ACCIDENT vs. BACK INJURY

- Example: Employee is lifting a sixty pound box –which she does all day, everyday.
  - If she feels a pop in her elbow, this may be denied as non-compensable.
  - If she feels a pop in her back, this is likely going to be accepted as compensable.

# BENEFITS: Medical Compensation

Employer pays for medical treatment.

- Employer gets to decide which doctor employee visits.
- Employer may send a nurse manager with patient to doctor visits.
  - If so the injured worker should insist on seeing a doctor alone and then allow the nurse to come in after the examination. This is the injured worker's right.

# BENEFITS: Wage Compensation (TTD – Temporary Total Disability):

- Weekly wage payment begins after you have missed seven days of work.
- If you miss 21 days or work does then you are paid for the first seven days. The 21 days away from work do not have to be consecutive.
- Weekly check is of  $\frac{2}{3}$  of average weekly wage (AWW). AWW is calculated by looking back 52 weeks and taking an average.
- The max comp rate was \$674.00 for 2003 and \$688.00 for 2004.

# BENEFITS: How Temporary Total Disability is Calculated

Average Weekly Wage: \$600  
(52 Week Average)

x

$\frac{2}{3}$

Comp Rate for TTD= \$400

# BENEFITS: Temporary Partial Disability (TPD)

If upon returning to work after recovering from injury, employee is unable to earn wages as great as pre-injury wage, then employee may receive  $\frac{2}{3}$  of the difference for up to 300 weeks.

Any number of weeks of TTD paid to employee will be deducted from 300 weeks of available TPD.

# BENEFITS: Permanent Partial Disability (PPD)

- After medical treatment is completed, the doctor evaluates employee for permanent impairment rating.
- PPD payment is based on the amount of rating and IC guidelines for the body part injured.

# Example of PPD Calculation

- Doctor gives rating of 10% of the back.
- Employee's AWW was \$400.00/week
- Comp rate = \$266.67 (2/3 of \$400)
- Back = 300 weeks
- $300 \text{ wks} \times 10\% \times \$266.67 = \$8,000.00$
- Other body parts: Leg = 200 weeks,  
Arm = 240 weeks, Foot = 144 weeks

# BENEFITS: Re-Open Case Within Two Years for Change of Condition

- Employee has two years from the date of their last compensation to have the case reopened if there is a change of condition.
- Change in condition does not mean that the same problem that the employee had at the time of rating, but it means a change, such as worsening, etc.



# VOLUNTARY AGREEMENT/CLINCHER

- If the injured worker does not return to the former job, then the insurance company may be willing to clincher the case.
- Clincher is a voluntary settlement for additional money beyond what injured worker is entitled to.
- Both injured worker and insurance company must agree.
- Injured worker gives up the right to have case reopened within two years of last payment in exchanged for insurance company/employer paying additional money in lump sum settlement.

# DEATH BENEFITS

- 400 weeks of AWW
- \$3,500.00 funeral expenses
- Medical bills paid
- If minor children or disabled spouse, more than 400 weeks may be awarded.

# IF UNABLE TO RETURN TO OLD JOB

- Employees who are released to return to work by their physician who cannot return to their former job must engage in a full time job search.
- The insurance company may assign a vocational rehabilitation counselor to do two things:
  1. Enforce the job search
  2. Help the injured worker find a job

# RETURN TO WORK: Vocational Rehabilitation

- If employee is unable to return to former job, so long as the employee is engaged in a full time job search, the employee should continue to receive a TTD check.
- Employees are not required to withhold information about the workplace injury from potential employers. We encourage employees to tell potential employers that they have a workplace injury and explain their limitations so that the employer can be sure that the job meets the employee's limitations.
- Insurance companies often assign vocational rehabilitation counselors to enforce and enable a full time job search.

# DENIED CLAIMS

- If the claim is denied then the employer will not pay the benefits outlined above.
- Employee's only recourse is to file a Form 33, Request for a Hearing, and proceed to the hearing before the Industrial Commission.
- As in personal injury cases, mediation is mandatory and many cases eventually settle at mediation.
- The employee may use their health insurance to cover medical bills in denied claims.