

EMPLOYEE'S GUIDE TO WORKERS' COMPENSATION IN NEW HAMPSHIRE

WHAT IS WORKERS' COMPENSATION?

WHAT ARE MY RIGHTS?



Workers' Compensation is a system of laws created by our legislature which govern the rights and duties of an employee who suffers a work injury. With few exceptions, an employer who hires one or more employees must have workers' compensation insurance. These insurance benefits are available for all injuries arising out of employment. Injuries for which an employee is entitled to compensation can include injuries such as burns, lacerations, sprains or fractures, as well as injuries from repetitive motion, chemical or noise exposure, stress. Workers' compensation does not cover disabilities which are the natural result of the aging process or which are due to non-work related causes. Benefits may be due, however, if work aggravates a pre-existing or underlying medical condition

Through New Hampshire workers' compensation law, an employee who is injured in the course of work is entitled to four benefits. The first benefit is weekly disability payments. If you are disabled from performing any work as a result of your injury, you are to receive 60% of the gross average weekly wage you were earning at the time of the injury. This is called total disability. If you were working two jobs, both incomes are added in calculating your average weekly wage. Whether you are totally disabled is determined primarily by your medical records. The right to receive weekly benefits for total disability continues so long as you are totally disabled. After three continuous years of total disability, you may qualify for a yearly increase in your weekly payment.

- Family Law
- Personal Injury Claims
- Bankruptcy
- Real Estate Transactions
- Estate Planning
- Business and Corporate Organizations and Problems
- Arbitration/Mediation
- Litigation
- Planning Board and Zoning Matters
- Probate Matters
- Environmental Law
- Employment Law
- Workers' Compensation
- Criminal Law

To qualify for workers' compensation benefits, you do not have to prove that your employer was at fault. You only have to show that your injury was the result of work activity. The employee may not sue the employer in the normal sense, even if the employer was at fault. Under workers' compensation, the injured employee is entitled to four basic benefits.

Weekly payments can also be for partial disability. If you resume work after your injury, and as a result of your injury, you earn less than your pre-accident average weekly wage, you are entitled to receive weekly disability payments of 60% of the difference between your pre-accident average weekly wage and your wages after your return to work. Partial disability benefits are not ordinarily paid for more than five years after the injury.

WHAT SHOULD I DO IF I HAVE A WORK-RELATED INJURY?

First, report the injury promptly to your employer. Your employer will have forms for this purpose. If you wait too long to report the injury, you can lose the right to recover benefits. Once a report of injury has been completed, your employer will communicate the fact of your injury to its workers' compensation insurance company. That insurance company, who has been paid to cover any workers' compensation claims, will then be responsible on your employer's behalf for your claim. Second, get the medical care you need to have your injury properly diagnosed and treated.

The second benefit is the payment of your medical bills. Your employer's workers' compensation insurance company is obligated to pay all reasonable medical bills for services required as a result of the work injury. This obligation includes medicine and necessary equipment. Some insurance companies have a "managed care program," which requires you to receive care from a certain group of physicians. Otherwise, you are free to choose who treats you. You are entitled to reimbursement for mileage to and from medical care.

The third benefit is a right to vocational rehabilitation. This benefit is provided if your injury permanent makes you unable to do the work you used to do. In such a case, the workers' compensation insurance company is obligated to help you acquire a new job or, sometimes, new job

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skills. The goal is to help you return to employment, in a position which is within your physical limitation and as close as reasonably possibly to the wages you were earning when you were injured. A vocational rehabilitation specialist is hired by the insurance company to work with you. This person will evaluate your current physical capacity, your interest, aptitudes and past work skills, to determine the best way to return you to the workforce. An injured employee who has a work capacity is obligated to cooperate with vocational rehabilitation efforts. The failure to do so could result in the suspension of benefits. Generally speaking, the most valuable benefit an injured employee can receive from the workers' compensation system is a successful vocational rehabilitation program.

The fourth workers' compensation benefit under our law is payment for permanent impairment suffered by the employee. This is a separate benefit to which the injured employee is entitled if the work injury has caused him or her to permanently lose the normal function of a part of the body. The calculation of the percentage of permanent impairment is made by your doctor, through the use of standardized medical procedures for measuring loss of use. The dollar amount of this benefit depends on the part of the body involved, the degree of loss of use, and the injured employee's average weekly wage.

Other benefits include the right to be placed by the employer in a temporary alternative work position, while unable to do the usual work. Also, if an injured employee is within 18 months, with or without "reasonable accommodation" to return to the former job, the employee is entitled to reinstatement to his or her former position.

THIRD PARTY ACTION

If someone or something besides your employment contributed to your work injury, in addition to collecting workers' compensation benefits, you may be entitled to bring a claim against such a third party. For example, if you were in a car accident in the course of your employment duties, you would be

entitled to workers' compensation benefits. You might also be entitled to make a separate claim against the responsible driver. In such a "third party action," you would not be limited to workers' compensation benefits. You would be entitled to compensation for 100% of past lost wages, future lost wages, emotional distress, physical pain, scarring, incidental financial loss. If you were to recover compensation in such an action, the law requires that the workers' compensation insurance company be reimbursed from that compensation for the benefits it provided.

WHO ADMINISTERS WORKERS' COMPENSATION?

The New Hampshire Department of Labor acts as the "court system" for workers' compensation claims. If a disagreement develops on any workers' compensation issue, the issue is resolved at a hearing at the Labor Department in Concord. Testimony, evidence, and legal argument are presented to a hearings officer. A hearings officer settles the dispute with his or her decisions. Each party must abide by that decision, unless the decision is overturned on appeal. An appeal consists of a new hearing before a three-member appeals board.

SOCIAL SECURITY DISABILITY

If any injury is going to make you unable to work for year or more, you should apply for Social Security disability benefits. An application for those benefits will not hurt a workers' compensation claim, even if you are denied Social Security. If you are approved, what you are receiving from workers' compensation would be subtracted from the Social Security disability payments you are awarded.

SHOULD I HAVE A LAWYER?

The guidance and counsel of an experienced attorney will help an injured employee throughout the workers' compensation process. Many legal and factual issues can develop in such cases. The representative of the workers' compensation insurance company will be trained in the related

issues and procedures. Legal counsel will guide the employee in the course of a claim, so as to prevent and solve problems which might develop. Should decisions need to be made, or disputes arise, your attorney can serve as an experienced information source, problem solver, or an advocate on your behalf. If a hearing at the New Hampshire Department of Labor proves to be necessary, with a lawyer your case will be presented by someone familiar with the laws and procedures, and with how to best present the employee's case.

WHAT IF I HAVE A QUESTION?

The law firm of Winer and Bennett, LLP, has attorneys experienced in workers' compensation. In the workers' compensation case, attorneys can be hired on an hourly basis or a contingent fee basis. To receive the benefits due you, call Winer and Bennett, LLP, at 882-5157.

This material reflects the law in effect in May, 2006. Due to the changing nature of this area of law, this material should not be construed as legal advice nor should it be used as a final authoritative legal source.

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