

Understanding Worker's Compensation

An Injured Employee's Perspective

R.GAGNE, EET, CFE, NADEP

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ABSTRACT

Multiple studies have shown that the chances of you returning to work after injury are directly related to the length of time you have been out of the workplace. The US Bureau of Labor Statistics indicates that workers absent for more than 6 months because of work-related injury have approximately a 50% probability of returning to work, and those absent for more than 1 year have a 25% probability of return. Employees absent for more than 2 years have virtually no chance of returning to work. On the other hand, patients who miss no days from work have the best chance of a full recovery from an on-the-job injury. The timeliness of treatment is the single most important consideration in rehabilitating an injured employee. Early intervention, injury management, appropriate rehabilitation, and attention to safety and wellness can reduce the negative consequences of work-related injuries.



Worker's Compensation cases can often create conflict of a sick or injured worker with that of the employer. For this reason, the worker's compensation claim process can potentially be adversarial and difficult. The process can be confusing and or frustrating and riddled with unknown terms from the employer, case manager, claims manager and Physician. The information presented on these pages is to assist you in the injury process and should generally be suitable for worker's compensation claimants in most states. However, claimants should keep in mind the fact that each state is different with regards to worker's comp laws, and for this reason consultation with a local expert may be advantageous. The worker's compensation information contained in these pages, of

course, is of a general informational nature. They do not constitute legal advice, and should not be construed as such.

"It is in everyone's best interest to expedite return to work and to ensure quality focused care is provided to the injured worker at all times and as quickly as possible post injury"

What is worker's comp or worker compensation? Worker's compensation is a system that exists in all states to protect workers who become hurt on the job or contract an illness as a result of their job. Fundamentally, the system works like this: when a worker becomes injured, rather than sue their employer, they can file a claim for compensation. Worker's comp is a no fault system that allows injured or sick employees to receive certain benefits (which normally includes medical care, payment of a certain percentage of a worker's wages, and, in many cases, the continuation of certain benefits) while not suing their employer (though, in some instances, an employer can still be sued, though generally this involves extreme negligence).

How soon should you notify an employer of a worker's comp injury? As soon as a worker realizes that a workplace injury has occurred, he or she should immediately provide notification to their employer. Notification of a worker's comp compensable injury is the first step in the worker's compensation process and it allows for an injury report to be

filed with the state worker's compensation board (which may be known as the industrial commission, depending on the state). The initial notice is often called "The First Report of Injury". It's impossible to understate the importance of notification when it comes to an injury that may be compensable for worker's compensation benefits. Failure to do this can even provide justification for a worker's compensation carrier to deny a worker's benefits, even if the workplace injury is very serious. And taking an excessively long time to inform an employer of a compensable worker's comp injury can even potentially throw up red flags regarding the illegitimacy of a claim (i.e. possible f-r-a-u-d). However, even after an employer has been duly notified of a work accident or work injury, an individual may wish to contact their state's worker's compensation board to ensure that all the necessary documents are filed to properly establish a claim. Additionally, an injured worker should provide their employer with the following information if the injury was the result of a specific accident: the names of all witnesses and a description of how, when, and where the accident and injury took place. Workers should also know that providing employer notification is particularly important in cases involving an employee's exposure to toxic substances and chemicals such as pesticides and asbestos.

If you have a worker's comp case and can return to light duty, does your employer have to find you a job? In most states, when a worker who has filed for worker's comp benefits is able to return to light duty, the employer must provide suitable work and return the worker to the job he or she left, or an equivalent job, provided that such a position is available. However, going back to work in a light duty capacity may mean that an employee still needs to be paid worker's compensation benefits to make up the difference for what they might have earned in their regular position were they fully recovered.

How much do you get for worker's compensation? If you have a compensable worker's comp claim, you'll usually receive a benefit that is equal to 66 percent, or two-thirds of your regular wages or salary. This is typically a gross dollar amount (ordinarily, taxes on worker's compensation benefits do not have to be paid until a worker is released to work or it has been determined that a worker's injury has resulted in a level of permanent incapacity). However, there are other issues that play into the process and they involve whether or not a worker's accident-or-injury-related impairments are temporary or permanent, and total or partial. For example, a worker filing for worker's compensation benefits may be found to have sustained a permanent impairment, but one that only renders the worker partially disabled. In such cases, the worker may only be able to return to his or her employment in a capacity that pays less. Worker's comp, in those instances, would pay the difference between what a worker formerly earned and then later earned as a result of a job related accident or injury. Such payments are often referred to as

temporary partial disability payments and they may be limited to a maximum weekly amount which a worker can receive, as well as a maximum number of weeks for which the worker can be paid. Workers may also receive a worker's comp lump sum settlement, based on the degree of impairment suffered (such as the loss of a finger due to a work-related accident). And, in cases where permanent and total incapacity is the end result, the lump sum settlement will typically take into account a worker's earnings and projected life expectancy.

What happens if you lose a worker's comp case at arbitration?

Typically, you'll be able to file an appeal and have the employer continue your worker's comp benefits. However, the longer a worker's comp case drags on, the worse it becomes for the worker since the worker only receives two thirds of what they normally might have received from pay. Again, assuming your abilities are in line with the requirements of the job, the earlier you are back to work benefits all concerned.

Do injured workers who complain of constant back pain get labeled as malingering?

No, it is a fact that many medical conditions are difficult to objectively verify, especially soft tissue injuries such as sprains and / or strains. The bottom line is simply this: worker's comp is a benefit and employees who have become injured or sick as a result of their job should file to protect themselves. Whether or not the employer believes that the worker is legitimately injured is really irrelevant. You may be asked to partake in a Functional Capacity Evaluation or FCE as it is called in the clinical environment. This is a battery of tests designed to evaluate your present strength, range of motion, cardiovascular and occupational task performance levels and the clinical evaluator will use this data to determine a job match based on your abilities.

What is considered a compensable worker's compensation injury?

A compensable worker's compensation injury is generally defined as an occupational injury that arises "out of and in the course of employment". For the injury to be covered by worker's comp, the injury must generally have occurred at work, and must also have been related to work. Therefore, an injury that occurs in the course of one's work, or an injury that occurs while running an errand for one's employer would typically be covered by worker's comp, whereas an injury that occurs on the premises of one's job location during lunch time would not be covered by worker's comp. Furthermore, to be covered by worker's compensation, an occupational injury must generally have resulted from an accident (though some injuries, it is true, is the result of repeat or cumulative trauma, such as carpal tunnel syndrome or conditions resulting from toxic substance exposure). Accidents, of course, are events that happen unexpectedly and without prior knowledge. And for this reason, an individual who willfully injures himself or places himself into a position for which such an outcome is likely will generally not be covered by worker's comp.

Can you file for workmen's comp and also file for social security disability?

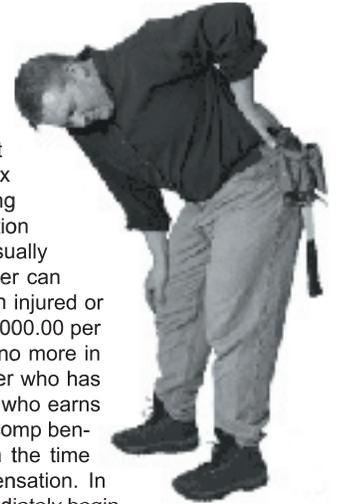
Yes, you can certainly file a claim for worker's comp and social security disability benefits simultaneously. The two benefit systems are completely separate and distinct (social security disability is a standardized federal program while worker's compensation laws may differ from state to state). However, an individual seeking both types of benefits may gain advantage from the input of a worker's compensation attorney since "timing issues" (as regards to a social security disability claim) can, in some cases, affect a worker's comp claim.



Do I need an attorney? A person seeking benefits may decide to choose an attorney who can handle both types of claims, though very often, a work comp expert/specialist will handle only one or the other; that is, either social security disability cases or worker's compensation cases exclusively. The severity of the condition and the cooperation of the employer in the return to work process should be part of your decision to include legal representation. Anytime you can expedite return to work the better it is and many times adding an additional component in the continuum of care can sometimes delay the process.

What are the main benefits of worker's compensation?

Worker's comp is a system that varies from state to state. However, in most states, an injured or sick worker will receive an amount equivalent to two thirds of their gross or pre-tax earnings. However, the individual filing for or receiving worker's compensation should bear in mind that there is usually a cap placed on the amount a worker can ultimately receive. In other words, an injured or sick worker who normally earns \$80,000.00 per year may find that they will receive no more in worker's comp benefits than a worker who has filed for worker's compensation and who earns \$50,000.00 per year. Your worker's comp benefits should begin immediately from the time you file a claim for worker's compensation. In most states, your employer will immediately begin to pick the cost for your medical expenses as well as begin to pay you a percentage of your income. What is the percentage of income that you will receive? Typically (that is, in most states), a worker will receive two thirds of whatever their gross weekly income was.



What can I expect to receive? A worker who becomes sick or injured as a result of their working environment and is approved for worker's comp benefits can generally expect to receive the following:

- payment of the expenses attributable to medical care (including initial emergency care, follow-up treatment, and rehabilitation services)
- payment of a percentage of earnings (typically 66 % of a worker's average weekly earnings)
- payment of a lump sum amount in the event of permanent incapacity
- payment of benefits in the event of death

In many cases, a person who receives worker's compensation will also find that certain benefits will be continued for the time during which they are incapacitated and unable to work.

Who approves the Claim? In most states, it will be the worker's comp carrier who makes this decision, i.e. approves or disapproves the worker's compensation claim. If the carrier disapproves the worker's comp claim, the claim can be arbitrated before the worker's compensation board (depending on the state, it may also be called "the industrial commission"). If the worker's compensation board or industrial commission denies the worker's comp claim, it can, typically, go to court for resolution. Note that the worker's compensation law require an employee (or his or her family) to file a claim for worker's comp benefits and, typically, this filing for benefits must be done within one year of the date of the injured worker's accident.



When do I have to notify my employer? Though worker's comp laws vary and differ state by state, most jurisdictions require an injured or sick worker to notify their employer of an injury within thirty days of an accident or an injury becoming known (failure to do so can potentially result in a denial of benefits). Providing notification to an employer of a worker's compensation compensable injury is typically done by giving notice to someone in a managerial position. However, in cases where a worker is unable to provide such notification (perhaps due to hospitalization), the notice requirement can generally be excused, provided that the employer is otherwise made aware of the worker's injury. Once notification has been made to the employer, the employer can submit a report to the state worker's compensation board (or industrial commis-

sion). The employer can also notify the worker's comp carrier. At that point, the worker's comp carrier will be in the position to begin paying an injured or sick worker's medical bills, as well as a percentage of the worker's average weekly income (usually 66 percent), through payment of wages. However, the worker's compensation carrier may reject the worker's claim, leading to arbitration with the state worker's compensation board or industrial commission, and, potentially, a series of appeals if arbitration does not find in favor of the worker.

Typically, the following jobs will not be covered by worker's comp:

1. Part-time domestic employees in private homes
2. Newspaper carriers
3. Real estate sales agents
4. Some agricultural workers
5. Casual workers*
6. Unpaid volunteers (who are not considered employees in the first place)
7. Sole proprietors
8. Partners

* A casual worker is a worker whose work is not continuous, recurrent or is below a certain monetary threshold.

Who pays the benefits out? The worker's comp benefits that are paid out to an injured worker are, usually, paid out by the employer's worker's comp carrier. However, in a small number of states, employers are actually given the option to self-insure. And in instances where an employer has done so, the employer is liable for whatever worker's compensation benefits an injured worker would have been entitled to receive.

What about Mental conditions? Mental conditions can be covered by worker's comp, but, typically, this is in the sense of a psychological or psychiatric condition being tied to a physical condition. For example, job related stress or tension may contribute to a heart attack. Another example might be a worker who suffers a physical injury and later develops anxiety disorder or PTSD as a result of this. In either case, the primary condition in many cases would be the physical injury, though the worker's mental state would also merit consideration.

Are Independent contractors eligible? It depends. Independent contractors are not eligible for worker's comp; however, some employers will classify a worker as an independent contractor when in fact the worker in question more readily fits the definition of a basic employee. If a worker is designated as an independent contractor but is substantially "controlled" in the conduct of work duties, then the worker is an employee.

What are control issues? Basically, control issues involve a person's work schedule, whether or not they are trained for job tasks by the employer, and whether or not the performance of their job duties is largely dependent on resources made available by the employer. In other words, if the individual is largely dependent on the employer in order for work duties to be accomplished, the individual is probably an employee...even if on paper they are designated as an independent contractor. Employees, of course, may file for worker's compensation.

What about suspicion of fraud? To avoid a suspicion or accusation of fraud regarding a worker's comp claim, a worker should be mindful of the following factors:

- If no one witnessed the injury or accident, this may cause the worker's compensation carrier to have suspicions regarding the claim. For this reason, a worker will certainly want to present a list of witnesses to the accident.
- If the employee's story regarding the accident changes, this may cause suspicion as well. For this reason, a worker filing a worker's compensation claim should be very clear in their own mind regarding the details of a work accident or injury.
- Finally, if there is an unusually prolonged length of time between the occurrence of the work injury or work accident and the time that it is reported as a compensable worker's compensation claim, a carrier

may suspect that the claim is not wholly legitimate. For this reason, among others, a work accident or injury should be reported promptly and immediately to one's employer, typically to someone in a supervisory capacity.

What about Medical Expenses?

If you become sick or injured on the job, you may be entitled to worker's comp benefits that provide compensation for mental injuries, traumatic physical injuries, and injuries that are the result of cumulative or repetitive trauma such as carpal tunnel syndrome. Typically, the medical expenses that are paid for by worker's compensation will include expenses related to hospital and treating physician care, emergency room care, the costs associated with imaging studies (x-rays), blood panels, and other testing, and even the cost of rehabilitation treatment. If you file a worker's compensation claim, your employer's worker's comp carrier will immediately start paying all your medical expenses. This also includes bills for surgery that might be necessary.



Does a worker's comp injury have to be from a specific accident? No, many compensable worker's comp injuries are the result of one specific accident on the job that involves traumatic physical injury or, perhaps, exposure to toxic substances, but many are not and are the result of cumulative or repetitive trauma.

Here are some example of injuries and occupational illnesses that are not the result of specific one-event accidents, but which may be compensable for worker's compensation benefits:

- Workers who are exposed to noise levels that over time produce hearing loss.
- Workers who are exposed to environmental contaminants that over time lead to lung conditions.
- Workers whose jobs require repeating the same motions many times throughout the course of a day, resulting in degenerative conditions or repetitive stress injury (production line environment).

Workers with job-related injuries and occupational illnesses such as these may find themselves eligible for worker's compensation benefits. Of course, this is simply a representative sampling. In actuality, there are probably dozens of similar scenarios and injuries that might qualify an injured or sick worker for worker's comp.

What do they mean by "No-Fault"? Regardless of the state in which you live, worker's comp is uniformly designed to be a no-fault system. Even if a job injury is caused by a work accident that is determined to have been the fault of the worker, the worker may still be eligible for worker's compensation benefits. The only exceptions to the no-fault worker's comp system tend to be injuries that are self-inflicted, or are the result of a worker's impairment due to drug or alcohol use on the job.

Can I select my own Physician and / or Clinical team? This may depend on the state in which you live. Some states may require that an injured worker be seen by a doctor who has been chosen by the employer or worker's comp carrier. Other states may allow a worker to select a physician of their own choosing, subject to approval by the state worker's compensation board, which in some states is known as the industrial commission. However, in most states a worker may make an objection to the treatment provided by the employer and request that another doctor be selected. Additionally, in most states a worker will also have the right to be seen by their own doctor as well. This same process may be the case for the rehabilitation provider for Physical or Occupational Therapy. Many states allow the physician to send you to PT or OT for the first 10 days or so to a clinic of their choice, but after that period of time you have the FULL CHOICE to go to wherever you decide you will be receiving the best possible care.



Who manages my Claim? Depending upon the setup of the employer and whether or not they are self insured will depend on who is your primary contact – but for the most part your main contact throughout the injury rehabilitation process will be an assigned nurse case manager working for a Third Party Administrator on behalf of the Insurance company or Employer direct. This case manager will communicate with your adjuster that the claim was filed with, and will set up and get approval for medical care and any diagnostic testing required.

At all times the employer's human resources, health and safety and/or risk manager will be updated on your condition so they can be proactive in getting you back to work in either modified duties, transitional duties, alternate job or to your previous job.

In conclusion it is important to note that although the process seems confusing, it is there to protect you, your family and the employer. It is an effective and time proven system that if properly handled will enable you timely access to the treatment and care required throughout your injury rehabilitation. Communication is the key and has a direct effect at all stages of the continuum of care including each step from properly reporting the injury at the beginning to keeping all parties involved in the injury rehab on track. The end result will hopefully end in a safe and sustained return to duties.

The information noted above is a summary of one of the components of Fit2WRK by USPh. This integrated model is available through USPh in close to 400 facilities and 44 states nationally. For additional information on how the Fit2WRK Model could help your organization, visit; www.Fit2WRK.com or call 1-877-Fit-2WRK.

Worker's Compensation Terms & definitions and Employee Links:

http://www.injuredworker.org/work_comp_terms.htm
<http://www.dir.ca.gov/dwc/wcglossary.htm>
<http://reduceyourworkerscomp.com/workers-comp-abbreviations.php>
<http://hrhero.com/hl/articles/2009/04/24/definitions-of-common-workers-compensation-terms-and-jargon/>

References:

1. US Department of Labor. Industry Injury and Illness Data. www.bls.gov/iif/osh-sum.htm.
2. Killian MJ. Reducing worker's compensation costs. *J Health Care Benefits*. 1994;3(5): 26-31.

Sample of the First Report of Injury Form:

*(*Need to verify the appropriate form for your State – these are examples only)*

<http://www.dli.mn.gov/WC/PDF/fr01.pdf>
<http://www.iowaworkforce.org/wc/forms/14-0001froifillable.pdf>
<http://www.state.il.us/agency/iic/ic45FORM.pdf>