



# The Letter of the Law



## I HAVE BEEN INJURED AT WORK. WHAT DO I DO NOW?



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Work injuries can have a dramatic effect on injured workers and their families. Injuries preventing a worker from returning to work mean that the worker and the worker's family suffer from potentially substantial losses in income. In an effort to assist injured workers, the Workers' Compensation Act of Pennsylvania provides various benefits, including wage loss and payments for medical treatment.

Workers' compensation benefits are paid to an injured worker who is injured "in the course and scope of employment." There are numerous cases which define when a worker is "in the course and scope of employment." However, in most cases, whether or not a worker is injured in the course of employment is generally quite clear.

Workers' compensation benefits may be paid to an injured worker regardless of how the injury may have occurred. There are some exclusions to workers' compensation which include (1) intentional self-inflicted injury or death, (2) an employee's violation of law, (3) an employee's violation of the positive orders of the employer, (4) personal animosity (i.e. an injury caused by a third person intending to injure the worker), and (5) injuries caused by the worker's intoxication.

Generally, the date of the injury governs the rights of the injured worker regarding claims for benefits. The weekly rates for benefits, duration of payments and limits on medical benefits are the type of rights that may be fixed as of the date of the worker's injury. The Workers' Compensation Act fixes benefits at two-thirds (2/3) of your "average

weekly wage." The "average weekly wage" is specifically defined and calculated under the Act. Workers' compensation wage loss or indemnity benefits are not taxable since they are paid at a lower rate than the average weekly wage of the worker.

In order to preserve your rights as an injured worker, you must give prompt notice of any injury to your employer. The Workers' Compensation Act requires that notice be given to the employer within 120 days of the date of the injury. The failure to give prompt notice to an employer may dramatically affect your ability to preserve and present a claim for benefits. The employer should have an injury report, which is to be filed with the Bureau of Workers' Compensation, to document the worker's notice of an injury. It is important that when completing any injury report for an employer that you identify accurately how the injury occurred.

You may also want to obtain the workers' compensation insurance information from your employer to ensure that the injury is reported to the insurance company. Although the employer is required to immediately report all injuries to the insurer and to the Department of Labor and Industry, an injured worker may want to ensure that this has been done.

An easy case is where the workers' compensation insurance carrier accepts the injury and issues a Notice of Compensation Payable and proceeds with paying benefits. In this case, it is important, however, to ascertain and determine your rights to continuing benefits and to ensure that your average weekly wage and indemnity benefit are correct.

The more difficult cases occur where the insurance company denies liability for benefits. In this case, the in-

surance carrier is required to send a denial notice within twenty-one (21) days after the employer has notice or knowledge of the employee's disability. It is important to remember that no wage loss or indemnity benefits are paid during the first seven (7) days after disability begins, but if disability (inability to return to work) lasts 14 days or more, compensation is then paid for the first seven (7) days. The first installment of compensation is required to be paid no later than the 21st day after the employer has notice or knowledge of the employee's disability. If the workers' compensation insurance carrier has denied benefits, you may be required to file a Petition with the Bureau of Workers' Compensation. In this instance, it is most beneficial to have an attorney experienced in workers' compensation matters to represent you. After the filing of a petition, the matter is assigned to a Workers' Compensation Judge. The matter proceeds through multiple hearings before the Judge, with testimony taken from witnesses and, generally, the submission of medical reports and/or depositions from the injured worker's doctor(s) to substantiate the claim for benefits.

The nature and length of a claim for workers' compensation benefits varies. Unlike a claim for personal injuries which may be presented to a jury, the Workers' Compensation Judge ultimately decides your case. There is no claim for non-economic damages such as pain, suffering, inconvenience, loss of life's pleasures, etc. in a claim for workers' compensation.

You may see advertisements in which attorneys indicate that they will represent injured workers in workers' compensation matters for a contingent fee or assist in obtaining lump sum settlements.

In workers' compensation matters, the contingent fee is set by law and is 20%. In terms of lump sum settlements, settlements must be agreed to by the parties and ultimately presented to the judge for his or her approval at a hearing. Lump sum settlements may be an opportunity to resolve your workers' compensation claim and to allow you to get on with your life. However, it is important to evaluate any kind of settlement based upon each individual injured worker's needs. In this regard it is generally helpful to have an attorney evaluate your case and to discuss with you whether a lump sum settlement may be the right option.

The bottom line is that if you are injured at work, it is important to notify your employer, make sure that the employer notifies the workers' compensation insurance carrier, and document on your own what you have done to comply with these requirements. The workers' compensation process can be quite overwhelming, but with the assistance of an experienced workers' compensation practitioner you will have your best opportunity to obtain the benefits to which you are entitled if you are injured at work.

Attorney Jeffrey K. Millin is a partner with the Shafer Law Firm. Attorney Millin has extensive experience in representing injured workers throughout Northwestern Pennsylvania. If you have any questions regarding workers' compensation you are invited to contact Jeff. He can be reached at The Shafer Law Firm at (814) 724-4540, ext. 228 or at [emailto:jmillin@shaferlaw.com](mailto:jmillin@shaferlaw.com)

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