

The Georgia Employee's Guide  
To Workers' Compensation

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## INTRODUCTION: THE PURPOSE OF WORKERS' COMPENSATION

Workers' compensation was enacted to prevent workers from suing their employers in a civil court of law, and also for a humanitarian purpose: to allow the worker legal recourse, even if he was partially or wholly at fault for the accident. Workers' compensation was created under a "no-fault" system: it does not matter whose fault it was that the worker became injured. The only criteria for receiving benefits is that the employee was injured on the job. Benefits are usually provided by the employer's workers' compensation insurance carrier. Some employers--usually large corporations--are instead self-insured for workers' compensation purposes.

Under workers' compensation law, with few exceptions, if you are injured on the job, you may become entitled to certain benefits. The workers' compensation benefits for which you are eligible are not the same as you might receive in a civil tort case such as automobile negligence or a slip and fall accident. You are entitled to be "made whole" again by the payment of money, which compensates pain, suffering, discomfort and aggravation. In contrast, workers' compensation law does not require you to prove fault. Nor does workers' compensation make you "whole;" there is no compensation for pain and suffering, discomfort, distress, or mental anguish. The only factor which may entitle you to money is impairment of your ability to work, which will be more fully explained later. As in a civil case, an injured worker who pursues his claim to a hearing has the burden of proving his entitlement to certain benefits, just as a plaintiff in a civil matter has the burden of proving his case.

If your employer had three or more full-time employees at the time of your accident, your employer is subject to the Workers' Compensation Act, and must conform to it by providing workers' compensation benefits as required by law. Some types of workers, such as domestic employees and farm laborers, are exempted from the Act. The basic types of benefits to which

you may be entitled fall into three categories: (1) provision of necessary medical treatment, (2) weekly income benefits, which are a partial compensation for lost wages, and (3) weekly benefits for permanent partial disability. In order to receive any of these benefits, you must first report your injury to your supervisor or employer. This must be done within thirty (30) days from the date of your injury. Normally, you must also file a claim for benefits with the State Board of Workers' Compensation in Atlanta within one year of your injury. Otherwise, part or all of your claim may be barred, although there are exceptions. Your attorney can help ensure that your legal rights are not forfeited.

#### **PAYMENT OF MEDICAL BILLS**

From the perspective of the injured worker, the employer's obligation to pay medical bills arising from a work injury is the cornerstone of the Workers' Compensation Act. This obligation may continue for the lifetime of the injured worker, in the case of an injury severe enough to require lifetime care. This obligation also continues regardless of employment status. In exchange, the employer/insurer is generally entitled to control which providers the employee is entitled to use. Your employer is required to have a list of physicians available to you in the event of a work injury. If a worker is injured on the job, he or she must report to one of the "authorized" doctors of his or her choice. Otherwise, the employer/insurer is not required to pay for the employee's treatment. Exceptions may be made for emergency treatment, if an authorized doctor is unavailable or unqualified to treat a specific type of injury. If the injured worker is dissatisfied with his or her authorized doctor, he or she is automatically entitled to one change of physicians on the authorized list of physicians. Some employers do not properly maintain a list

of physicians. This may entitle the worker to use any doctor of his or her choice, at the expense of the employer/insurer, without being limited to those few chosen by the employer. In any event, the employee has the burden of proving the absence of a list of physicians. Because of the potential expense to you if you are not successful in proving this fact, you should only take this step under your attorney's advice.

If you wish to change to a treating doctor who is not on the posted panel, then another option is a petition to the State Board of Workers' Compensation for a "Request for Change of Physician." The employer has the opportunity to respond. Occasionally, the employer's insurance carrier will not respond at all and the change of physician is granted. As long as the doctors with whom you treat are authorized, either by the employer/insurer or by the State Board, the insurance carrier is required to pay 100% of all the medical treatment related to your work job injury.

Upon the advice of your attorney, a second opinion from your own "unauthorized" doctor is often a good idea. Authorized "company doctors" tend to return workers to their job prematurely or before the employee is fully capable of performing his or her job. This often results in the employee re-injuring him or herself or being unable to perform job duties, which can lead to the employee's termination for poor job performance. A favorable opinion from an unauthorized physician may give you grounds to be awarded benefits at hearing.

You are also entitled to receive 40¢ mile for your travel to and from every authorized doctor, as an additional benefit. Our office provides our clients with the appropriate forms that make it easier to collect this little-known benefit. Finally, you are entitled to parking expenses

arising from physician visits, and reimbursements of expenses for prescription drugs and devices. Save your receipts, and keep track of your mileage for each physician visit.

#### INCOME BENEFITS

A worker becomes automatically entitled to lost time benefits when: (1) the authorized treating physician disables him or her from all work for at least two weeks, or (2) sends the employee back to work with medical restrictions which prevent the employee from working for the employer, after being off work for at least two weeks. If you have missed twenty-one consecutive days after having given notice of the injury, however, you will be receive benefits for all twenty-one days (including days 1-7).

The weekly lost time benefit is known as temporary total disability (TTD). You may receive TTD benefits for a maximum of 400 weeks. Benefits are calculated at two-thirds of your before-tax average weekly wage, or \$450.00, whichever is less (effective July 1, 2005). The average weekly wage is typically calculated through the 13 weeks preceding the injury. If an employee is injured on his first day on the job, there are other measures of average weekly wage. This \$450.00 or 2/3 figure is known as the "compensation rate." For example, for a worker earning \$700.00 per week, two-thirds of that salary is \$466.67 per week. He or she would only be entitled to receive the maximum compensation of \$450.00 per week. By the same token, another worker who earns only \$150.00 per week, is only entitled to \$100.00 per week in benefits. As a result, injured workers do not receive all the income to which they were accustomed. Some generous employers will pay disabled workers full salary in lieu of TTD benefits. Consult your employee handbook. The employer/insurer's obligation to pay TTD is

offset by payment of full salary, unemployment benefits, and disability insurance benefits paid for by the employer. Advise your attorney if you intend to collect any of these types of benefits. You may not work anywhere, or actively earn money, and at the same time collect TTD.

Temporary total disability benefit checks are usually issued weekly, and often arrive in the mail on the same day of each week once the insurance company has entered you into its computer which issues the TTD checks. But when the authorized physician finds that you are able to return to work, and the employer can use you in the workplace, the TTD benefits are suspended, and you should receive a WC-2 workers' compensation form advising you of the suspension of benefits. If you do not physically feel ready to return to work as the doctor has recommended, consult your workers' compensation attorney immediately. He or she may then arrange for a recommencement of your benefits, or request a hearing. If you do return to work before you are ready, you potentially jeopardize your job for failure to perform, or you may re-injure yourself by attempting to perform tasks which are beyond your capabilities.

The authorized doctor may return you to work regular duty or on a limited duty basis. "Restricted duty" or "light duty" may mean that you are not to be doing any heavy lifting, or pushing, pulling, or climbing, or it may mean that you are not to work full days. It is best to get a slip from your physician confirming this restricted duty status, and share a copy with your employer. Make sure your supervisor understands your limitations when you return to work, and remind your employer that you are not to do the types of regular-duty work specified by your physician. Sometimes your employer will not have this light duty or restricted-duty work available for you and will, therefore, return you to temporary total disability status until you can

perform "regular duty." Often, however, the employer will not share this information with the insurance company. In order to get your TTD benefits reinstated, it is important that you request your attorney to contact the insurance company to advise it that your employer did not have work available within your restrictions, and that your TTD benefits should be reinstated.

In certain circumstances, an injured employee who returns to work but, as a result of medical work restrictions or permanent disability caused by the injury, earns less per week than he was making before the injury. The worker may be entitled to temporary partial disability (TPD) benefits. TPD is payable for up to 350 weeks at a maximum of \$300.00/week, or 2/3 of the employee's weekly loss of earnings, whichever is less. Consult your attorney about receiving this benefit.

#### **PERMANENT PARTIAL DISABILITY BENEFITS**

When, after treatment and full healing, a worker has reached maximum medical improvement (MMI), he or she may be eligible to receive permanent partial disability (PPD). These benefits are never paid at the same time as TTD or TPD benefits. Permanent partial disability has nothing to do with "pain and suffering." Rather, PPD is usually based upon loss of physical function, which includes impairment of range of motion such as ability to turn, twist, bend, stoop, reach, lift, grip, or walk up stairs. You may be eligible for PPD even if you have returned to work full-duty. The amount of PPD benefits which you receive for your particular injury is determined according to a mathematical formula enacted by the state legislature which takes into account three factors: (1) the degree of permanent impairment as expressed in a percentage; (2) which body part(s) is/are injured; and (3) your "compensation rate." (See the

preceding section, "Income Benefits," to determine your compensation rate.) The value of PPD benefits typically amounts to thousands of dollars per claim.

There is often a large discrepancy between impairment ratings issued by different doctors, even though the ratings are based upon the same objective guidelines. It is sometimes helpful to obtain a second opinion of permanent impairment. Usually the "company" doctor will find that the worker has no impairment at all, or will find an unreasonably low degree of permanent impairment. On the other hand, an independent physician might find a greater or more reasonable degree of impairment. If the company doctor has not reasonably assessed your permanent impairment, your attorney should refer you to an independent physician for this purpose. Under these circumstances, it is usually necessary for your attorney to request a hearing on the issue of PPD. You should not attempt to obtain a disability rating immediately after an injury, because maximum medical improvement and healing is not typically reached for a matter of months, even after a minor injury.

Usually, in our experience, insurance companies will neglect to pay PPD benefits to claimants without lawyers, in spite of the fact that permanent impairment has been assessed by the authorized treating physician, and the claimant would clearly be entitled to PPD. A qualified attorney can correct this "oversight." Late payment of PPD, as found by an authorized treating physician, results in a 15% penalty to the employer/insurer.

#### **HEARINGS AND SETTLEMENTS**

The vast majority of workers' compensation cases settle for amounts agreed upon by the parties, without need for a hearing. Occasionally, however, the parties cannot agree, and a

hearing is conducted. Hearings before administrative law judges, without juries, are held by the State Board of Workers' Compensation. In the Atlanta area, hearings are held at the State Board headquarters in downtown Atlanta. In other localities, hearings are typically held in the courthouse of the county of your injury, or in that of an adjacent county. As we mentioned, an injured workers' compensation claimant who pursues his or her claim to a hearing does have the burden of proving his entitlement to benefits, just as a plaintiff in a civil matter has the burden of proving his case. An employee usually requests a hearing to obtain medical treatment or payments, income benefits, or permanent partial disability benefits, and they are generally scheduled two to three months following the Request for Hearing. A hearing can be as short as fifteen minutes or can last up to half a work day, depending on the complexity of the case. If the case involves only one narrow issue, such as permanent partial disability, the hearing might only take 20 to 30 minutes.

As we noted, parties are often able to settle their cases out of court. Once a settlement is reached, a stipulated settlement agreement is prepared and signed by all of the parties. No one may settle a workers' compensation claim without approval from the State Board; thus all signed settlement papers must be sent to the State Board for final approval. Once the stipulated settlement agreement has been finalized by the State Board, the settlement money is issued to the parties by the employer's insurance company. By law, the settlement check must be issued within twenty (20) days after the agreement is approved by the State Board.

#### **EXTRAORDINARY CLAIMS**

Some other benefits which we have not discussed are those for catastrophic injuries and death arising from employment. A catastrophic claim only arises from an extremely severe injury.

The guidelines for determining the catastrophic nature of an injury are relatively complicated, and are beyond the scope of this brochure. Nonetheless, the 400-week limit for TTD benefits is removed, and the maximum number of weeks for which a claimant may receive benefits becomes indefinite. Moreover, the employer/insurer must provide the employee with vocational rehabilitation services.

In the event you die as a result of an on-the-job accident, will receive burial expenses up to \$7,500 and two-thirds of your average weekly wage, but no more than \$450 per week. A widowed spouse with no children will be paid a maximum of \$125,000. Benefits will continue until he/she remarries or openly cohabits with a person of the opposite sex. Only a surviving "dependent" can file a death claim. That is, if those who survive the deceased worker are not financially dependent upon that person for support, then no award is made, except limited funeral and burial expenses. If minor children were dependent upon the worker, or a spouse or parent was partially or totally financially dependent upon the worker, those dependents are claimants entitled to receive weekly death benefits. The amount of these benefits is based upon the deceased employee's "compensation rate," once dependency is proven.

#### **HIRING AND COMPENSATING YOUR ATTORNEY**

Unlike most other areas of law practice, attorney's fees in workers' compensation are governed by state law. A workers' compensation attorney may collect no more than 25% of any gross settlement amount, monetary award, or weekly benefits. An attorney is not entitled to any percentage of weekly benefits which the client was receiving before hiring the attorney, unless the benefits were suspended and the attorney has caused them to be recommenced. The 25% contingent legal fee, plus expenses, is deducted from the gross amount that the attorney recovers

for the client, after the attorney has received permission from the State Board. The 25% figure is standard among workers' compensation claimants' attorneys. Normally, you only pay your attorney if you recover money. When an employer/insurer has had no basis for its defense to all or part of a claim, the State Board has been known to separately award assessed attorney's fees which, unlike most contingency fees, are not deducted from the award made to the employee. Assessed attorney's fees are rare so you should anticipate that your attorney will receive 25% of your recovery, money benefits, award, or settlement as his or her fee. More commonly, the prospect of assessed fees is leverage in settlement negotiations.

#### **A FINAL WORD**

A workers' compensation claim may also be related to other types of cases (civil claims) such as auto negligence, premises liability, medical malpractice, product liability, or battery. A qualified attorney should be able to advise whether you may recover in the civil courts against a party other than your employer under any of these other legal theories. Any questions you have, which touch upon your workers' compensation claim, should be directed to your attorney.

None of the topics we have discussed so far in this brochure have been discussed in depth. In workers' compensation, as in every other area of the law, there are exceptions to every rule. It is crucial to consult with an attorney instead of attempting to handle your workers' compensation claim on your own. This brochure is neither intended to be a road map for handling your own claim, nor a guide to evaluating your claim. Instead, we provide this brochure to explain the basic principles of Georgia workers' compensation law, to enable you to make informed decisions about pursuing this important legal action.

We hope this information helps you better understand this ever-changing and complex area of the law. We suggest that you not attempt to handle your own workers' compensation claim

without the assistance of an attorney who has a thorough understanding of Georgia's workers' compensation law. If you have been injured on the job, we sincerely hope that you will allow us to put our expertise and experience to work for you. We look forward to assisting you, and we invite you to contact us at (404) 351-5900.

**KOPELMAN LAW GROUP , P.C.**