



Health Professionals and
Allied Employees, AFT/AFL-CIO

Injured on-the-job?

Know Your Workers' Compensation Rights in New Jersey

HPAE members who are injured or made ill on-the-job may be entitled to cash benefits, medical care, and other benefits under the New Jersey Workers' Compensation Law. HPAE members may have additional negotiated benefits that are included in collective bargaining agreements. Below are some of the most important procedures that should be followed when filing for workers' compensation.

Report all injuries

Reporting all work-related injuries and illnesses is critical to ensuring that workers' compensation claims are handled properly. Notify your supervisor or personnel department in writing about the injury/illness as soon as possible, but no later than 90 days, and follow your employer's reporting procedures. If you experience a work-related hernia, 48 hours notice is required.

It is also important to notify your HPAE representative so that they can provide support and assistance in navigating the workers' compensation system, as well as advice about how to address any unsafe or unhealthy conditions that led to your injury or illness. Often a single accident will expose risks posed to an entire work group.

Obtain first aid and medical treatment

Obtain first aid and medical treatment as soon as possible. Under the law, employers and insurance companies have a right to select treatment providers. When a worker is dissatisfied with the level of care, a hearing must be requested to consider a motion for alternate medical treatment. Receiving medical care is essential to establishing a claim because benefit determinations are based on medical reports. Treatment in an emergency room should always be followed up with an appointment with the employer's selected medical provider. Otherwise benefits may be withheld based on inadequate medical documentation.

Medical benefits

All "necessary and reasonable" medical treatment, prescriptions, and hospitalizations related to the work injury are paid by the employer's workers' compensation insurance carrier or directly if the employer is self-insured. **YOU SHOULD NOT PAY YOUR DOCTOR, HOSPITAL, HEALTH PLAN, AMBULANCE OR MAKE ANY CO-PAYMENTS** for workers' compensation medical expenses! Medical providers will be paid by the insurance carrier in cases that are not disputed.

Be aware, that insurance companies routinely challenge the necessity and reasonableness as well as work relatedness of medical treatment. Your rights to appeal are detailed below. You are entitled to be reimbursed for medications. New Jersey does not reimburse for mileage, car fare, or other travel expenses going to and from your doctor's office or hospital, except when medically necessary. Keep receipts for all claim-related expenses. In the event you have already paid for these expenses, you can be reimbursed when your claim is settled.

Work related?

You do not have to prove that your injury or illness was caused solely by your job, but you must show that your work substantially contributed to your injury/ illness. Insurance carriers will often try to access your complete medical records. However, you may attempt to limit access to only those records that are relevant to your claim through representation by a competent counsel.

Filing a claim

Employers should notify their insurance carrier to begin processing a workers' compensation claim as soon as they receive an accident report for a qualifying work-related injury or illness.

If your doctor thinks there may be some permanent disability involved or you are not receiving benefits you should, promptly obtain the services of an attorney to assist you in filing a claim, using the "claim petition". You can obtain the form by calling the Division of Workers' Compensation at (609)292-2515 or on the web at:

http://lwd.dol.state.nj.us/labor/wc/forms/forms_index.html.

Your attorney will file 3 copies of the petition: one for the division's file, the second for the employer's insurance carrier, and the third will be sent back to you marked "filed" with the claim number on it. It may take a few weeks to process the claim.

It is a good idea to find out who is processing your claim for the insurance company and contact them to find out why the payments are being delayed. It may be a simple matter that the doctor's report has not yet been received. In that case, you can contact the doctor's office to request that they expedite the submission of the medical report to the insurance carrier.

Keep records

It is critically important to keep copies of all records relating to your claim as it is usual that insurance carriers will dispute claims or delay treatments and payments, and records are key to successfully overcoming these challenges. This includes copies of all forms, accident and medical reports, and letters from the employer and insurance carrier. If the cause of the injury is being disputed, it would be helpful to obtain written statements from witnesses.

Waiting period

There is a one week waiting period, seven calendar days, which must be met before a worker who is disabled from a work related injury is eligible to receive wage replacement benefits. The first day is the first day of disability, even if you worked a partial day. The seven days when you are unable to work do not have to be consecutive days.

Cash benefits

Wage replacement benefits are calculated at a rate of 70% of a worker's average weekly wage (AWW). The worker's AWW is normally determined based on payroll records for the previous 26 weeks. Overtime is included in these calculations. The maximum weekly benefit for most types of cash benefits is 75% of the state's average weekly wage (SAWW). The **maximum weekly benefit in 2014 is \$843.00**. An injured worker receives (1) 70% of the worker's weekly wage, or (2) the maximum weekly benefit – whichever is less. The minimum weekly benefit in 2014 is \$225, which is 20% of the state's AWW. The AWW is calculated and the benefits adjusted annually.

All cash benefits provided by workers' compensation **are not** subject to state or federal income taxes.

Temporary total benefits

These benefits, calculated as above, are available when a worker is unable to work and is under active medical care. Injured workers must attend follow up appointments when

requested by the employer or carriers to continue eligibility for benefits. Under the law, temporary total disability benefits are capped at 400 weeks; 7 years and 9 months.

Disability determinations are made by the employer-appointed treating physician. If this doctor says you may return to work and you disagree with that determination, you may seek a second opinion at your own expense. If the 2nd opinion determines you are not ready to return to work, you must submit this written opinion to the employer.

Typically, this will require a workers' compensation hearing to resolve, and an injured worker will need representation by a workers' compensation attorney.

Light duty

If your employer offers you a light duty assignment while you are under curative treatment and you refuse to accept it, your temporary benefits will be terminated. However, if you have medical evidence that the light duty assignment is not appropriate, you may request a workers' compensation hearing to dispute the termination of benefits. In such cases, you will need a workers' compensation attorney.

The light duty job must pay you either your pre-injury/accident wage or enough money so that you net what you were receiving as temporary disability benefits.

Permanent partial benefits

The New Jersey workers' compensation program also provides benefits according to a schedule included in the statute for permanent injuries involving fingers, toes, hands, feet, legs, arms, loss of vision, and loss of hearing. These benefits are called Scheduled Permanent Partial Disability (PPD) benefits. The schedule lists the maximum number of weeks per body part, and range from a maximum of 330 units for loss of an arm to a maximum of 15 units for loss of a toe other than the great toe; these units are paid weekly.

A nonscheduled loss includes injuries to the back, shoulders, head, heart, and lungs. The maximum number of units of benefits for a nonscheduled loss is calculated based on a percentage of 600 units for a 100% loss.

The number of units of compensation awarded is dependent upon both the particular body part injured and the percentage of permanent impairment of that body part. Thus a 50 percent rating for the loss of an arm results in 165 units of PPD benefits.

The value of particular units of PPD varies, related to how serious the disability is. If the PPD amounts to 90 units or less, the value of each unit is 20% of the state's average weekly wage (SAWW), which in 2014 is \$225. For PPDs of 91 to 96 units in

duration, the maximum benefit is 21% of the state AWW. For PPDs of 97 to 180 units, the first 96 units are based on 21% of the state's AWW and then increase 1% for each additional six units until reaching 180 units. Units 175 to 180 have a maximum based on 35% of the state's AWW. For PPDs that are 181 units or greater, the formula is 35% of the state's AWW for the all units of PPD payments. The benefits increase 5% of the state's AWW for every unit beyond 210. If the PPD is 421 to 600 units, then 75% of the State's AWW is the maximum benefit, currently in 2014: \$843. The minimum unit PPDD benefit is \$36. There is a chart available that simplifies the calculation of these benefits which may be accessed under the Schedule of Disabilities at http://lwd.dol.state.nj.us/labor/wc/forms/forms_index.html.

The extent of the permanent partial disability benefits is not established until a worker has completed his or her healing period, referred to as the date of maximum medical improvement (MMI). In New Jersey, the worker is entitled to PPD benefits if he or she has an injury that results in a permanent medical impairment even if there is little or no lost time from work. These determinations of the extent of disability (extent of permanent impairment) are made by experienced physicians and are established in Workers' Compensation hearings. You will need an attorney to help you claim these benefits.

Permanent total benefits

When an injured worker is unable to return to any type of work, the injury is considered total and permanent. This entitles the worker to 450 weeks at the maximum rate for temporary total benefits. This is 8 years and 8 months of benefits, which are continued for life if the worker has not at that time improved sufficiently to return to work. The weekly benefit is 70% of pre-injury wages and a maximum in 2014 of \$843.00.

Unfortunately, New Jersey is one of the few states in the country that does not fully consider an injured workers age, impairment, and capacity to work in determining permanent total disability. This is due to a 1979 amendment to the Workers' Compensation Act that requires physical and neuropsychological impairment must constitute at least 75% of total disability before other factors will be considered.

Social Security Benefits Offset

In addition to Workers' Compensation benefits an injured worker may also be entitled to Social Security Disability Insurance (SSDI) benefits. However, the maximum amount of the workers' compensation and SSDI benefits you can receive is 80% of your pre-injury wages. Therefore, your employer's insurance carrier will reduce your workers' compensation benefits accordingly.

Qualifying for SSDI benefits requires injured workers to go through an entirely new set of medical reviews and bureaucratic procedures as well.

Death benefits

When a member dies from a work related accident or disease, their dependents are entitled to a weekly benefit calculated in a manner similar to temporary benefits; the reasonable costs of necessary medical treatment for the fatal condition; and \$3,500 to pay for funeral and burial expenses.

The weekly death benefit is 70% of the worker's prior wages, but cannot exceed the maximum weekly death benefit, which in 2014 is \$843.

These benefits continue until the spouse remarries and until a child turns 23 if he or she is a full time student.

Discrimination

The Workers' Compensation Statute prohibits the employer from discharging or discriminating in any manner against an employee because the employee has claimed or attempted to claim workers' compensation benefits, or has testified, or is about to testify, in a workers' compensation case.

Lawyers

The New Jersey worker's compensation system is a minefield that necessitates your use of a qualified attorney. It is important to select a lawyer whose primary business is workers' compensation. Lawyers who make their living representing injured workers are more likely to know the law, regulations, and procedures that are key to effective representation. Some lawyers represent both employers and injured workers. Lawyers whose primary practice is workers' compensation may handle as many as 500 cases at a time. Lawyers are only paid when there is a hearing and a judge orders payment. In those cases, the judge will usually set the lawyers fee at 20% of the award, some of which may be paid by the employer or carrier. The maximum allowed by law is 20%.

You should never pay a lawyer a retainer or any fee to represent you in a workers' compensation case.

Because of the high volume of cases required for a lawyer to practice in the Workers' Compensation system, it is often difficult to communicate with your lawyer. Therefore, when selecting a lawyer it is important to find out how communications are handled by that particular firm.

Disputes and hearings

You should seek representation by an attorney to represent you in all hearing processes.

Informal hearings

Warning: settlements at informal hearing usually involve reduced benefits. Employers, insurance carriers, or injured workers can request an "informal hearing". If the parties come to an agreement on the disputed issues, the judge will write the agreement on a judgment form, signed by the parties. If no agreement is reached, then a formal hearing must be requested. Applications for informal hearings can be obtained by calling (609) 297-2515 or can be downloaded at

http://lwd.dol.state.nj.us/labor/wc/forms/forms_index.html .

Formal hearings

It may take many months or even years before a hearing is scheduled to resolve disputes or determine permanent disability benefits.

If your employer refuses to pay temporary disability benefits your lawyer can file a motion with the Workers' Compensation Division for emergent medical care based on a statement by a physician that a delay in treatment will result in irreparable harm or damage. The insurance carrier must answer the motion with 5 calendar days from the date of service of the motion and the filing of the claim petition. The insurance carrier must arrange for a medical exam within 15 days if they require an independent medical exam (IME).

After the hearing, the judge will issue a decision on the issues addressed at the hearing. Some of the most frequent issues that are decided are work-relatedness, degree of disability, medical diagnostic and treatment procedures, rates of compensation, and permanency. You can obtain a copy of the decision by submitting a written request to:

Department of Labor and Workforce Development
Division of Workers' Compensation
P. O. Box 381
Trenton, NJ 08625-0381

Appeals to a negative decision by the judge may be made to the state courts.

Independent Medical Exams (IME)

These are exams ordered by the insurance carrier to review the treating provider's determinations of causality, degree of disability, appropriateness of medical treatment, and other issues. The IME is paid by the insurance carrier to review the case and therefore, is not independent. Injured workers must attend IMEs or their benefits may be cut. However, you should be very aware that these exams are not medical exams to aid in your recovery. The purpose of the exams is to question and review the appropriateness of the determinations in your case. IME's will issue a report that will either continue your benefits and compensation or lead to cuts in benefits and care.

Time Limits for Filing Claims

Time limits are strict and must be followed:

1. For accidental injuries you must file an informal or formal claim within 2 years after the date of the accident.
2. For occupational diseases you must file your informal or formal claim within 2 years of the date that you knew your disability was related to work.

For more information:

Workers' Compensation Division website:

http://lwd.dol.state.nj.us/labor/wc/wc_index.html

Workers' Compensation Division forms

http://lwd.dol.state.nj.us/labor/wc/forms/forms_index.html

Workers' Comp Hub

<http://workerscomphub.org/>

Sources:

1. A Workers' Guide to the New Jersey Workers Compensation Law, Department of Labor Studies and Employment Relations, School of Management and Labor Relations, Fourth Edition, 2009, John F. Burton, Jr and Patricia McHugh, Rutgers, The State University of New Jersey
2. State of New Jersey, Department of Labor and Workforce Development website

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