



WASHINGTON STATE ASSOCIATION

for

J U S T I C E

formerly WASHINGTON STATE TRIAL LAWYERS ASSOCIATION

This brochure was prepared by the Washington State Association for Justice (WSAJ) as a guide to help the citizens of Washington State understand their rights. Established in 1953, WSAJ represents attorneys and professionals in the legal field committed to protecting citizens' right of access to the civil justice system. The mission of the Washington State Association for Justice is to protect and promote a fair justice system and the right to trial by jury, and to ensure that any person who is harmed by the misconduct or negligence of others can obtain justice in America's courtrooms, even in actions against the most powerful interests.

Washington State Association for Justice
1809 7th Ave #1500, Seattle, WA 98101-1328
t: (206) 464-1011 e: wsaj@washingtonjustice.org
www.washingtonjustice.org

UNDERSTANDING WORKERS' COMPENSATION

What follows are some commonly asked questions regarding workers' compensation issues and general answers to those questions. Of course, each situation is different. This pamphlet is not intended to be a substitute for obtaining legal advice with respect to your specific situation.

What if I am Injured on the Job?

Q. What is Workers' Compensation?

A. Workers' compensation, or industrial insurance, is a system to provide basic benefits to people injured on the job. The goal of the law is to provide sure and certain benefits to reduce the physical and economic suffering of people injured on the job.

Compensation is provided for employees injured on the job regardless of who is at fault. In exchange for this no fault coverage, employers are granted immunity from separate civil liability. However, if a third party's negligence causes or contributes to your work-related injury or illness you may have a separate civil action against that person or company. A third party is someone other than your employer or a co-worker.

Most employers in this state pay workers' compensation insurance premiums to the Department of Labor and Industries. If you are injured, the Department is responsible for approving your claim and paying benefits. Some employers are self-insured, which means they pay benefits directly and will manage your claim themselves or through a third-party administrator. The Department oversees the self-insured claims and may intervene to resolve disputes. You are entitled to the same benefits whether your employer is state funded or self-insured.

Q. How do I know if I am covered by workers' compensation insurance?

A. To receive workers' compensation benefits you must be a covered employee, acting in the course of employment, who has sustained an injury or occupational disease.

Definitions

"A covered employee" – The law recognizes there are hazards in all jobs, so workers' compensation coverage is almost always required. Generally, if you are an employee, not an independent contractor, then you will be covered. There are some categories of employees who

are excluded from coverage. Where coverage is not mandatory, the employer can elect to provide coverage. You should check with your employer to make sure you are covered.

“Acting in the course of employment” – To be covered, you must be doing a task at the direction of your employer, or for your employer’s business, at the time you are hurt. For example, if you are injured on your way to work you will not be covered, but if you are injured while making a delivery for your employer you will be covered.

“Injury” – An injury is defined as a sudden and tangible event of a traumatic nature, which results in a physical condition. You must be able to identify an event or occurrence which resulted in your injury.

“Occupational Disease” – An occupational disease is not caused by a sudden identifiable traumatic event. An occupational disease is a physical state that arises naturally from the conditions of employment, as opposed to being caused by conditions that exist in everyday life. There must also be a causal relationship between your illness and your job. Hearing loss from exposure to harmful levels of occupational noise is an example of an occupational disease.

Q. How do I file a claim for workers’ compensation?

A. You are responsible for giving your employer notice of your injury or illness and you must file an Application for Benefits to open a claim.

You should notify your employer when you suffer an on-the-job injury or illness. Many employer’s, however, do not notify the Department of Labor and Industries of injuries to their workers. It is your responsibility to make sure that you file an application for benefits in a timely manner. You can get an application from your doctor’s office, from your employer or from the Department.

Q. How long do I have to file a claim?

A. You have one (1) year from the date of your accident to file an application for benefits to open your claim. Applications for occupational disease claims must be filed within two (2) years of learning you have a work related disease. The application has a section for you to complete and a portion for your doctor to fill out. The sooner you file the application for benefits, the sooner the Department will be able to provide benefits. Please remember your employer is not required to file an application of benefits for you, even where they have notice of your accident.

Q. What benefits am I entitled to under workers’ compensation?

A. Many benefits are available. Numbers 1-8 are mandatory; number 9 is a discretionary benefit which the state or employer can choose to offer.

1. **Medical Treatment** – Proper and necessary medical care will be provided for your job related injury or disease, including necessary prescription medications. You may choose your medical provider, who may refer you to a specialist if necessary. Medical care will be provided until your condition has reached maximum medical improvement or is fixed and stable. The Department or self-insured employer may periodically request an evaluation by medical examiners of their choosing (called an independent medical exam or an IME.) You may have a friend or family member accompany you to these exams, and you may obtain a copy of the written report. Your doctor should review this report and provide a written response. All of this information will be considered in making decisions about your claim.

2. **Property Damage** – If your personal effects or protective equipment are lost or damaged as a result of your work related injury, repair or replacement is covered. This would include items such as clothing and glasses.

3. **Travel Expenses** – Travel expenses are reimbursable for travel that is necessary for the treatment of your injury or occupational disease. This includes travel for vocational services, medical exams arranged by the Department or self-insured employer, and travel to your medical provider if adequate treatment is not available within 10 miles of your home. Travel expense vouchers can be obtained from the Department.

4. **Time Loss** – Time loss is a non-taxable, partial wage replacement benefit paid while you are unable to work due to an industrial injury or occupational disease. Your time loss compensation rate is 60% of your monthly wage, with additional amounts if you are married or have children. Your monthly wage includes wages you were receiving from all employment at the time of injury. Monthly wage also includes the employer's cost of your health care benefits, housing, tips, fuel, and other similar considerations. You must provide accurate wage information and double check how your monthly wage and time loss rate are calculated.

5. **Loss of Earning Power (LEP)**– Your employer may request your medical provider allow you to work part time or at a lighter duty job while you are recovering. A written job description must be provided for your medical provider to review and approve or disapprove. If you return to some kind of work, but still have more than a 5% loss of earnings, then you will be eligible for LEP benefits.

6. **Permanent Partial Disability** – Once you are able to return to some type of permanent work and your medical condition has reached maximum medical improvement, the extent of any permanent partial impairment will be determined. Partial disability awards are not based on lost wage earning capacity and do not include pain and suffering, so returning to work does not reduce your award, and your level of pain will not increase your award. An impairment rating based on a medical exam will be obtained from your attending physician or a medical examiner selected by the Department or the self-insured employer. Your doctor is more familiar with your condition and should be encouraged to rate your impairment. Your impairment rating will be converted to a monetary award and will be paid to you at the time your claim is closed.

7. Pension/Permanent Total Disability – There are two ways to become eligible for a pension or permanent total disability benefit. If your accident results in the loss or paralysis of both legs, both arms, one arm and one leg, or total loss of vision, you are considered totally disabled even if you are able to return to work. You may also be totally disabled if vocational and medical evaluations indicate your work injury prevents you from obtaining or maintaining reasonable continuous gainful employment. Your age, education, transferable work skills and pre-existing medical conditions must be considered in making this determination. If you are permanently disabled as a result of your injury, you will be paid a monthly pension benefit for life. The amount is based on the factors that determined your time loss rate.

8. Survivor/Death Benefits – If a work related injury or occupational disease causes death, your spouse and dependent children will receive a monthly pension benefit. This benefit is based on the same factors that determine your time loss rate. They are also entitled to receive an immediate cash payment, and a burial benefit. A dependent child's portion of the pension benefit is paid to the person who has legal custody of the child. The child's benefit is paid until age 18 or until age 23 if enrolled full time in an accredited school.

9. Return to Work Assistance – This is a benefit which can be provided at the discretion of your employer or the state. There are a number of programs or benefits that can assist you in returning to work after an injury or illness. These may include temporary or permanent modifications to your work duties or job station. You may receive early intervention assistance from a vocational counselor to help you return to work, either with your employer of injury or with a new employer. If your limitations and work skills leave you unemployable, you may be eligible for vocational retraining. If you are eligible, you will work with a vocational counselor to develop a retraining plan. This program may last up to two years and cost up to \$12,000 (for retraining plans approved in 2008; the costs allowed after 2008 will be adjusted annually). While you are in retraining, you will receive on-going time-loss benefits until you finish the program and are considered employable.

Q. How can I protect my rights to workers' compensation benefits?

A. When a decision is made about your claim, either the Department or your self-insured employer will issue an Order. All Orders have specific information which explains your right to protest or appeal the decision if you do not agree. If you want to protest or appeal a decision, you must do it in writing within 60 days of receiving the Order. It is not enough to call your claims manager, although you may do that in addition to sending your written protest or appeal. If you do not file a written protest or appeal of an Order, the decision in that Order becomes final and binding and cannot be changed. You must carefully review each Order. If any of the information contained in a Department Order is incorrect or if you disagree with any decision contained in a Department Order you must file a written protest to protect your rights. A written protest is sent to the Department. (See Resource List) The Department will review your claim and issue a new Order.

Q. What if I still disagree with the Department's decision?

A. If you still disagree with the new Order, you must file a written appeal with the Board of Industrial Insurance Appeals (see Resource List.) The BIIA is a separate state agency charged with resolving disputes that may develop in work-related injury claims. Information about the appeal process in general, or your rights, can be obtained by contacting the BIIA.

Q. What happens when my claim is closed?

A. Your claim will be closed when your treatment is concluded, your medical condition is at maximum medical improvement and you are able to return to some type of employment. If your injury or disease has resulted in a permanent disability or impairment, you will receive a monetary permanent partial disability award at the time your claim is closed. No further medical bills will be paid by the Department or the self-insured employer after your claim is closed.

You will receive an Order from the Department notifying you that your claim has been closed.

Q. What if I get worse after the claim closes?

A. You can apply to reopen the claim. Pick up an Application to reopen your claim from your medical provider or from the Department. A claim will be reopened if medical evidence shows that your job related condition has objectively worsened since the date of claim closure. You will be eligible for full benefits if your claim is reopened within 7 years of when it was first closed.

Q. Do I need an attorney?

A. Many work related injury claims are processed with no difficulty and an attorney is not necessary. If your claim is allowed and time-loss compensation is paid promptly using correct wage information, you should focus on your medical treatment and follow your doctor's recommendations about returning to work. However, if a dispute or conflict develops about your claim, consultation with an attorney may be helpful. If you believe your injury may have been caused by a third-party, it is also a good idea to speak with an attorney about your rights in a potential civil action.

An attorney may represent you while your claim is being managed by the Department or self-insured employer; or in proceeding before the BIIA. With a few exceptions, attorneys charge a percentage of the benefits they obtain on your behalf as an attorney's fee. This "contingency fee" should be thoroughly explained to you before you hire an attorney. Do not be afraid to ask questions if there are things you don't understand.

A lay representative rather than an attorney can also assist you with your claim. Many unions or trade organizations provide invaluable assistance to their members in resolving routine matters that may arise in the management of your claim.

Resource List

WASHINGTON STATE RESOURCES

Government Agencies

Department of Labor and Industries
Post Office Box 440001
Olympia, WA 98504-4000
1-800-LISTENS (547-8367)
TDD (360) 902-5797
www.lni.wa.gov

Washington Industrial Safety & Health Administration (WISHA)
1-800-4BE-SAFE (1-800-423-7233)
www.lni.wa.gov/safety

Board of Industrial Insurance Appeals
PO Box 42401
Olympia WA 98504 - 2401
(360) 753-9646
www.biia.wa.gov/

Human Rights Commission
Olympia: (360) 753-6770
Seattle: (206) 464-6500
Spokane: (509) 568-3196
Yakima: (509) 575-2772
www.hum.wa.gov/

Community Groups & Non-profit Organizations

Washington State Labor Council
314 1st Ave W
Seattle WA 98119
(206) 281-8901
www.wslc.org

Injured Worker Coalition
(253) 262-7018

Alliance of People with disAbilities
www.disabilitypride.org
(206) 545-7055 (Voice)
(206) 632-3456 (TTY)

Unemployment Law Project
1904 3rd Ave #604
Seattle WA 98101
(206) 441-9178
<http://unemploymentlawproject.org>

Kids' Chance of Washington
P.O. Box 185
Olympia, WA 98507-0185
1-800-572-5762

Washington Assistive Technology Act Program
PO Box 357920
Seattle, WA 98195-7930
1-800 -214-8731 (toll free)
<http://watap.org>

Lawyer Referral Services

NW Justice Project
Coordinated Legal Education, Advice, & Referral System (CLEAR)
1-888-201-1014 (tollfree)
1-888-201-9737 (TTY)
1-888-387-7111 (people over 60)
www.nwjustice.org

King County Bar Association
(206) 267-7010
www.kcba.org/LRS/lrs.htm

Tacoma/Pierce County Bar Association
(253) 383-3432

Snohomish County Bar Association
(425) 388-3018

WASHINGTON STATE ASSOCIATION
for
J U S T I C E
formerly WASHINGTON STATE TRIAL LAWYERS ASSOCIATION

Columbia Legal Services
Seattle: (206) 464-5911
Moses Lake: (509) 765-0417
Yakima: (509) 575-5593
Tri-Cities: (509) 374-9855
Wenatchee: (509) 662-9681
Olympia: (360) 943-6260

FEDERAL RESOURCES
Government Agencies

National Labor Relations Board
Seattle Office:
915 2nd Avenue, Room 2948
Seattle WA 98174-1078
(206) 220-6300
www.nlr.gov

Occupational Safety & Health Administration
Regional Office:
1111 3rd Ave Ste 715
Seattle WA 98101-3212
(206) 553-7520
www.osha.gov

Equal Employment Opportunity
Commission
1-800-669-4000
TTY - 1-800-669-6820
www.eeoc.gov

US Department of Labor
Wage & Hour Division
1-866-487-9243 (Toll free)
Seattle District Office:
(206) 398-8039
www.dol.gov/esa/whd.org