

Workers' Compensation

The Workers' Compensation Act which governs workers' injuries in Pennsylvania and most states is a compulsory system and not a matter of election by or contract between your employer and you. The purpose of the law is to provide automatic coverage for loss of income and medical coverage to injured employees who are injured on the job without having to prove the fault of the employer. In return, the worker gives up the right to sue the employer for damages.

For the most part, this is a good compromise. Otherwise, under existing injury law, the injured employee would have to prove the employer was at fault and would also have to obtain an attorney and fight insurance companies who have a great deal more resources than the average injured worker. Of course, there are problems in this compromise. The injured employees cannot receive additional damages such as are available in normal personal injury actions. They cannot collect pain and suffering or other forms of consequential damages normally available to a person injured by the negligence of another.

The Workers' Compensation process is an administrative process. There is a statutory framework to follow, and it is supposed to provide that injuries are investigated and benefits paid without the necessity of litigation. In fact, the Pennsylvania Supreme Court has stated that the clear legislative intent is to:

- Provide an accessible, expert and easy forum for the handling of all claims for occupational injury or disease;
- Provide for prompt payment of all costs for all medical expenses and reasonable income loss payments to the employee or his/her dependents;
- Reduce the costs and delays of personal injury court trials and eliminate unnecessary payments of fees to lawyers, witnesses as well as time-consuming trials and appeals; and
- Accomplish this without assessing fault to the employee or employer while the employer is free from threat of court suit.

Unfortunately, this lofty ideal sometimes falls short in reality. Although many claims are paid voluntarily without denial, many claims are denied because the insurance company handling the case will argue that you had a pre-existing condition or that your injury is not readily observable by x-ray or other diagnostic testing procedures, or that while you may be injured you should still be able to do your job. At that time, most injured workers cannot take on the elaborate and expensive procedures necessary to bring a claim before a Workers' Compensation judge to receive their benefits on their own.

The insurance company also has the right to have you go to doctors they select for a period of ninety days after the injury, and many times these doctors feel that their obligation is to return you to work as soon as possible even if you are still injured.

Much of the litigation work in workers' compensation involves cases where injured workers have been receiving benefits but have those benefits terminated by insurance companies on the basis of "independent medical evaluations" paid for by the insurance companies. Many of these doctors will write reports favorable to the insurance carriers, and these reports can be used to terminate your benefits even when you are still injured. It is important to meet this type of attack head on by obtaining appropriate medical evaluations from treating physicians or other physicians who stick up for injured workers when the climate and the big money makes it more difficult to obtain the "accessible, expert and easy forum for handling of claims. . ." as mentioned by the Pennsylvania Supreme Court.

An attorney representing injured workers must understand the Workers' Compensation Act, the specific procedures involved as well as the medical evidence to receive benefits and also maintain them when necessary.

The workers' compensation attorney has to be skilled in cross-examining the "independent evaluators" and must give you important information so that your benefits are not terminated because you were not aware of the specific roadblocks that the legislature has recently created by amendments to the Workers' Compensation Act.

Many times injured workers believe they cannot work. Their own doctors have told them this, and therefore they ignore notices from the insurance company that make them apply for jobs or go to medical evaluations. It is important that you have a skilled attorney provide important information at every step of this process so that your benefits cannot be terminated solely because you missed an appointment you did not believe was necessary or reasonable. Once you are involved in litigation in the workers' compensation area, your attorney must be able to help you provide important information relating to your injury. You must present your case in a logical, consistent and credible manner. If you were injured before, it is important to bring that out, but also show that you had worked five years since the injury without any affect until the most recent accident or injury, if that is the case.

Your attorney must receive all of your prior medical evidence before the injury to establish that there is no pre-existing situation that most insurance companies love to dwell on. It may be important to obtain updated diagnostic tests such as MRIs when your insurance company has refused to pay for them, possibly afraid of what they will show. It will also be important to detail why you cannot do not only the job you did at the time of your injury but other jobs that the insurance company may wish to refer you to, to prove that your benefits can be modified on the basis of alternate work that a vocational expert hired by the insurance company will say you can do. Many times this will mean you will need to have your own vocational expert and your doctor testify in such a way as to absolutely ensure that your benefits cannot be modified or terminated on the basis of biased medical and vocational reports.

At a certain time it may be beneficial for you to settle your case and get on with your life. A lump sum settlement process is available in workers' compensation; however, it is extremely important that an attorney help you with the process. The insurance company again will attempt to settle your claim for the lowest possible figure. You must understand that you will never receive other benefits from the insurance carrier with respect to the particular injury in question if you settle your case at that time without ensuring that you have a method for receiving appropriate income if you are disabled, such as other forms of disability payments, or that you can work at other jobs to provide that income. You will also need to ensure that you will have medical coverage for the future. Most importantly, workers' compensation benefits can affect other government benefits such as social security disability. If an attorney does not structure your settlement in an appropriate way, you may not receive social security disability benefits for many years since workers' compensation benefits are deducted from social security benefits unless they are treated in a specific way in the settlement order.

Many attorneys who formerly represented claimants in workers' compensation cases no longer do so because they feel the law is so unfair and the cases are difficult and are expensive to win. That may be true; however, there is still a need for highly trained, competent and experienced attorneys in the workers' compensation area to ensure a level playing field for injured workers. We believe our firm can provide that representation.

Attorneys are paid in workers' compensation cases a percentage of any award that is received up to a maximum of 20% of the benefits. On a claim petition, an attorney cannot get paid unless he wins the case, except for the costs that the individual attorney may put up in advance for medical or vocational testimony and necessary reports.