

KEARNS & DUFFY, P.C.

ATTORNEYS AT LAW

Workers' Compensation & Your Rights

Q: What benefits am I entitled to under our Workers' Compensation system?

A: An employee or worker arising out of and in the course of employment is entitled to three different types of benefits*. Those benefits are:

1. **Temporary Disability** - these are money payments made to you while you are under authorized treatment and are temporarily, but totally disabled from working. Scroll down for specific information as to this benefit.
2. **Medical and Hospital Service and Treatment** - the payment of all hospital and medical bills for treatment deemed reasonably necessary to treat your injury or occupational disease.
3. **Permanent Disability** - a monetary award paid over the course of a specific number of weeks (which is set forth in a chart for the year of injury or illness) for a functional restriction of a worker's body part(s) or organs(s) that has impaired the worker's ability to perform his/her duties or to make money

*If a worker dies arising out of and in the course of employment, his/her dependent(s) are entitled to dependency benefits, as well as the payment of outstanding medical bills and a funeral allowance. For more information concerning these benefits, we recommend that you consult with an experienced Workers' Compensation attorney from the Law Offices of Prince & Portnoi.

Q: How long must I be employed before I am entitled to these benefits under Workers' Compensation law?

A: You are entitled to Workers' Compensation benefits from the moment you are hired as long as your injury or condition arises out of and occurred in the course of your employment. There is no waiting period for eligibility. Employers are required by law to maintain Workers' Compensation insurance coverage regardless of the size of the company or an employee's length of employment service.

Q: What should I do if I become injured or suffer an occupational disease arising out of and in the course of employment?

A: You should immediately notify your employer of your condition. You should do so regardless of the seriousness of the injury/occupational disease in order for a record of your complaints to be established. This is especially important if the injury did NOT initially seem particularly serious, but is progressing. Where possible, you should complete an accident or incident report in order to document an accident resulting in injury/occupational exposure.

You should request of your employer the name of a company doctor or facility where you may seek medical treatment. The reason for this is explained as you scroll down to additional questions.

You should also know that you are entitled to Workers' Compensation benefits even if you had a condition that pre-existed your accident/occupational exposure as long as that exposure materially contributed to your disability.

Q: If the injury was my fault, am I still entitled to Workers' Compensation benefits?

A: Absolutely. In almost all cases (there are some very narrow and limited exceptions, such as; voluntary intoxication, or failing to use safety equipment when required, and being warned repeatedly about the failure to use the required safety equipment) fault is irrelevant and not a factor in deciding a workers' entitlement to benefits. The only requirement for benefits is that the injury/occupational exposure arose out of and in the course of employment.

- Q:** What if the injury is cause by another person while I am at work?
A: You are still entitled to Workers' Compensation benefits. If the injury is cause by a co-worker, you are limited to Worker's Compensation benefits. However, if the injury is cause by a person other than a co-worker, you may have a personal injury claim against that person and his/her employer. It is not uncommon for an injured worker to have two separate claims: one for Workers' Compensation benefits, which is filed in the Workers' Compensation court, and one for personal injury damages, which is filed in a separate civil court. With respect to the latter, proving negligence and fault on the part of the person, other than a co-worker, is a requirement for recovery. If you have further questions regarding a personal injury claim, you should speak with an experienced attorney at the Law Offices of Prince & Portnoi.
- Q:** How much money will I receive while I am temporarily disabled?
A: In order to receive temporary disability benefits, you must be out for seven days, which is called the "Seven-Day Waiting Period". After you are out for seven days, you will be paid back to day one. Generally speaking, an injured worker will receive seventy percent (70%) of his/her gross weekly wages, although there is a maximum/minimum benefit. The rate increases slightly each year. In 2007, the minimum weekly rate was \$190.00 and the maximum weekly rate was \$711.00. The maximum rate applies even if the worker is earning a substantially larger amount of money, such as \$100,000 a year. If you are a public employee, you may be entitled to your full wages for a specified period. If you are a member of a union, you may be entitled to additional wage benefits depending upon the terms of your collective bargaining agreement.
- Q:** Who determines which doctors I see for my injury/occupational disease?
A: New Jersey has a managed healthcare system in Workers' Compensation. This means that your employer or their Workers' Compensation insurance carrier gets to control and direct your treatment. If you are injured or suffer an occupational disease, you should ask your employer, or their carrier, for the name of a doctor with whom to seek treatment. If you go to a doctor on your own or obtain any treatment other than emergent, you will likely be responsible for the payment of those medical bills. If a dispute arises with the doctor that you are authorized to see, you should notify your attorney who can advise you on what course of action to take including the filing of a motion with Workers' Compensation court for medical treatments and/or benefits.
- Q:** Am I responsible for any medical bills?
A: No, as long as the hospital or medical treatments/services you are receiving are authorized by your employer or the Workers' Compensation insurance carrier. All authorized treatment is paid one hundred percent (100%) by your employer, or their carrier, with no co-payments or deductible due from you. These benefits include, but are not limited to doctor bills, hospital bills, bills for diagnostic testing (like MRI's or X-Rays), prescription medications (prescribed by the authorized doctor), and devices (such as knee or back braces).
- Q:** Are injuries such as heart attacks or lung disease covered?
A: Yes. If the worker's employment exposure caused or contributed in a material degree to the development of the condition, then the worker is entitled to Workers' Compensation benefits.
- Q:** Who is entitled to an award for permanent disability?
A: Generally speaking, workers who can demonstrate through objective medical evidence that they suffer a functional restriction of a body part(s) or organ(s) that impairs the worker's ability to perform his/her duties or make money, even if only slightly, are entitled to an award for permanent disability.
- Q:** How is permanent disability determined?

A: There is a two-step process in determining the amount of award to which a worker may be entitled. First, a percentage of disability is determined for the injured body part(s) for the year in which the worker was injured. Second, there is a Schedule of Disabilities used by the courts, which sets forth an exact dollar amount for the percentage of disability determined for the injured body part(s). The following are examples of disability values for the 2007:

Injury	Percentage of Disability	Award Amount
Hand	10%	\$ 4,655.00
	50%	\$ 25,059.00
Leg	10%	\$ 5,985.00
	50%	\$34,618.50
Back	10%	\$11,400.00
	40%	\$90,960.00
Neck	10%	\$11,400.00
	40%	\$90,960.00
Heart	10%	\$11,400.00
	40%	\$90,960.00
Hearing (1 Ear)	10%	\$ 1,140.00
	66.67%	\$ 7,600.00

Q: Is there any time limitation in which to file a claim for Workers' Compensation benefits?

A: Yes. A claim must be filed within two years from the date of the accident, the date of the last authorized treatment or the last compensation payment. For example, if the accident/injury occurred on January 14, 2006, and the last temporary disability payment was June 30, 2006, then a claim must be filed no later than June 30, 2008. There are virtually no exceptions to the two year period and it is not enough that the employer and their Workers' Compensation insurance carrier know about the claim. The claim must be filed with the Workers' Compensation court within that two year period by filing of a document called a Claim Petition.

Q: Is the time limitation different for occupational exposures and diseases?

A: Yes. In these cases the two-year time period begins to run on the date on which the worker first learns of the nature of the disability and its relation to his/her employment.

Q: If I am working for a new employer, but I still was injured at my previous job, can I still make a claim for a permanency award?

A: Yes, but the claim must be made to your prior employer and their Workers' Compensation insurance carrier and the claim must be made within the two year limitation period explained above.

Q: Can I be fired for making a Workers' Compensation claim?

A: No. It is against the law for an employer to discharge or discriminate against an employee who has filed or attempted to file a Workers' Compensation claim. The Department of Labor and Workforce Development has a separate complaint procedure for workers who claim to have been fired or discriminated against for making a Workers' Compensation claim.

Q: How much will my lawyer's fee be?

A: Lawyer's fees are determined by the Workers' Compensation court only if the lawyer is successful in obtaining benefits for you. If no benefit is obtained, there is no lawyer's fee. The lawyer's fee cannot exceed 20% of the amount of benefits obtained. In most cases, the lawyer's fee is shared between the worker and the employer, or their insurance company.