

# **PENNSYLVANIA WORKER'S COMPENSATION FACT BOOK**

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This booklet is intended to supply you with useful facts about your rights and responsibilities concerning the Pennsylvania Workers' Compensation Act (Act). Every case has differences that may affect your right to benefits. The law places the burden of knowing your rights upon you, even if you have never before suffered a work injury or received Workers' Compensation benefits. The information in this booklet is a summation and is not all inclusive. Do not rely upon this booklet alone.

# **ALL QUESTIONS ARE IMPORTANT**

## **FREE CONSULTATIONS**

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## **SIX EASY STEPS TO PROTECT YOURSELF**

### **STEP ONE: SPEAK UP- REPORT YOUR INJURY**

If you suffer a work injury or occupational disease you should notify your employer (boss, supervisor, foreman, human resource dept., etc.) **IMMEDIATELY**. Written notice is preferred to protect your rights but is not required by the Law.

**FACT: GIVE IMMEDIATE NOTICE -  
DON'T WAIT - TIME LIMITS EXIST -  
FILL OUT AN ACCIDENT REPORT**

You have 120 days from the date of injury to notify your employer of the work injury. Failure to give this “Notice” will prevent you from being eligible for any workers’ compensation benefits.

## **STEP TWO: SEEK MEDICAL ATTENTION**

The sooner the better. Your employer is required to post a list of panel physicians (at least 6), and you are required to treat with a panel physician for the first 90 days of treatment. After 90 days you can pick who will treat you and where you get treatment.

### **FACT: YOU MUST TREAT WITH COMPANY DOCTORS FOR THE FIRST 90 DAYS OF TREATMENT.**

The employer cannot force you to treat with anyone, but your employer is not required to pay for treatment unless it is with a panel physician for the first 90 days of treatment.

## **STEP THREE: INFORMATION**

Keep your employer and the insurance company informed of your doctor's name and where you get treatment.

**FACT: YOU MUST INFORM YOUR  
EMPLOYER & THE INSURANCE  
COMPANY OF WHERE YOU GET  
TREATMENT**

**STEP FOUR: KEEP EXCELLENT  
RECORDS**

- Keep all your records in one place.
- Keep records of your treatment appointments.
- Keep records of your doctors' names and addresses.
- Keep records of your treatment, past, current and future.

**FACT: YOUR EFFORT IS NECESSARY  
TO PROTECT YOUR RIGHTS.**

**STEP FIVE: ALWAYS BE COOPERATIVE**

While recovering, it may be frustrating talking with doctors and the insurance company but anger make things worse, call us to help.

**FACT: YOU MUST COOPERATE  
WITH THE INSURANCE COMPANY'S  
REQUESTS FOR MEDICAL INFO.  
& VOCATIONAL REHAB.**

**STEP SIX:  
THINK ABOUT YOUR FUTURE**

Some injuries are life altering and may prevent you from returning to your regular job. Ask your Doctor questions about what to expect during your recovery and when to expect to return to work. Consider what job modifications may help your return to work.

You know the demands of your job best. Discuss your job demands with your doctor early. Make sure your doctor knows the demands of your job.

If you will not be able to return to your regular job, then consider early what other types of work interest you. Your employer and/or its insurance company are unlikely to know your preferences or be able to satisfy you with alternate employment.

**FACT: THE LAW DOES NOT REQUIRE  
YOUR EMPLOYER TO KEEP YOUR  
JOB OPEN OR TO PROVIDE  
ANOTHER JOB TO YOU.**

Your employer or its insurance company may seek to prove that you are able to return to work at your regular job or another type of work, completely different from your regular job, even if it pays less.

**WHAT TO KNOW**

**What Benefits are Available?**

Certain medical expenses and wage loss benefits can be received for work related injuries. Medical benefits are available even if you do not miss work. Wage loss benefits are payable for total wage loss and partial wage loss. Benefits are also payable for Hearing Loss, Scarring & Disfigurement and Specific Losses (explained later). Benefits may be available to your surviving dependents for work related deaths.

## **Who is Covered?**

Most Pennsylvania workers are covered. Generally, all full time, part time and seasonal employees are covered by the Law. Some employees that may not be covered are agricultural laborers, domestic help, federal employees, long-shoremen, railroad workers, shipyard & harbor workers, and volunteers. Some workers are covered by other laws. If you are unsure, ask your union rep. or call us with any questions.

## **What is Not Covered?**

Benefits are not available for self inflicted injuries or death caused by an employee's violation of the law, use of illegal drugs, or intoxication. Injuries that result from an employee's violation of a known work rule may also be excluded from coverage.

## **When do I get Paid?**

Protection begins on your first day of work. Medical benefits are payable from the date of injury and wage loss benefits are payable after the first 7 calendar days. If you are unable to work for less than 7 calendar days, then wage loss benefits are not payable. If you are unable to work for 8 to 14 calendar days, then you are entitled to wage loss benefits for the 8 to 14 days off. If you are unable to work for 15 or more calendar days, then you are entitled to wage loss benefits back to the 1<sup>st</sup> day missed.

Once you report an injury and have missed more than seven days of work, your claim should be accepted or denied by the insurance carrier within 21 days. After that, you should receive wage loss payments as you received your wages, but usually you will receive bi-weekly checks. You should receive your wage loss benefits by regular mail. Your employer cannot require you to report to the employer's office to pick up your checks.

Your claim may be accepted on a temporary basis for up to 90 days. If your claim is accepted on a temporary basis, then you will receive a **Notice of Temporary Compensation Payable**. The insurance company must advise you that it will not continue your wage loss checks past 90 days by a **Notice Stopping Temporary Compensation**. You have the right to file a Claim Petition if you disagree with the decision to deny your claim.

If you are not notified that temporary compensation benefits will stop before the end of the 90 day period, then the Temporary Notice will convert to a **Notice of Compensation Payable**.

## **How Much do I Get?**

Weekly benefits for wage loss are equal to approximately two-thirds of your Average Weekly Wage, up to a weekly maximum for the year of injury. The maximum rate for the year 2019 is \$1,049. Wage loss benefits are offset (reduced) by: (1) 50% of Social Security "old age" benefits, (2) the employer paid portion of a pension, (3) severance pay, (4) unemployment compensation or (5) earnings from work. Wage loss benefits are based upon your wages at the time of injury and will not increase.

Calculation of your Average Weekly Wage is determined by your wages at the time of injury. There are several calculation methods and the rules can be complicated. Call us if you feel that your weekly benefit rate is too low.

## **Notice of Compensation Payable (NCP)**

The insurance company should send you this notice when your claim is accepted. The notice contains a description of your injury that it has accepted. Make sure it fully details your injuries, not merely a general description, inaccurate description, or only partial description. Make sure all injuries are listed. The NCP also lists your Benefit Rate.

### **TYPES OF BENEFITS**

Claims for Workers Compensation injuries are of basically three types:

1. New Injuries.
2. Aggravation of a pre-existing physical condition, and
3. Reoccurrences of old injuries

Both Physical and Psychological Injuries are compensable but Psychological Injuries are more complicated than this summary. Call us if you have a psychological condition related to your work.

**Total Disability Benefits:  
Medical & Wage loss benefits**

Injuries which result in total wage loss are payable as Temporary Total Disability Benefits. Such benefits are payable for the period you are unable to work in any capacity and earn wages. Classification of your disability as Total or Partial is based upon wage loss. After 104 weeks of Total Disability status, the employer/insurer may seek an IRE - Impairment Rating Evaluation from a Doctor. The Law sets a presumption of total disability at a 35% impairment rating. The impairment is based upon your work injury according to the American Medical Association standards. Impairment ratings below 35% allow the change of your disability status from Total to Partial Disability.

## **Partial Disability Benefits: Medical & Wage loss benefits**

Partial Disability wage loss benefits consider actual or potential earning when calculating a weekly benefit rate.

Partial Disability Wage Loss benefits are payable for a maximum of 500 weeks. You may petition for total disability while on partial disability status if your condition worsens or again results in total wage loss due to your work injury. Partial disability benefits are paid if you can return to work at a lower paying job, within your physical restrictions, or you are found not totally disabled.

## **Death Benefits:**

Compensation benefits based upon the deceased employees Benefit Rate

Your spouse and dependents may be eligible for weekly wage loss benefits due to your work related death. Benefits payable to your surviving spouse are payable until remarriage or marriage-like relationship. Funeral expenses are payable up to \$3,000.

### **Specific Loss Benefits:**

Compensation benefits payable for a specific period of time based upon the type of injury and your Benefit Rate

You may receive compensation benefits for the permanent loss or loss of use of body parts based upon a weekly rate. The body parts involved are the thumb(s), finger(s), hand(s), arm(s), leg(s), foot, feet, toe(s), sight, hearing, or serious and permanent disfigurement to the head, face or neck. Benefits can compensation for the loss of the whole or 1/2 of a thumb, finger or toe.

## **Hearing Loss**

Hearing loss benefits can be for traumatic injury or occupational noise induced. Percentage of loss must exceed 10%, for one or both ears. The maximum is 60 weeks for one ear and 260 weeks for both ears.

## **Occupational Disease**

Occupational diseases caused by or aggravated by employment may be covered by the Act. Occupational Disease claims are more complicated than the typical physical injury claim and are not covered by this summary.

## **CALCULATING BENEFITS**

### **Statement of Wages**

The insurance company should send you this Notice when your claim is accepted. The Notice sets forth your Average Weekly Wage and Benefit Rate.

## **Average Weekly Wage (AWW)**

Gross earnings are used to calculate your Average Weekly Wage (AWW). The calculation of your AWW uses the method of your wage payments, such as weekly or hourly wages, and uses the total wages you have earned with your employer. The formula for calculating your AWW can be complicated. If you feel the AWW calculated is too low, then contact us for help.

## **TOTAL and PARTIAL DISABILITY CALCULATIONS**

Total Disability is payable for total wage loss and Partial Disability is calculated by deducting gross earnings your AWW to determine your wage loss and paying 2/3rds of the resulting wage loss, up to the maximum rate for the year of your injury.

**Example:** If your AWW at the time of injury was \$1,800 then  $\frac{2}{3}$ 's equals \$1,200. The maximum rate for the year 2019 is \$1,049. Therefore, you will only receive the maximum rate as your weekly benefit for total disability.

If you return to work and earn equal to or greater than your AWW then you will not receive partial disability. If you return to work but on a restricted basis due to the work injury and earn less than your AWW then you are should receive partial disability benefits.

**Example:** You return to work in a restricted capacity and earn \$600 per week (time of injury AWW was \$1,800 per week), then your wage loss is \$1,200 per week. You are entitled to Partial Disability Benefits of  $\$1,800 - \$600.00 = \$1,200$  multiplied by  $\frac{2}{3} = \$800.00$  per week of Partial Disability Benefits.

### **TAXES:**

Workers' Compensation wage loss benefits are not subject to income tax.

## **Medical Benefits:**

Reasonable and necessary treatment that is causally related to the work related injury. Medications, supplies, hospital treatment and services, orthopedic appliances, and prostheses are covered. (Rules apply to entitlement).

**Ask your doctor or provider before you get treatment, supplies or prescriptions.**

The Law provides for the amount that Medical providers are paid for services and Prescription Medication. You cannot be billed for any unpaid balance, EXCEPT, if you seek treatment outside of Pennsylvania.

## **Doctors**

You must treat with a "Panel Doctor" for 90 days. A list of six or more health care providers must be posted in your workplace. You must seek initial treatment with a posted provider and continue treatment with a posted

provider for a period of 90 days following the first visit. You may seek treatment from any provider listed and may switch between listed providers during the 90 day period. You must be advised in writing of your rights concerning medical benefits. The written notice of your rights and duties must be provided to you at the time of injury or as soon after the injury as is practicable. You may seek a second opinion regarding invasive surgery from another posted provider and the employer must pay for the second opinion. The right to a second opinion is your right, not the insurance company's right.

Treatment recommended as a result of a second opinion must be provided by a listed provider for the balance of the 90 days.

If you seek treatment from a "non-panel physician" without approval of the insurance company or referral by a panel doctor during the 90-day period then payment will be denied.

After 90 days of treatment, or if your employer did not post a list or posted an improper list, you may seek treatment with a health care provider of your own choice.

You must notify the insurance company of the provider you select. During treatment, the insurance company is entitled to receive monthly reports from your physician or provider.

The insurance company can require you to submit to examination by a doctor of their choosing. Called an IME (independent medical examination). Refusal may result in suspension of your benefits.

### **How long can I receive Benefits?**

Any wages earned or income received affects your entitlement to wage loss benefits. Total Disability benefits are of indefinite duration. **Partial Disability benefits are payable for a maximum of 500 weeks.**

You must report, in writing to the insurer, any information which is relevant in determining entitlement to, or amount of, compensation. For example, you must report any and all wages from another employer or from self-employment.

Your wage loss benefits can be stopped if you return to work at wages equal to or greater than your AWW and the insurance company filed a timely notice of that fact. You must receive this notice.

The insurance company can stop paying temporary compensation benefits during the 90 days following the report of injury, but you must be notified that benefits are being stopped and your claim is being denied.

Benefits may be terminated, suspended or modified by (1) signing a Supplemental Agreement, (2) signing a Final Receipt, or (3) by Order of a Workers' Compensation Judge.

Wage loss benefits are not payable during any period of incarceration.

### **Alternate Employment**

While you are disabled, your employer may offer you employment or seek to establish that employment is available to you, within your restrictions. If you decline any job offer, then your employer may petition to modify or suspend your wage loss benefits based upon the potential earnings of that job. A judge will evaluate medical and vocational evidence submitted by you and your employer to decide whether to modify or suspend your wage loss benefits.

Modifying wage loss benefits based upon alternate employment has significantly different rules for injuries occurring on or after June 24, 1996. For this summary, only rules for injuries after June 24, 1996 will be considered.

## **Funded Employment**

Your employer or the insurance company may contact organizations and agree to pay your wages if they hire you. These positions are considered valid offers of employment and your refusal of such a position will result in the suspension or modification of your weekly wage loss benefits. The job must be within your local area and within a reasonable commuting distance. A consideration of what is a reasonable commuting distance can be the distance you were willing to travel for your time of injury employment.

Also, considered is if the distance to the job is within the geographic area that others in the same community travel for work.

After any type of refusal by the employee, the employer may withdraw the offer and still seek a modification or suspension of wage loss benefits due to the refusal.

## **Time Limits**

Even if you think that your employer knows you suffered a work injury, you must give Notice of your work injury within 120 days after the injury. If you have given notice of your injury within the 120 day period then you have three years from the date of injury to file a Claim Petition.

In occupational disease cases, injury/disability must occur within 300 weeks from your last date of last employment in an occupation in which you were exposed to a hazardous substance. A petition for benefits must be filed no later than three years from the date of injury/disability.

**Failure to give Notice of Injury or to file a Petition for Benefits on a timely basis will result in loss of your right to benefits.**

## **Attorneys:**

You are not required to have an attorney but be aware that your employer and the insurance company will. Failure to know your rights and how to protect your rights is your responsibility. Discuss fees and cost arrangements with an attorney early, before problems arise to assure your protection.

## **Appeals:**

A Workers' Compensation Judge will decide your case and their decisions can be appealed to the Workers' Compensation Appeal Board and then to the Commonwealth Court and then to the Pennsylvania Supreme Court.

## **Fraud:**

**The Law makes the failure to inform the insurance company of earnings or income is Insurance Fraud and it is a Crime. You must complete all forms honestly to prevent being subject to the fraud provisions of the Law.**

## **Other Disability Benefits**

You may be eligible for Social Security Disability Benefits or a Disability Pension from your employer or union.

## **Additional Remedies**

If someone other than your employer is responsible, or even partly responsible, for your injury or disease, you may be able to sue that third party. The third party may be a manufacturer of unsafe equipment, or another contractor or its employee(s) that contributed to the cause of your injury.

## **COMMON QUESTIONS & ANSWERS**

### **How long do I have to file an injury claim?**

You must notify your employer (your foreman, your steward, or someone in charge) within 120 days of the date you are injured. Assuming you have notified your employer within 120 days, you have 3 years within which to file your claim.

### **How long do I have to go to the "company doctor"?**

You must treat with a doctor designated by your employer for 90 days from the date of initial treatment. After treating with a "company doctor" for 90 days, you may select a doctor of your own choosing for treatment.

### **Who are the "company doctors" ?**

Your employer is required to post or notify employees of a list of 6 panel physicians. If your employer does not post or notify you of the list of "company doctors", called panel physicians, then you may seek a doctor of your own choice.

### **Am I covered if I get hurt "off the clock"?**

Maybe, there is not an easy answer to this question. In general, you are not covered by workers' compensation benefits while traveling to and from work. Although there are some exceptions.

You are generally covered if you are "on-site", even if not actually clocked in. For example, if you arrive to work early to get your tools together for work, you are probably covered.

If you leave the work site at lunch for personal reasons and are injured then you are probably not covered.

A second example where you are probably covered is if you park in an employee designated parking area and are traveling from the parking lot to the job site.

**How long do I have to be off before  
I can collect lost wage benefits?**

You will not collect for the first week off, the first seven calendar days. You are eligible to receive wage loss benefits starting the 8th calendar you are unable to return to work. If you are unable to return to work after 14 calendar days then you will receive

the initial 7 days missed. For example, if your injury prevents you from returning to work for 1 to 7 calendar days, then you are not eligible for wage loss benefits for the first week. If your injury prevents you from returning to work for 8 to 14 calendar days then you are eligible for wage loss benefits for the second week. If your injury prevents you from returning to work for more than 15 calendar days, then you are eligible for wage loss benefits for the first, second and future weeks of missed work.

**What if I had an injury, returned to work, then got re-injured?**

Generally, an Aggravation of an old injury means you have a new claim. A Reoccurrence of the old injury means that you must re-open the old claim. This is a fine line that sometimes gets blurred, so it is often necessary to make both an old and new claim and let a Workers' Compensation Judge decide.

### **Can I sue my employer for my injury?**

No. Your employer is immune from a lawsuit, other than Workers' Compensation, except for extremely limited circumstances.

### **Can I make a claim for pain and suffering?**

No. A Workers' Compensation claim is for lost wages and medical expenses only. However, if there is some party other than you, your employer or a co-worker responsible for your injury, you may have the right to pursue a "third-party claim", which could include a claim for pain and suffering.

### **Can I be laid off or fired while I am on Workers' Compensation?**

Yes. An employer is not required to hold open your job while you are off due to injury. But, most employers will not lay off or fire an injured worker to maintain the ability to offer alternate work.

## **Can my employer force me to return to work before I'm able to return to my regular duties?**

Yes. The Law allows employers a wide range of control regarding return to work. An employer must first determine if alternate work exists with their company. The employer can offer, and even create, alternate work to match the restrictions of a doctor's release. If the employer does not have a position, then the insurance company may attempt to find you an alternate job. Refusal to accept a work offer or to cooperate with attempts to locate alternate employment may modify or suspend your wage loss benefits.

If you are contacted about returning to work and you are not sure what you are able to do, you should accept the position first with the statement that "you will do what you can".

**Refusal or delay** may jeopardize your benefits. If you are unable to do the duties requested then you must tell your employer you need assistance or simply that you are

unable to perform the duty and request other duties. This is a very complicated issue and the initial acceptance is only to prevent loss of benefits. You may still be unable to perform your duties or even the alternate duties. If so, you are entitled to be put back on wage loss benefits.

### **Can I receive payment for my travel expenses for medical treatment?**

You can receive reimbursement for travel expenses to and from medical treatment only if, the travel is for “non-local” travel. Generally, Local Travel is defined as the area to which people in your area travel for the type of treatment you are seeking. Such expenses include train or bus fares, auto mileage, tolls and parking. Keep a record of your mileage and the receipts for fares, parking and tolls. A copy of these records should be submitted with your request for payment

## **Can I refuse medical care?**

If a doctor recommends treatments, therapy, or an operation to “improve” your condition, and you refuse such treatment, your benefits may be in jeopardy. The Act requires that you accept reasonable medical treatment if it will improve your condition.

## **What if I am laid off after returning to work?**

If you have a physical impairment, limitations or restrictions due to a work-related injury, and then are laid-off, your Workers’ Compensation benefits should be reinstated.

**CHECKLIST OF FACTS:  
SEEK PROFESSIONAL ADVICE AT ALL  
STAGES OF YOUR CLAIM.**

- Report injury as soon as possible.
- 120 days to report injury.
- 3 years to file your claim.
- Seek treatment from a posted panel doctor or provider for the initial 90 days of treatment.
- Be accurate & detailed in your descriptions of what hurts and was injured. The doctor can't treat it, if he doesn't know it's hurt.
- You can change doctors if not satisfied to another posted provider.
- After 90 days of treatment with the panel doctor, you can pick your own doctor.

- Notify the employer of the doctor chosen.
- Keep the employer informed of your treatment.
- Keep your records in one place.
- Review documents from the insurer for accuracy.
- Social Security Old Age Benefits, Unemployment, and other pension benefits affect what you will receive from Workers' Compensation.
- Never sign any document without reading and understanding it completely.
- Supplemental Agreements and Final Receipts affect your benefits, beware before signing.  
**Do not sign** a final receipt if you are still treating or have pain or limitations due to the work injury.

- You must notify the employer if you have earnings while on Workers Compensation.
  
- Do not refuse employment.  
If you are unsure of being able to do the duties then let the employer know that you are willing to try the job. You can say no later, but if you say no first then the employer can claim you refused the offer in bad faith and modify or suspend your benefits.
  
- Do not settle claim without professional advice.

## NOTES

**SEEK PROFESSIONAL ADVICE AT ALL  
STAGES OF YOUR CLAIM.**

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