

INJURED ON THE JOB?

**A SUMMARY OF THE RIGHTS AND BENEFITS
AVAILABLE TO INJURED WORKERS
UNDER ILLINOIS LAW**

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INTRODUCTION

The law firm of **ANESI, OZMON, RODIN, NOVAK & KOHEN, LTD.**, has been in practice for more than 50 years concentrating in the area of personal injury and workers' compensation law. This includes claims based on work-related accidents, construction related accidents, faulty or defective products, maritime or other seamen rights, medical malpractice, automobile and other negligence based actions, social security law and employment related causes of action. During our more than 50 year history, a significant amount of our practice has been devoted to representing construction workers and building tradesmen.

In addition, members of our law firm have been elected to positions of leadership in numerous legal organizations including the Illinois Trial Lawyers Association, Workers' Compensation Lawyers Association, Association of Trial Lawyers of America, and the Chicago Bar Association. Our firm has many members selected as Illinois Super Lawyers, Leading Illinois Attorneys and Best Lawyers In America.

This handbook is intended to answer the most commonly asked questions of workers who are injured on the job. It is not intended to fully cover all questions relating to injuries suffered by workers. Laws can be complex and subject to change. The information contained in this handbook, although accurate when printed, may become inaccurate over time based upon legislative changes and court decisions. It is important to contact us if you have been injured, as we continually track the latest changes in the law.

Any person who needs information may call our office. We are ready to assist you in every way possible to obtain your benefits and protect all your rights under Illinois law. Our office phone number is (312) 372-3822 or (800) 458-3822. Our office hours are 8:30 a.m. to 5:00 p.m. on weekdays and 8:30 a.m. to 12:00 noon on Saturdays. We have foreign language interpreters available to assist during business hours. We also have a 24-hour answering service for our clients' convenience.

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A. OVERVIEW OF RIGHTS UNDER WORKERS' COMPENSATION

1. What Is Workers' Compensation?

Workers' compensation is a system of benefits provided for workers who sustain work-related injuries or diseases. The allowable benefits are established within the framework set by the Illinois Workers' Compensation Act and the Illinois Occupational Diseases Act. Generally, three areas of benefits are provided to workers who are injured on the job: (1) payment of medical bills; (2) compensation for time lost from work; and (3) compensation for the permanent effects of an injury or exposure.

2. Should I Consult With An Attorney?

It is important to consult with lawyers experienced in Workers' Compensation cases and "Third Party" cases. It is important that an experienced attorney looks at every aspect of your case to ensure that all of your rights are protected. Employers, insurance companies, and defense attorneys are skilled at handling claims, and you will be at a severe disadvantage if you attempt to deal with them on your own. The lawyers at **ANESI, OZMON, RODIN, NOVAK & KOHEN, LTD.** have been representing and protecting the working men and women of Illinois for over 50 years.

3. How Much Can My Attorney Charge Me For Handling My Workers' Compensation Claim?

Your attorney is limited to 20% of the gross amount recovered, in addition to the costs of the litigation paid by the attorney. However, there are some exceptional instances where the Illinois Workers' Compensation Commission or the Workers' Compensation Act determine the amount of fees to which the attorney is entitled.

Please remember, at **ANESI, OZMON, RODIN, NOVAK & KOHEN, LTD.**, we offer you a free initial consultation to evaluate your case and discuss fees.

B. PARTIES INVOLVED IN A WORKERS' COMPENSATION CASE

1. Who Is Covered Under Workers' Compensation?

Most workers in Illinois are covered under the Illinois Workers Compensation Act when they are injured on the job. There are a few exceptions, but the law does include all workers in the building trades.

2. Who Provides The Benefits?

Under the law, your employer is responsible to provide workers' compensation benefits. Often, your employer will have workers' compensation insurance to handle work-related injuries. An employer

may also pay the benefits directly or through a third party administrator. If an employer is uninsured, and fails to pay workers' compensation benefits, an injured worker may be entitled to recover from the Injured Workers' Benefit Fund. The Injured Workers' Benefit Fund consists of money obtained through penalties and fines collected by the State of Illinois from employers who fail to comply with the Illinois Workers' Compensation Act.

3. What Is Considered An Accident?

An accident is an event or circumstance that results in an injury for which benefits are payable. A single, definable occurrence will usually constitute an accident, but a repetitive injury or trauma developing over time may also be a compensable accident. Exposure to a hazardous substance on a one-time or recurring basis may also constitute an accident.

4. What is Considered a Compensable Injury?

The Illinois Workers' Compensation Act states that in order to be compensable, an injury must "arise out of and in the course of" employment. Generally, this means that the injury must have occurred while at work and as the result of a work-related activity.

5. If I Am Injured, What Should I Do?

An injured worker should immediately notify his or her employer. Under the law, an injured worker has 45 days to report a work-related accident. The sooner you notify your employer, the better. When you report your accident, it is important that you tell your employer how, when, and where you were injured.

C. MEDICAL BENEFITS

1. What Medical Benefits Am I Entitled To Under The Workers' Compensation Act?

An injured worker should insist on immediate medical attention for any injury sustained on the job. In Illinois, an injured worker is not required to treat with the company doctor. By law, you are entitled to see a doctor of your choice.

Please keep in mind that the discussion of treatment and "choices" below only applies to *non-emergency* treatment. Reasonable emergency treatment following an injury is compensable under the Act and is a separate matter from later, non-emergency treatment.

In Illinois, injured workers are allowed to treat with up to two doctors of their choice; however, if your employer has established an approved "Preferred Provider Program" ("PPP") for work injuries this "PPP" counts as one of your choices, *even if you decide not to use it*. **If your employer has established a "PPP," you only get one choice of doctor outside the program.** For this reason, it is extremely important to find out whether your employer has such a program in place when you are injured.

These “choices” are better defined as “chains of referral”. If an injured worker saw Dr. Red, then Dr. Red would be considered the injured worker’s first “choice”. For example, if Dr. Red refers the injured worker to Dr. Blue, then Dr. Blue would still be considered a part of the worker’s first “choice,” because Dr. Blue falls into Dr. Red’s “chain of referral.” If Dr. Blue refers the injured worker to yet another specialist, Dr. Green, then Dr. Green would also be in the first chain of referral.

Dr. Red (1st choice) —————> Dr. Blue —> Dr. Green

Anytime you see a doctor without a referral from one of the doctors in your first “choice” or “chain of referral”, this will constitute the beginning of a second “choice,” or chain of referral”.

If an injured worker exceeds his number of “choices” (one choice if the employer has a PPP, two if the employer does not), then the employer will not be held responsible for payment of any medical bills that arise from any of the additional choices of medical providers.

Although you are not required to treat with the company doctor, your employer does have the right to have you examined by a physician of its choice to determine if you are entitled to continuing weekly benefits, or in order to determine the extent of your permanent disability. This is often referred to as an “Independent Medical Examination” or a “Section 12 examination”.

You should not pay for medical treatment on your own, nor should you use any personal insurance, or union insurance plan. If you pay for the services of a medical provider by cash or personal check, your employer or the workers’ compensation insurance carrier should reimburse you.

2. How Do I Protect My Right To Medical Benefits?

An injured worker must file an Application for Adjustment of Claim with the Illinois Workers’ Compensation Commission to protect his or her medical benefits. If you do not file an Application for Adjustment of Claim with the Commission, your medical rights will only be held open for three years following the date of accident or two years from the last payment of benefits. If a claim is not properly filed within these time frames, all rights under the Workers Compensation Act end.

Your right to medical benefits may vary even after a claim is properly filed. If your claim is settled, you will likely be required to give up all future medical rights in exchange for that settlement. You will not be able to claim any future medical expenses against your employer if your medical rights are terminated in a settlement contract. There may be situations in which settlement can provide for an extension of your medical rights, but it is very important that you consult with an attorney regarding these special situations.

If an Application for Adjustment of Claim is properly filed with the Illinois Workers’ Compensation Commission, you will have the right to a hearing before an Arbitrator. If the hearing results in an award, your medical rights will remain open indefinitely. However, in order to pursue these rights, you

must establish by evidence that: (1) the medical treatment you are claiming is related to the original job injury; (2) the medical treatment you receive is reasonable and necessary; and (3) the medical cost is usual and customary.

3. Must The Employee's Doctor Send Medical Reports To The Employer?

Yes. The Workers' Compensation Act provides that the employer has a right to obtain medical records from the treating doctor, and upon written request, the treating doctor must provide full and complete reports to the employer. These reports are important because they inform the employer that the employee is unable to return to work. The employer may need these reports in order to authorize payment of weekly temporary total disability benefits, and to authorize medical treatment.

4. What if My Employer Refuses To Pay My Medical Bills?

If an employee informs a medical provider that a claim is on file at the Illinois Workers' Compensation Commission, the provider must cease all efforts to collect payment from the employee. While the claim is pending, the provider is allowed to send the employee reminders that the employee will be responsible for payment of the bill when the provider is able to resume collection efforts.

The provider may also request information about the status of the claim, and if the employee fails to respond, the provider can resume collection efforts. An attorney can make sure that your bills are not placed in collections while your claim is pending.

D. LOST TIME BENEFITS

1. What Benefits Am I Entitled To When I Am Off Work?

When a worker is disabled and cannot return to his or her job, that person is entitled to receive weekly benefits under the Workers' Compensation Act. These benefits are referred to as TTD (Temporary Total Disability) benefits. TTD benefits are paid at the rate of 2/3 of the employee's weekly wage averaged throughout the 52 weeks prior to the accident. These benefits have minimum and maximum amounts which are set by the State of Illinois. The minimum rate for TTD is 2/3 of the Federal minimum wage or the Illinois minimum wage, whichever is higher, multiplied by 40 hours. The percentage rate increases 10% for each spouse and child, not to exceed 100% of the total minimum wage calculation. The TTD rate cannot exceed the employee's average weekly wage.

The Act also precludes the inclusion of overtime when calculating average weekly wage. Under certain circumstances, however, overtime may be included. There are different methods used to compute an injured employee's average weekly wage. Having an experienced Workers'

Compensation attorney protecting your rights may, in some instances, increase the amount paid in TTD benefits by hundreds of dollars per week.

No benefits are paid for the first three days lost from work, unless the lost time continues for 14 days or more after the date of injury. If temporary total disability benefits are not paid within 14 days, and the employer cannot justify the delay in payment, the employer may be subject to penalties under the Workers' Compensation Act.

2. Are Workers' Compensation Benefits Subject To Income Tax?

The basic workers' compensation benefits are not subject to state or federal income tax.

3. How Long May I Receive Temporary Total Disability Benefits?

Temporary total disability benefits are those benefits paid while the injured worker is unable to return to his or her job in any capacity and is recovering from his or her injuries. These benefits are paid until the injured worker has been released to return to work or has completed a vocational rehabilitation program. There is no preset time frame for receiving these benefits.

4. What If An Employee Works At Two Jobs?

This is an important consideration for calculating the worker's average weekly wage. (See Section D, Question 1). The employee's temporary total disability rate is based upon a percentage of his average weekly wage. The average weekly wage is based on the combined income from both jobs, **if** the employer was aware of the employee's second employment **before** the accident occurred.

5. What If A Volunteer Firefighter, Volunteer Policeman Or A Civil Defense Member Is Injured?

In these particular cases, the temporary total disability rate will be based upon the average weekly wage at the employee's regular job.

6. What is Temporary Partial Disability?

Temporary partial disability (TPD) benefits are paid when an employee is working light duty on a part-time basis or full-time basis, and earns less than he or she would be earning if employed in the full capacity of the job or jobs. TPD is paid at 2/3 of the difference between the average amount that the employee would be able to earn if fully employed in the job he or she was working at the time of the accident, and the gross amount he or she earns in the new, modified job.

E. PERMANENT DISABILITY/DISFIGUREMENT BENEFITS

1. What Other Type Of Benefits Am I Entitled To After I Return To Work?

An employee may be entitled to recovery for the permanent impairment to the parts of the body which were injured in the work-related accident. This is a different type of recovery from that discussed in Section E, Question 9. This is sometimes referred to as a scheduled recovery or a specific loss recovery. If you sustain an injury to a part of your body such as the hand, arm or foot, you may be entitled to an award or settlement based upon the permanent partial disability which you have sustained to that part of the body. This disability is based upon a percentage loss of use of the part of the body that was injured. Although the Workers' Compensation Act sets forth a framework for computing this type of disability, it must be emphasized that the particular circumstances surrounding an injury are significant factors in determining the proper compensation which the injured worker should receive as a result of this injury. Factors such as occupation, age, inability to engage in certain kinds of work or activities, impairment of earning ability, skill, training, pain, stiffness, weakness, spasms and limitation of motion are just some of the considerations taken into account in determining the proper compensation for a specific loss recovery. Therefore, it is recommended that an attorney be consulted for an opinion regarding the benefits to which you are entitled because of the injury.

If the injury causes disfigurement to the hands, head, face, neck, arms, legs (*below the knees*) or chest (*above the axillary line*), an employee is entitled to compensation if the disfigurement is still evident six months after the injury. If this disfigurement is permanent, you may be entitled to benefits, not to exceed 150 weeks, at the permanent partial disability rate. (*See Section E, Question 2*). Again, the individual circumstances become important because the benefits for disfigurement are sometimes considered as an alternative to a scheduled award and under other circumstances the benefits are in addition to the physical impairment which is discussed above as a scheduled award or specific loss.

2. What Is The Amount Of Benefits That I Can Receive Under Permanent Partial Disability For Cases Of Disfigurement And Specific Loss Under The Workers' Compensation Act?

The benefit is computed by taking 60% of the average weekly wage, subject to certain minimum and maximum rates published by the State of Illinois, and multiplying that figure by a certain number of weeks designated to that part of the body by a schedule outlined in the Workers' Compensation Act. Disfigurement is compensated by awarding a certain number of weeks dependent upon the severity and location of the scar or other abnormality.

3. What If I Already Had Total Loss Of An Eye Or A Member And, After An Injury On The Job, I Sustain The Total Loss Of A Second Eye Or Member

In this situation, you are entitled to total permanent disability benefits for life. These benefits are paid at the temporary total disability rate referred to in Section D, Question 1. Your employer must pay you for the total loss of use of the second eye or member as set forth in the schedule within the Workers' Compensation Act. After the payments have been completed as required for the 100% loss of use of the eye or member, then the State of Illinois takes over, and you are paid total permanent disability benefits for life through a statutorily created Second Injury Fund. These benefits should continue whether or not you are still able to work. This is commonly referred to as a "statutory" total permanent disability.

4. Is A Loss Of Hearing Compensable?

Yes. If permanent hearing loss results from sudden trauma or event, compensation is determined by specific provisions in the Workers' Compensation Act. If hearing loss came from prolonged exposure to noise, the injured worker may also be entitled to benefits under the Act. The worker must show exposure to defined levels of noise over specific periods of time.

5. Is Carpal Tunnel Syndrome Compensable?

Yes. However, keep in mind that a worker claiming carpal tunnel syndrome due to repetitive injury must still prove the injury "arises out of and in the course of" his or her employment. As of the Amendments to the Workers' Compensation Act in 2011, there are special rules that apply to permanent disability compensation for repetitive carpal tunnel syndrome claims where the date of injury is after June 28, 2011. These special rules set strict maximum limits for permanent disability compensation.

6. What If I Go Back To Work After Receiving An Award Of Total Permanent Disability?

Unless you had a "statutory" total permanent disability award (*see Section E, Question 3*), if you recover sufficiently to return to work, your employer may file a petition for an order terminating your total permanent disability benefits. You may still be able to seek compensation for any remaining partial disability.

7. What Type Of Death Benefits Are Provided For Under The Workers' Compensation Act?

The Illinois Workers' Compensation Act provides benefits to certain surviving relatives and dependents of employees whose death is work related. The survivors must fall into one of the four classes: (1) widows, widowers and certain children of the employee (under 18, or under 25, if a full-time student at an accredited educational institution or a child, regardless of age, who is physically or mentally incapacitated); (2) parents totally dependent upon the earnings of the employee; (3)

partially dependent children who otherwise do not meet the requirements above and partially dependent parents who do not meet the requirements above; and (4) grandparents and grandchildren who are 50 percent or more dependent upon the earnings of the deceased employee.

The benefits payable are based on 2/3 of the employee's average weekly wage with certain minimum and maximum benefits limits by the State of Illinois. The total amount to be paid to entitled dependents is \$500,000 or 25 years of benefits (paid on a weekly basis), whichever is greater. (For example, if the injured worker was earning \$900 per week, then the death benefit payable to his widow or other dependents would amount to \$600 per week. This would result in a total payment of \$780,000 over 25 years, rather than the \$500,000.)

If the surviving spouse remarries, the spouse may then be limited to a lump sum payment equal to two years of compensation benefits.

These death benefits may be supplemented by payments made from the Rate Adjustment Fund. The surviving dependents are also entitled to reimbursement for burial expenses subject to certain limitations.

8. Can An Employee Be Fired?

The Illinois Supreme Court has held that an employer cannot fire an employee for pursuing a claim under the Illinois Workers' Compensation Act. If an employer fires an employee for that reason, it may give rise to a separate claim which must be brought in a court of law. However, an employer may still fire an employee for reasons other than simply filing a workers' compensation claim. The termination of the employment after a work injury does not affect benefits due under the Workers' Compensation Act.

9. What If I Am Injured, Disabled, And Cannot Return To My Former Job?

The Workers' Compensation Act requires that your employer pay for vocational rehabilitation. This means that the employer must not only pay for the medical care which you need for treatment of your injuries, it also must provide vocational rehabilitation. In some circumstances, this could require the employer to pay for a vocational expert who has experience in assessing the job market for workers who are unable to go back to their former type of work, and help place the injured worker in suitable new employment. In other circumstances, vocational rehabilitation could require the employer to pay to retrain the employee for some other occupation. In some special cases, it could mean that the employer should pay for further education. However, employees must reasonably cooperate in a rehabilitation program, or risk losing their benefits.

10. What If My Injury Prevents Me From Returning To My Previous Job And I Return To Work At A Job Making Less Money?

The Workers' Compensation Act protects the injured worker if an injury prevents the worker from returning to his previous job and causes a loss in earnings. When this occurs, a worker must decide

if it would be beneficial to pursue a wage loss claim. The Act provides that an employee is entitled to 2/3 of the difference between the average amount which he would be able to earn in the full performance of his old job and the average amount which he is earning or able to earn in some suitable new job, subject to certain maximums set by the State of Illinois.

For injuries occurring on or after September 1, 2011, an award of wage loss benefits lasts until the employee reaches the age of 67, or for 5 years, whichever ends later.

However, once workers choose to pursue their recovery under a wage loss theory, they are precluded from recovering under the specific loss or scheduled award provisions of the law which are discussed in Section E, Question 1. A worker cannot recover under both theories. It is recommended that a choice be made only after careful consideration of these alternatives with an attorney experienced in workers' compensation law.

F. ADDITIONAL BENEFITS

1. If I Am Injured At Work, Do I Have The Right To Sue Anyone In A Court Of Law?

Generally, you cannot sue your employer. In order for you to pursue your rights under the Workers' Compensation Act for a work-related injury you must proceed before an administrative agency known as the Illinois Workers' Compensation Commission. However, the Illinois Workers' Compensation Act does allow an employee to sue his or her employer in civil court if the employer knowingly fails to comply with the insurance coverage requirements of the Act. In this situation, an employee can pursue a civil action against the employer for his or her injuries, and the employer will not be allowed to defend the case by arguing that the employee or a co-employee were at fault.

In addition to a workers' compensation case against your employer, you have a right to pursue other legal remedies against any other party who may have contributed to your job-related injury. Such rights would include a lawsuit because an owner or a contractor was negligent, a manufacturer had responsibilities under products liability law, or someone else negligently operated machinery, vehicles or automobiles, or perhaps even a doctor committed malpractice in the medical treatment rendered.

You may have heard the term "third party case". That phrase refers to cases in a court of law against entities other than your employer. There are times when an on-the-job injury will give rise to a third party lawsuit.

Workers at construction sites are often injured under circumstances which may create additional rights and remedies (a third party case) which need prompt attention and protection. Investigation of the facts by an experienced law firm (including such things as on-site investigation, photographs and

interviewing witnesses) is crucial to the preservation of evidence. This is especially true since the potential "third parties" will be doing their own investigation immediately after the accident.

The law firm of **ANESI, OZMON, RODIN, NOVAK & KOHEN, LTD.** has many experienced lawyers involved in the practice of third party cases.

2. If I Am Receiving Workers' Compensation Benefits, May I Also Receive Social Security Disability Benefits?

Yes. However, there are offset provisions within the Social Security Act which may reduce your Social Security disability benefit if you are also receiving workers' compensation benefits.

G. ILLINOIS WORKERS' COMPENSATION COMMISSION

1. Who Administers The Law?

The Illinois Workers' Compensation Commission is the state agency responsible for administering and enforcing the compensation law. The Illinois Workers' Compensation Commission resolves disputes between the parties. These disputes usually involve the employees' claim for benefits and the amount of those benefits. In hearing these claims, the Workers' Compensation Commission has two tiers: one ("Arbitration") for the initial hearing to resolve disputes; and the other ("Review") rules on the appeals from Arbitration.

2. When Must A Claim Be Filed For Injuries With The Illinois Workers' Compensation Commission?

In order to protect your rights under the Illinois Workers' Compensation Act, an Application for Adjustment of Claim must be filed with the Illinois Workers' Compensation Commission. This document must be filed within three years of the date of the accident, or two years from the last date of payment of compensation benefits, whichever date is later. Special filing requirements apply to occupational disease claims.

3. Can The Payment Of My Medical Bills Extend The Statute Of Limitations And The Filing Of My Claim?

The payment of medical benefits may be considered compensation for the purpose of extending the time for filing a claim. However, once the time for filing a claim has passed, future payment of medical benefits will not permit you to file a claim.

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