

**The Law Firm of**  
***Steiner, Segal,  
Muller & Donan***

**What You Need  
To Know About  
Pennsylvania Worker's  
Compensation Benefits**

***Representing Injured Workers  
in Pennsylvania for over 25 years!***

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## ***WHAT IS WORKER'S COMPENSATION?***

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If you are unable to Work because of a job injury or a work-related illness, Pennsylvania's worker's compensation takes care of your medical expenses and pays wage-loss compensation benefits until you are able to go back to work. Death benefits for work-related deaths are paid to your dependent survivors.

Benefits are paid by private insurance companies or the State Workmen's Insurance Fund (SWIF), a state-run insurance company, or by employers themselves if they are an approved self-insured.

## ***ARE YOU COVERED?***

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Nearly every Pennsylvania worker is covered by the Pennsylvania Workmen's Compensation Act. Employers must provide workers' compensation coverage for all of their employees, including seasonal and part-time workers. Non-profit corporations, unincorporated businesses, or even employers with only one employee, must comply with the Act's requirements, and coverage is mandatory.

## ***WHAT IS COVERED?***

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If your work duties or environment causes or contributes to any injury, illness, or disease, you may be entitled to workers' compensation benefits. Even a pre-existing injury or illness that is aggravated by your work may be covered under the law.

## ***WHEN AM I COVERED?***

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Coverage begins on the date of hire and continues so long as you are employed.

## ***WHAT ABOUT AN OCCUPATIONAL DISEASE?***

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Occupational diseases are covered if caused by or aggravated by the duties of your employment. Your disability must occur within 300 weeks of your last employment in an occupation where you were exposed to the hazard.

For certain lung diseases, you must have worked in an occupation with a silica, coal, or asbestos hazard for at least two years during the ten years prior to your disability.

Diseases which are common and particular to an industry or business are also covered.

## ***HOW DO I GET THE BENEFITS?***

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Prompt Reporting is the Key. Report any injury or work-related illness to your employer or supervisor immediately. You must tell your employer that you have an injury or illness and that it is work related. Once you have lost a day or shift of work, your employer is required to report your injury to the Bureau of Workers' Compensation through the filing of an Employer's Report of Occupational Injury or Disease.

## ***WHAT ARE THE BENEFITS?***

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The law provides several types of workers' compensation benefits:

### ***1. PAYMENT FOR LOST WAGES***

Wage-loss benefits are paid for total disability and partial disability. Total disability benefits will be paid so long as it is determined that you are totally disabled. Partial disability benefits are paid if you return to work at a lower paying job due to work-related injury restrictions or if your disability is converted to partial status. If the injury results in death, surviving dependents may be entitled to benefits for various periods of time depending on the dependent's age and marital status.

### ***2. SPECIFIC LOSS BENEFITS***

If you have lost the use of all or part of your thumb, finger, hand, arm, leg, foot, toes, sight, hearing, or have a permanent scar on your face or neck, you may be entitled to a specific loss award of money benefits which is payable even if you do not lose any time from work.

### ***3. MEDICAL CARE***

In the event of a work-related illness or injury, you are entitled to the payment of reasonable and related surgical and medical services rendered by a physician or a duly licensed practitioner of the healing arts.

Medicine, supplies, hospital treatment and services, orthopedic appliances, and prostheses and travel expenses (under some circumstances), are also covered for as long as they are reasonable and necessary, even if you have not lost time from work. There is no deductible and all costs are normally paid directly by your employer's worker's compensation carrier to the medical provider.

## ***DO I HAVE A CHOICE OF DOCTOR?***

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If your employer has posted a list of six or more physicians or other duly licensed practitioners of the healing arts in your work place, then you are required to choose one of them for initial treatment. You may treat with that practitioner or another on the list for a period of 90 days following the first visit. If, during the 90 day period, you visit other medical practitioners not on the list, your employer or your employer's insurance carrier can refuse to pay for such treatment. After 90 days, as well as in situations where your employer had no list posted, you may seek treatment with any physician. You should notify your employer of the practitioner you have selected. During treatment, the employer or the employer's insurance carrier is entitled to receive monthly reports from your physician or practitioner. Your employer or its insurance carrier has the right to have you examined periodically by a physician of their choice.

## ***HOW MUCH ARE THE LOST WAGE PAYMENTS?***

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Disability wage-loss benefits are equal to approximately two-thirds of your average weekly wage, up to a maximum set by the State. The law does not allow for a cost of living increase. There are several different ways of calculating the average weekly wage under the Act. The employee is entitled to the most favorable calculation.

Worker's Compensation Payments are Currently Tax Free. In addition, there are no deductions taken from your benefits for social security, union, retirement fund, or pension plan benefits.

## ***WHEN ARE THE LOST WAGE PAYMENTS MADE?***

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If you report the injury promptly and you miss more than seven days of work and your claim is accepted by the insurance carrier, you should receive your first compensation check within 21 days of your absence from work. After that, you will receive a check as regularly as you received your wages prior to the injury, until you are able to go back to work. There is a seven day waiting period for wage benefits, although medical benefits are payable from the first day. However, being off from work due to your injury for more than 13 days, payments will be made for the first seven days.

## ***WHEN DO LOST WAGE PAYMENTS STOP?***

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Wage-loss benefits can only be stopped under these defined circumstances:

- (a) By a Worker's Compensation Judge after a hearing;
- (b) If the employee signs an "Agreement to Stop Worker's Compensation" (commonly referred to as a Final Receipt) which terminates benefits, or you sign a "Supplemental Agreement" form which may, under some circumstances, suspend or terminate workers' compensation benefits.

(c) When you return to work at your prior wages and the employer files a petition to terminate or modify or files a notice of stopping of benefits.

(d) After the 500 week period of partial disability expires.

## ***ARE THERE ANY TIME LIMITS?***

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If your request for workers' compensation benefits is denied by your employer or your employer's insurance carrier, 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 the date of last exposure and a petition must be filed no later than 3 years from the date of injury/disability.

Failure to file a petition on a timely basis may result in forfeiture of your right to benefits.

If past workers' compensation benefits were terminated, you have three years from the last payment of lost wage benefits to reopen the claim. If your benefits were suspended, you have 500 weeks to file for a reopening.

Payments of medical benefits by your employer does not mean that your claim has been accepted or reopened and will not automatically extend the time limits for filing a claim.

## ***WHAT CHANGES WERE MADE TO THE WORKERS' COMPENSATION ACT IN JUNE OF 1996?***

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**I. New provisions that apply to Workers' Compensation Benefits for employees injured or exposed to an occupational disease on or after June 24, 1996.**

(a) Workers' compensation wage-loss payments can be offset by 50% of any "old age" Social Security benefit the worker receives, unless he/she was receiving that old age Social Security benefit prior to the injury.

(b) Workers' compensation wage-loss payments are offset by severance payments paid by the employer and retirement pension plan benefits to the extent funded by the employer.

(c) Unemployment compensation received during the period of disability continues to reduce workers' compensation wage-loss benefits and is to be reported by the employee.

(d) Wages received through employment and self-employment while on disability also reduced the amount of workers' compensation benefits. Employees are required to report any of the above "income" to their insurance carrier if it is received after the date of injury, and also to authorize a verification of Social Security benefits received. Employees

have up to 30 days to report this information after filing a petition or receiving workers' compensation wage-loss benefits. False reporting can lead to penalties and criminal sanctions.

(e) Injured workers in a total disability status for an injury occurring on or after June 24, 1996 can be required by the insurer or self-insured employer to submit to a medical examination within 60 days after the end of the first 104 week period. In this examination, the worker's degree of impairment which is due to the compensable injury is determined pursuant to the most recent edition of the American Medical Association's "Guide to the Evaluation of Permanent Impairment." If the result is that a worker is not determined to reach the 50% level of impairment, insurers can shift employees to partial disability status which has a 500 week maximum duration. Insurers must provide a 60 day notice of this modification of benefit status. If it is determined during the 500 week partial disability period that the employee meets the 50% impairment level, the employee can appeal to the Bureau of Workers' Compensation to be placed on total disability benefit status. The doctor chosen for the examination must be jointly chosen by the parties or one designated by the Bureau of Workers' Compensation.

(f) Partial Disability Status. When calculating the amount of wage-loss benefit for injuries occurring on or after June 24, 1996, employees are entitled to 662/3 of their pre-injury average weekly wage (within the maximum statewide average weekly wage allowance and minimum restrictions) which can be reduced by the "earning power of the employee." This earning power is the amount the employee is earning after the injury or what the person could be earning if working in his/her local area, at jobs available within the medical restrictions imposed as a result of the injury. An "Expert" in vocational rehabilitation must present evidence of available employment to establish earning power. For those living outside Pennsylvania, the usual employment area is that where the injury occurred.

(g) Employers must offer job openings to injured workers. This applies to any specified vacancy for which their injured worker is qualified and capable of performing.

(h) The method of calculating average weekly wages used to determine the employee's weekly wage-loss benefit level was changed. Wages for these calculations include employer-provided room and board, and bonus/incentive pay and vacation pay earned on an annual basis. Gratuities (tips) reported for federal tax purposes are calculated as earnings.

## II. Agricultural Exemptions

Employers of agricultural labor must provide workers' compensation coverage to their employees if, during the calendar year, they pay more than \$1,200 to one person or employ one person for 30 days or more. A spouse or child is exempt unless they work under a written contract. A copy of the contract must be filed with the Bureau of Workers' Compensation.

### III. Imprisonment After Conviction and Change of Status

Employers/insurers are not required to make compensation payments to claimants during imprisonment.

(a) Total disability benefits are not payable to those employed or receiving wages. (They may instead qualify for partial disability status benefits which have a 500 week limit).

(b) No workers' compensation wage-loss benefits are payable while employees are receiving wages equal to or greater than their pre-injury earnings.

### IV. Employers Who Have a List of Six Designated Medical Providers on or after August 23, 1996.

No more than four of the medical providers may be supplied through a coordinated care organization (CCO).

Employees must treat with one or more of the listed providers for 90 days following their first visit after injury.

If invasive surgery is prescribed by a list medical provider after August 23, 1996, employees may obtain a second opinion from a medical provider of choice at the employer's expense. Employees who decide to follow the course of treatment prescribed by the second opinion must do so for an additional 90 days through a medical provider on the employer's list.

### V. Disputes About Medical Bills

There can be disagreements between insurers and medical providers about the medical bill.

### VI. Utilization Review

Utilization reviews have only one step. The reconsideration step has been eliminated as of August 23, 1996. Further disputed issues of the reasonableness or necessity of medical treatment must be petitioned for a decision by a Workers' Compensation Judge. The petition must be filed within 30 days of receiving the initial utilization review organization report. During the dispute the employer is not required to pay the medical bills. This provision has been declared unconstitutional by a Federal Court and may be eliminated.

### VII. Certification of Coordinated Care Organizations (CCO's)

Responsibility for providing certification of CCO's was transferred from the Department of Health to the Department of Labor and Industry effective August 23, 1996.

### VIII. Employment and Receipt of Wage-loss Benefits

Employees receiving worker's compensation wage-loss benefits or filing a petition for these benefits on or after August 23, 1996 are required to notify their insurer in writing, if they are employed or self-employed. Every six months, insurers can require a verification that an employee's status to receive compensation has not changed.

## **IX. Physical Examinations or Expert Interviews**

Physical examinations or expert interviews can be requested by insurers for anyone seeking worker's compensation on or after August 23, 1996. Insurers must pay for these services. Employees can take a health care provider of their choice to the examination, but they have to pay for the attendance of their provider. The insurer must pay for the employee's reasonable travel expenses and loss of wages if the examination is ordered by a Worker's Compensation Judge.

## **X. Informal Conferences**

On or after August 23, 1996, informal conferences may be requested by joint agreement to the Bureau of Workers' Compensation, if a petition has been filed. A Workers' Compensation Judge or hearing officer will hold the informal conference in a confidential manner. If the employee is not represented by an attorney at the informal conference, the employer/insurer cannot have an attorney represent them. If an agreement is not reached, the petition is heard in the normal fashion.

## **XI. Temporary Compensation**

On or after August 23, 1996, the insurer or self-insured employer can temporarily make benefit payments for up to 90 days without admitting liability. Payments will continue unless a Stopping Notice and Denial form is issued within the 90 day period from the injury.

## **XII. Cessation of Benefits/Return to Work**

If an employee has returned to work at or above his or her prior earnings level, workers' compensation payments can be suspended, if the Bureau of Workers' Compensation and employee are notified within seven days of the insurer/employer's stoppage of payments. Employees have 20 days from their receipt of this notice to challenge the suspension of benefits. (Effective August 23, 1996).

## **XIII. Modification of Benefits/Return to Work**

If the employee has returned to work, the employer can modify (reduce) the workers' compensation payments by an appropriate amount if they mail notification to the employee and the Bureau of Workers' Compensation within seven days of modifying compensation with an affidavit attesting to this fact. The employee can challenge this matter by so indicating on the notification form and filing such with the Bureau within 20 days of receiving the modification notice. (Effective August 23, 1996).

## **XIV. Supersedeas Hearing**

The insurer/employer can send to the Bureau of Worker's Compensation a Physician's Affidavit that the employee has fully recovered, based on an examination (conducted) within 21 days of filing the petition to terminate payments. The Worker's Compensation Judge must then hold a special expedited hearing and decide if worker's compensation payments will be stopped. (Effective August 23, 1996).

## **XV. Workers' Compensation Judge Decisions**

Workers' Compensation Judges have to explain their reasons for rejecting competent and uncontroverted evidence when writing their decision. Judges must also meet new qualification standards to be hired, must complete 20 hours of added training per year, and must meet extensive ethical requirements.

## **XVI. Delays in Litigation**

Excessive or unreasonable delays by employers/insurers can lead to higher penalties of up to 50%. The penalty is paid to the person receiving compensation.

## **XVII. Compromise and Release Agreement**

When a petition is before a Worker's Compensation Judge, the parties can enter into a Compromise and Release Agreement (settlement). Both parties must agree to the terms of the agreement and the Judge must approve it.

## **XVIII. Collective Bargaining Agreements**

Employers and unions can, by their collective bargaining agreement, define added workers' compensation provisions and procedures for their covered members and employees.

## ***DO I HAVE TO GO TO COURT TO GET BENEFITS?***

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If you and your employer or its insurance company cannot agree on the payment of benefits to you for any claim, then the matter should go into litigation in front of a Worker's Compensation Judge. After a trial the Worker's Compensation Judge will issue a decision either granting or denying you workers' compensation benefits. Workers' Compensation Judge decisions can be appealed to the Workmen's Compensation Appeal Board and then to the Commonwealth Court.

## ***WHAT CAN I DO IF THERE'S A PROBLEM?***

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If you think you haven't received benefits due you, contact your employer or your employer's insurance carrier. The insurance carrier is allowed 21 days from your notice to the employer of your work-related disability to decide to accept or deny your claim.

If the problem still hasn't been resolved, it may be necessary to see a lawyer and file a petition with the Bureau of Workers' Compensation. Forms can be obtained through the Hotline at 1-800-482-2383 or (TDD) 1-800-362-4228 for people with a hearing loss. The Bureau is responsible for assigning petitions to a local Worker's Compensation Judge.

## ***DO I NEED AN ATTORNEY?***

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Workers' compensation litigation is complex and your employer or your employer's insurance carrier will be represented by an experienced attorney. In order to have the best chance of winning your case, **YOU SHOULD HIRE** a worker's compensation lawyer. Any fee that you agree to pay to the lawyer must be approved by a Workers' Compensation Judge or the Workmen's Compensation Appeal Board. Usually the fee is contingent on the lawyer getting you benefits.

*If you believe you became injured or sick because of your workplace or If You're Receiving Benefits for a work injury...You need our FREE ADVICE!*

**Worker's  
Compensation  
Law**

*Lump Sum Resolutions & Settlements*

*Aggravation of Previous Injuries*

*Bone & Spinal Disorders*

*Social Security Disability Claims*

*Heart Attacks and Heart Disease*

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*Hearing Loss Claims*

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*Asbestos & Toxic Substance Illness*

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