

THE INJURED WORKER

Who is entitled to workers' compensation benefits?

If you have an injury or illness caused by your job you may be entitled to workers' compensation benefits, which are provided for you at your employer's expense. The injury or illness may result from a single incident or from repeated or prolonged exposure to activities or substances at work.

With only a few exceptions all California employers are subject to State Workers' Compensation laws. Most workers receive workers' Compensation laws. Most workers receive workers' compensation benefits from their employers' insurance company. The rest receive benefits directly from employers who are self-insured.

Federal employee and persons covered under federal legislation have other benefits programs and should contact the United States Department of Labor.

Some unions have negotiated "carved out" agreements to handle workers' compensation injuries outside the workers Compensation system. Union members should check with their unions to make sure they do not fall into the exception.

How to I apply?

The first step is to report the injury or illness to your employer.

Your employer should give you a claim form within one working day after receiving notice of your injury/illness.

If your employer does not give you a claim form, you can obtain one by visiting any Division of Workers Compensation (DWC) office or by calling a toll free number 1-800-736-7401. The recorded information that you will receive by calling this number will allow you to leave your name and address to request any forms or printed information that you may need.

- Complete the claim form and give it to your employer.
- Your employer should give you a dated and signed copy of the claim form and send a copy of this form to their worker's compensation insurance company.

What happens if my employer has not insurance?

If your employer does not have workers' compensation insurance and is not self-insured, your benefits may be paid through the Uninsured Employers Fund. It is important that you contact an attorney or an Information and Assistance officer if you suspect that your employer is illegally uninsured.

How is my disability determined?

Permanent disability can be evaluated only after your doctor or a medical evaluator decided that your condition has reached maximum medical improvement (MMI) and further change is not likely. At that time your condition has become permanent and stationary and a medical evaluation can be done by either the treating doctor or a Qualified Medical Evaluator. QMEs are independent medical evaluators certified by the California Industrial Medical Council.

The treating doctor or QME will determine the percentage of your permanent disability, which depends on a formula that includes your permanent impairment or limitations (if any), your age, and occupation. The rates for permanent disability benefits range from \$70 to \$840 per week, depending on the date of injury, your wages, and the final permanent disability rating.

The DWC information and Assistance officer can help you select a Qualified Medical Evaluator.

The industrial Medical Council (IMC) has a pamphlet Your Medical Evaluation. You can contact the IMC at (415) 737-2769 for a copy.

Vocational Rehabilitation

If you were injured before 1/1/04 and you cannot return to your job because of your injury/illness, you may be entitled to vocational rehabilitation benefits that can help you return to work. For injuries occurring on or after January 1, 1994 and before 1/1/04 there is a \$16,000 limit on this benefit. A publication explaining vocational rehabilitation benefits can be obtained from the DWC Information and Assistance office.

For injuries occurring after 1/1/04 you may be entitled to a training voucher to aid you in your return to work.

Death Benefits

In the case of a fatal industrial injury/illness, a death benefit may be paid to the qualified surviving dependents. A separate allowance is given for reasonable burial expenses up to \$5,000 depending on the date of death and the number and type of dependents.

May I go to a doctor of my choice?

If prior to your injury you notified your employer in writing of the name of your doctor and your doctor signed an agreement to treat you, your doctor may treat you for injuries requiring more than first aid. The doctor must have treated you previously and have your medical history and record.

If you have not given such notice prior to your injury, your employer is responsible for arranging medical treatment for the first 30 day after your injury. You may also be required to treat within your employer's Health Care Organization (HCO) or Medical Provider Network (MPN).

In case of an emergency, you may choose your own doctor for treatment of your work-caused injury or illness. Other rules may apply to your case. For example, if your treatment is through a

state certified health care organization; your choice of treatment outside that organization may be more limited.

What should I do if there is a dispute?

Contact the person who is handling your claim. Very often misunderstandings and oversight can be quickly corrected by discussing your situation with the person assigned to handle your claim.

Contact the DWC Information and Assistance Office nearest you (see phone number of Information and Assistance Offices at the end of this pamphlet).

Information and Assistance Officers are workers' compensation specialists with the State of California. They are not attorneys and cannot give you legal advice, but they can answer many of your questions and can assist you in resolving disputes.

If a serious dispute occurs over your workers' compensation benefits, you may wish to retain an attorney. Attorney fees will generally be deducted from any amount you receive in an award or settlement.

Can I take my claim to civil court?

Normally, you may not bring any civil action against your employer for your industrial injury/illness. The California Workers' Compensation Appeals Board has exclusive jurisdiction over such disputes. If you believe a person other than your employer is responsible for your injury, you may be able to seek payment from that person in a civil court.

What other rights do I have?

Workers' compensation laws prohibit discrimination against you for:

- Filing an application for adjudication of claim.
- Receiving a rating, award, or settlement.

If you feel you have been discriminated against in any of the above ways, you may file a claim for discrimination before the Workers' Compensation Appeals Board.

What are Workers' Compensation Benefits?

Medical Care:

You will receive medical treatment that is reasonable and necessary to cure or relieve you from the effects of a work-caused injury or illness. This includes physician's services, hospitalization, and physical restoration, necessary and reasonable care ordered by your physician. There are no deductibles. The total cost of medical care is paid directly by employers and their insurance carriers. In workers' compensation law the term physician is defined to include physicians and surgeons, psychologists, optometrists, dentists, podiatrists, acupuncturists, and osteopathic and chiropractic practitioners licensed by California Law.

All requests for treatment must be evaluated by the insurance carrier's Utilization Review provider. They have 14 days to authorize or deny medical treatment.

Temporary Disability Benefits:

If your physician confirms that you cannot work because of your work caused injury or illness, you are eligible for disability benefits. You will not be paid for the first three days off work after an injury, unless you are off work more than 14 days or you are hospitalized overnight. Payments continue until your physician releases you to return to work or decides that your condition has reached a point of maximum improvement....

The weekly rate for temporary disability benefits is established by state law and is usually based on two thirds of your gross weekly wages. The maximum weekly benefit is \$336 per week for injuries, which occurred on or after January 1, 1991. The minimum weekly benefit is \$126 or your actual wages if your wages were less than \$126 per week. For injuries occurring on or after July 1, 1996, the maximum weekly amount is \$490. For injuries occurring on or after 1/1/03, the maximum amount is \$602. For injuries occurring on or after 1/1/04, the maximum amount is \$728. For injuries occurring on or after 1/1/05, the maximum amount is \$840.

If your physician allows you to return to part-time or modified work while you are still recovering from your injury or illness, and you are receiving less than your usual earnings; you may be entitled to temporary partial disability payment.

Permanent Disability Benefits:

If your injury or illness results in permanent impairment that reduces your ability to compete in the job market, you may be entitled to permanent disability benefits, if you believe that this applies to you, you should first discuss the nature of your disability with your doctor. Then you can discuss your eligibility for preeminent disability benefits with your employer or the insurance company. In addition, under the Federal Americans with Disability Act (ADA), employers with 25 or more employee (15 or more after July 26, 1994) are prohibited from discriminating against "qualified individuals with disabilities". More information on ADA is available by calling the Equal Employment Opportunity Commission at (800) 669-3362.

The State Fair Employment and Housing Department administers California laws, which prohibit harassment or discrimination against you. If you want more information, the phone number is -1-800-884-1684.

Social Security Disability Benefits:

You may also be eligible for Social Security Disability benefits. In order to be eligible to apply for Social Security disability benefits, you must have not worked from one (1) year, or have a doctor's opinion that you will not be able to work for at least one (1) year. You must be physically unable to work at any job, not just the job you were doing at the time of your injury. It normally takes one to two years to get the benefits in place.

Applications can be obtained at the Social Security Administration, 280 South First Street, Second Floor, San Jose, and CA 95113 or at your local social Security office.

Over the past few months my clients have asked many questions about benefits separate and distinct from workers' compensation benefits. Many other funds exist which could provide assistance to people with disabilities. The most common benefit that my office sees and deals with however is Social Security Disability.

As a general rule if you have been out of work for more than a year you probably should be heading to the social security office to apply for this benefit. Although the system can be time consuming and complex the initial paperwork usually can be completed without an attorney. If for any reason you have trouble navigating the process you could seek representation from an attorney either in my office or elsewhere.

If you qualify you can get those benefits at the same time you receive workers' compensation benefits and they come in addition to workers' compensation benefits. Some issues necessarily become more complicated but in almost all circumstances this benefit helps the disabled worker with their monthly expenses. The SS administration does not charge for the application for benefits. If retroactive active benefits are awarded the attorney will be paid a fee out of those benefits and then usually directly from the Social Security administration.

To get a printout of their Social Security benefits:

- 1- Go to Social Security office and ask for Copy OR
- 2- Call Social Security at 1-800-772-1213 and ask for email or fax copy OR
- 3- Go to: <http://www.socialsecurity.gov/agency/contact/> and email the social security office.

Subsequent Injuries Benefits Trust Fund

The Subsequent Injuries Benefits Trust Fund (SIBTF) is a source of additional compensation to injured workers who already had a disability or impairment at the time of injury. For benefits to be paid from the SIBTF, the combined effect of the injury and the previous disability or impairment must result in a permanent disability of at least 70 percent.

This procure is intended to answer the most frequently raised questions and may not necessarily contain a solution to your particular problem. The specific facts of your situation may result in interpretations, which are different from those presented here. As the information contained in this brochure is general in nature, it is not intended as a substitute for legal advice. If you have further questions after reading this brochure, you may wish to contact an attorney or the Information and Assistance office listed below:

(408) 277-1292

The Information and Assistance Office was established by the State of California to help unrepresented injured workers. *Anyone who knowingly files or assists in the filing of a false Workers' Compensation Claim may be fined up to \$50,000 and sent to prison for up to five years. (Insurance Code Section 1871.4)*

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