

# PENNSYLVANIA WORKERS' COMPENSATION HANDBOOK

**Labor Law  
Employee Benefits  
Employment Law  
Workers' Compensation**



Law Offices of

**Willig, Williams & Davidson**

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## ABOUT WILLIG, WILLIAMS & DAVIDSON

No one plans on a work-related injury. Most workers never give workers' compensation a thought until after they have been hurt or become sick. Then, on top of dealing with their injury and medical treatment, they are forced into a complicated legal system without the proper tools to guide them through.

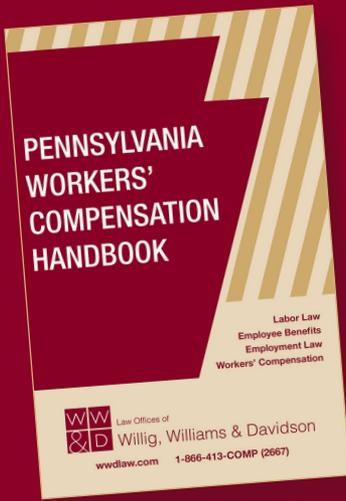
Willig, Williams & Davidson is committed to helping workers navigate the system, so they can focus on one thing – getting well. Our team of **certified workers' compensation attorneys** use their skills to assist sick and injured workers through the legal system, so the workers can maintain their dignity and get the treatment and benefits they deserve.



Our attorneys provide advice, counseling and legal representation to sick and injured workers, to make sure that they receive 100 percent of the benefits required by law. And our work injury lawyers who practice in this area, limit their representation to the protection of injured workers.

Our workers' compensation attorneys utilize the firm's wide-ranging union-side practice to help further the cause of providing safe working conditions and fair benefits for injured workers. Unlike some other firms, our attorneys are uniquely suited to understand the complex interplay between workers' compensation law and other employment rights, such as union benefits, the Family and Medical Leave Act (FMLA), Act 534, and the Heart & Lung Act. Our attorneys use that knowledge to look beyond the workers' compensation law and make sure that our clients' rights are fully protected.

Our attorneys also work closely with union clients to identify injury trends and eliminate unsafe practices and conditions at work before workers get hurt. We push the limits of the workers' compensation law to force employers to stop illegal practices like refusing to pay loss of overtime to injured workers or illegally reducing benefits for injured retirees. Our attorneys use their expertise and broad client base to leverage the best possible results for our clients, based on our firm belief that **sick and injured workers deserve the best possible legal representation.**



## **ABOUT THE PENNSYLVANIA WORKERS' COMPENSATION HANDBOOK**

This handbook has been prepared by Willig, Williams & Davidson to provide assistance to individuals who may be entitled to benefits under the Pennsylvania Workers' Compensation Act. It is not intended as a substitute for legal counsel, nor is it designed to answer all questions which might arise.

This handbook has been set up in a "question and answer" format to explain basic principles in easy to understand language.

## **Where To Go For More Information**

**If you have questions and would like to discuss a work injury or workers' compensation claim with us, please feel free to call Willig, Williams & Davidson and our work injury lawyers at 1-866-413-COMP (2667) or 1-215-656-3600.**

# Section 1: Understanding workers' compensation

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## **What is workers' compensation?**

The Pennsylvania Workers' Compensation Act provides wage loss and medical benefits to compensate employees suffering from work-related injuries or diseases. The Act also provides for death benefits to the dependents of workers who die as a result of a work-related injury or disease. Workers' compensation benefits generally are paid by private insurance companies which have insurance policies with your employer. While the Bureau of Workers' Compensation administers the system, it does not make the initial determination as to whether you are entitled to receive workers' compensation benefits. If you disagree with the insurance company's determination, you may file a petition to have a workers' compensation judge decide your case.

## **What is a compensable workers' compensation injury in PA?**

Under Pennsylvania law, the following conditions are considered compensable injuries under workers' compensation:

1. Specific incidents that cause an injury.
2. Repetitive activity resulting in an injury. This includes conditions like carpal tunnel syndrome caused by repetitive movement.
3. A pre-existing condition that has been aggravated by work activities. This includes conditions like arthritis, heart disease. The pre-existing condition does not have to be work-related for the aggravation to be covered under workers' compensation.

## **What diseases are covered by the Pennsylvania Workers' Compensation Act?**

The Act provides a list of specific diseases which are recognized as occupational diseases. These include (but are not limited to): tuberculosis and hepatitis for nurses, blood processors, and related professions which involve exposure to these diseases; diseases of the heart and lungs for firemen who have four or more years of service; pneumoconiosis and silicosis for any occupation that involves direct contact with or exposure to coal dust; specific types of chemical poisoning (such as lead, mercury, phosphorus and arsenic) for occupations involving direct contact or exposure to these chemicals, or to their preparations or compounds.

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The Act provides for compensation for other occupational diseases not specifically recognized, as long as three criteria are met:

- a. the employee is exposed to the disease by reason of employment;
- b. the disease is causally related to the employee's main industry or occupation; and
- c. the occurrence of the disease is substantially greater in the industry or occupation than it is in the general population.

Even if you suffer from a disease which is neither specifically recognized nor meets the criteria listed above, you may be entitled to workers' compensation benefits.

If you develop the disease as a result of an exposure which occurs at work, workers' compensation benefits are the same as those paid for injuries. Pre-existing occupational diseases aggravated by employment are treated in the same manner as injuries. The criteria listed in the previous paragraph do not have to be satisfied for this type of claim to be compensable.

Firefighters, police officers and certain public safety employees may be able to claim benefits for specifically listed diseases/illnesses related to their employment.

### **Must the injury occur on the employer's premises to be compensable under PA law?**

An injury does not need to occur on the employer's premises to be compensable under the Act. As long as your injury occurred while you were in the course and scope of employment, the injury is compensable. For example, if you are injured in an automobile accident while running an errand for your employer, the injury is normally compensable. On the other hand, injuries that occur while you are on your way to or from work may not be compensable. If you are injured on your employer's premises on your way in or out of work, your injury may be compensable. In addition, commuting may be covered if you are a traveling employee.

## **Section 2: What you should do if you have been injured at work**

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### **What should I do if I suffer a work injury?**

When you suffer an injury as a result of an accident or repetitive injury, you should give notice to your supervisor or any other person designated by your employer immediately. You should report the injury even if you do not anticipate missing time from work. Notice can be given either verbally or in writing. If required, complete an incident report. If you require medical treatment, you should request the list of designated health care providers approved to treat work injuries. You are required to treat with these physicians for 90 days after the date of your first visit to the doctor. If your employer does not have a list of approved doctors, seek medical treatment from any physician. Be sure to inform your physician that your injury is work related.

Within 21 days of your injury, your employer or its insurance company must notify you whether they agree that you sustained a work injury. The company is required to issue a form entitled Notice of Compensation Payable, which agrees that you have a work-related injury, or a Notice of Compensation Denial, which denies that you have a work injury. If your claim is accepted, review the Notice of Compensation Payable to determine whether your injury is described accurately and whether your wages are accurate. If your claim is denied, seek medical care with your own physician and obtain legal advice.

### **What is a Notice of Compensation Payable?**

A Notice of Compensation Payable is a legal document issued by the workers' compensation insurance company or employer. If you miss time from work, the Act requires that the insurance company or employer decide whether they are agreeing to cover an injury under the law within 21 days of the date of disability. The Notice of Compensation Payable is legal confirmation that an injury has been accepted under the law. The Notice contains important information about both the wage loss and medical benefits to be paid. Specifically, the Notice of Compensation Payable will state the amount of the injured worker's average weekly wage, upon which the wage loss benefit is calculated. In addition, the amount of the wage loss benefit is listed, along with the start date of the benefit. The Notice will list the legal description of the work injury.

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It is important to make sure that the description of the injury is correct because the insurance company will only be required to pay for reasonable and necessary medical treatment related to that specific work injury. For example, if the Notice lists a shoulder sprain, the insurance company may not be required to pay for surgery to repair a rotator cuff tear.

### **How should a work-related injury or disease be reported for purposes of workers' compensation?**

It is your responsibility to report an injury or disease to your employer as soon as possible. The report should include an explanation of the time, place and type of injury. The notice must contain an explanation as to how the injury occurred and how it was work-related. Although verbal notice is legally sufficient, it is best if the notice is in writing. You should retain a photocopy of the notice. You should give as much information as possible to your employer regarding the circumstances surrounding the injury. The report may be given to the employer by you or by someone acting on your behalf.

There are two time limits which are strictly enforced:

1. Notice given more than 120 days from the date of injury will likely preclude workers' compensation benefits; and
2. You must give notice within 21 days from the date of injury in Pennsylvania in order to receive workers' compensation benefits from the first day of injury.

If you do not give notice until the 22nd day after the injury occurred, you will only receive workers' compensation benefits from that date on. If notice is given within 21 days, however, you will receive benefits from the first day of injury.

### **How should an occupational disease be reported?**

The time period for giving notice of an occupational disease begins to run when you know or should know that your occupational disease is related to employment. The important thing to remember is that if you learn that you have contracted an occupational disease, you should provide immediate notice to your employer, or a previous employer, even if you have not worked for the employer recently. It is sufficient for someone acting on your behalf, including your doctor, to provide such notice. The notice must contain a statement that the disease is work-related; otherwise, you might be denied workers' compensation benefits.

### **What are considered occupational workplace diseases?**

Occupational diseases include chronic disease caused by or due to activities or environmental factors at the work place. There are many different types of occupational diseases. They can include: cardiovascular system disease; central nervous system disease; heart and lung disease; liver disease; musculoskeletal disease; occupational cancers such as mesothelioma; psychiatric diseases/mental health disturbance; renal disease; reproductive system disease; and skin disease.

These occupational diseases are often caused by exposure to "causation agents," which can include: asbestos, gas, infectious agents, metals, noise, pesticides, herbicides, rodenticides, fungicides, pressure, radiation, solvents, temperature and vibrations.

### **What should I do if my employer insists that I use my sick time instead of workers' compensation?**

Because it ordinarily takes several weeks for a worker's compensation claim to be processed, there is no reason for you not to use accumulated sick leave. If you use sick time, make sure that you report that you are using sick time for a work-related injury. The Workers' Compensation Act ordinarily does not give insurance companies the right to take a credit for sick pay you receive. If you are a member of a union, check your union contract carefully to determine what benefits are available. If your employer forces you to use sick time for a work injury, you are probably not being covered under PA Workers' Compensation.

**How should I deal with a workers' compensation insurance adjuster?**

When you are injured at work, your claim is processed by your employer's workers' compensation insurance company. An adjuster is assigned to handle the claim and is responsible for determining whether the claim will be covered under workers' compensation. The adjuster is required to complete the investigation of your claim within 21 days. You can assist the adjuster by helping to gather relevant medical records.

Once your claim is accepted, you may need to communicate with the adjuster regarding the payment of your wage loss benefits or obtaining medical treatment. Keep in mind, the adjuster works for the insurance company and may not be as responsive to you as you would like. Be persistent, follow up, and ask for a supervisor if you cannot get a response from the assigned adjuster. The adjuster is not required to advise you of your rights under the law and often provides misinformation. Being informed about your rights is the best protection you have from mistreatment by an adjuster.

**Should I sign a medical records release for the workers' compensation insurance company?**

Your employer's workers' compensation insurance company is required to investigate your claim and determine whether it will be covered under workers' compensation. They will want to see what the doctors are saying about your condition. Signing the release may make it easier for the company to investigate and approve your claim. The law does not require you sign a medical records release for your claim to be covered under workers' compensation.

**How do I know if my workers' compensations claim has been accepted?**

Your claim has not been legally accepted under the Pennsylvania Workers' Compensation Act unless you receive a document entitled Notice of Compensation Payable. This is a legally binding document which is issued by the workers' compensation insurance company which is handling your case for your employer. Your employer is not legally bound to cover your case unless this document is issued. Even if your employer is paying all of your medical bills, they are not legally responsible for your claim unless this document has been issued.

Your employer and its insurance carrier can agree to provisionally accept your claim by issuing a Temporary Notice of Compensation Payable. This document temporarily makes your employer responsible for your injury. The employer/insurance carrier can end their responsibility at any time within 90 days of your injury by issuing a Notice Stopping Temporary Notice of Compensation Payable and a Notice of Compensation Denial. If your employer and its insurance company does not stop the TNCP within 90 days, it will convert to a Notice of Compensation Payable which makes your employer legally responsible for your claim.

## **Where To Go For More Information**

**If you have questions and would like to discuss a work injury or workers' compensation claim with us, please feel free to call Willig, Williams & Davidson and our work injury lawyers at 1-866-413-COMP (2667) or 1-215-656-3600.**



## Q. Do I have to use sick time if I miss time due to a work injury?

**A.** Anytime you miss work because of a work injury, make sure that you alert your employer to the absence being related to your injury. If you miss less than one week of work due to a work injury, your missed time may need to be taken as sick leave because Pennsylvania Workers' Compensation law does not cover absences of less than one week.

If you are out of work for more than one week, you may be required to use sick time to cover your absence until the workers' compensation insurance company agrees to cover your injury under workers' compensation. The insurance company has 21 days to investigate your claim and let you know whether you are being covered for lost time. If you do not receive paperwork from the insurance company indicating that your injury is being covered, you are not being covered and should seek legal advice.

If the insurance company has agreed to cover your claim, you should not be required to use sick time while you are out of work, unless you are out of work for less than one week.

If your employer forces you to use sick time for a work injury, your claim may not be covered under PA Workers' Compensation.

## **Section 3: Understanding your employer's responsibilities**

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### **When must my employer prepare an injury report?**

Under Pennsylvania law, employers are obligated to keep records of all injuries which occur on the job. Whenever such an injury results in the loss of a day, shift, or turn, the employer must complete Form LIBC-344, Employer's Report of Occupational Injury or Disease. The employer must file such a report only if it is aware of your work-related injury or disease. The employer must complete this form even if it disputes your contention that an injury or disease is related to employment, or that it occurred at all. You are entitled to receive a copy of the Employer's Report of Occupational Injury or Disease.

### **What do my employer and its workers' compensation insurance company have to do once I report a work injury?**

The employer should report your injury to its workers' compensation insurance carrier. Under the law, the employer or its carrier has an obligation to investigate your injury report and pay compensation if due. If you miss time from work, the employer or its carrier has an obligation to issue a Notice of Compensation Payable, agreeing you had a work injury, or a Notice of Compensation Denial, denying that you had a work injury, within 21 days of the first day you missed from work.

### **May an employer terminate my employment after I have suffered a work injury?**

Your employer may have the legal right to terminate your employment after you suffer a work injury. The fact that you were injured on-the-job does not protect your job. If you are covered by a collective bargaining agreement, you may have additional job protection. The Family and Medical Leave Act requires that most employers grant 12 weeks of unpaid leave time per year to employees who cannot work due to a serious medical condition. If you qualify for FMLA, you should request that your absence be covered under FLMA to protect your job for 12 weeks. If you are a member of a union, many collective bargaining agreements include provisions which protect an injured worker's job. Consult your collective bargaining agreement and discuss job protection with your union representative immediately after your injury.

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## **Must an employer rehire me if I have recovered in part or in full from my work-related injury?**

Unfortunately, the Workers' Compensation Act does not require an employer to rehire you if you have recovered from a work injury. However, if you were injured after June 23, 1996, have not recovered, and are not working, your employer must offer any available light duty work to you before it can claim that your benefits should be reduced to reflect wages that you could earn if you found a job with another employer.

### **Where To Go For More Information**

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## **Section 4: Seeking medical treatment for work related injuries and payment of medical bills**

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### **May I choose to treat with my own physician?**

Unless your employer has posted a list of medical providers with whom you must treat in connection with a work injury, you have the right to choose your own physician. If, however, your employer has posted a list of at least 6 designated health care providers, no fewer than 3 of whom are physicians, the Act requires you to treat with one or more of these medical providers for a period of 90 days from the date of the first visit to the provider. *After 90 days, you should seek medical treatment with your own doctor.*

If the list is not posted, and you are not told of your rights, you are under no obligation to treat with any medical provider recommended by your employer. If the employer has posted a list of medical providers, you have a right to choose any of the providers on the list. The Act does not give your employer the right to force you to treat with a specific provider on the list. If you do not comply with this particular provision, the employer and its workers' compensation insurance company are not required to pay for health care services provided during this period. Your refusal to treat with an employer's panel physician does not relieve the employer of its obligation to pay wage loss benefits to you during your period of disability. You may, however, have to pay for your work-related medical treatment, because your health insurance company may not be responsible for medical bills incurred during this period of time.

In the event that a dispute arises concerning the insurance company's obligation to pay for medical bills incurred during this period of time, your employer or its workers' compensation insurance carrier must produce a document signed by you in which you acknowledge that you understood your rights and duties under this section of the Act.

### **Must I treat with an employer-designated physician if my workers' compensation claim has been denied?**

The Act is silent about whether you have an obligation to treat with an employer-designated physician in the event your claim is denied. If you treat with an employer-designated physician after your claim has been denied, however, you could end up being responsible for large medical bills, particularly if you have health insurance through a health

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maintenance organization (HMO). Insurance Department regulations impose upon your health insurer the obligation to pay medical bills for your work injury in the event of a denial. Accordingly, if your employer denies your claim, you are free to seek medical treatment by the physician of your choice. You should provide your physician with a copy of the insurance company denial letter. Your physician will then photocopy the denial letter and submit your medical bills and a copy of the denial to your health insurance company.

It is particularly important that you cease treating with an employer-designated physician if your claim has been denied and you have coverage through a health maintenance organization. HMO's ordinarily require that you treat with a primary physician. Referrals to specialists must be made by the primary physician, and the referrals ordinarily must be made to a participating specialist.

If your claim is denied and you continue to treat with an employer-designated physician, and you lose your workers' compensation case, you may be held personally responsible for medical bills incurred in the event the workers' compensation insurance company refuses to pay the bills of the employer-designated physician. If you have ordinary health insurance, your bills should be covered. You should not assume that the workers' compensation insurance company will pay your medical bills merely because you are treating with a "posted" physician. Insurance companies can and do refuse payment to such physicians, and if you have not been referred to the posted physician in accordance with the terms and conditions of your HMO coverage, the HMO will almost certainly decline to make payment, as well.

### **Can I get a second opinion and have it covered under workers' compensation?**

Under the law, you are entitled to obtain a second opinion, at no charge to you, if the panel doctor has recommended surgery. You are not entitled to a second opinion for treatment recommendations such as therapy; work restrictions; or failure of the provider to order diagnostic testing. If you believe that you are not being treated properly by a panel

physician, you can ask to change to another provider on the panel. After the first 90 days following an injury, you should seek treatment or a second opinion with any provider of your own choosing.

**Can I change physical therapist when I'm being treated under workers' compensation?**

For the first 90 days following your injury, you are required to treat with a panel provider. This includes physical therapy providers, if one is listed on the panel. However, if no physical therapy provider is listed on the panel, you are free to seek treatment at whichever therapy provider you choose, even within the first 90 days.

**Should I tell a workers' compensation doctor about prior injuries?**

An injured worker should always give a complete medical history to any physician who is evaluating the work injury. Prior injuries or pre-existing conditions are not a bar to receiving workers' compensation. Therefore, it is best to give a treating physician complete information about prior injuries or conditions. Some employers and insurance companies will use prior injuries or pre-existing conditions as a reason to deny a claim. Nevertheless, that denial can be appealed and reversed by a PA workers' compensation judge. The Act specifically states that an aggravation of a pre-existing condition can constitute a new injury and be covered under Pennsylvania workers' compensation.

**What should I do if I get a notice for an independent doctor to review my workers' compensation claim?**

Your employer and its insurance company is allowed to send you for an Independent Medical Exam (IME) every six months to get an evaluation of your condition by a doctor of their choosing. You do not have the right to ask for a different doctor, specialist or location. However, the employer must provide transportation to the examination for the injured worker. You must attend and participate in the exam and be cooperative. Even if requested, you are not required to provide any medical records or documentation to the IME physician. It is important to be truthful and forthright about your medical history, your work-related condition and your ongoing treatment. You should see your own treating physician soon after seeing the IME physician so your own doctor can evaluate your condition. Approximately 4-6 weeks after the exam, you will receive a copy of the doctor's report.

**What medical information should I submit to my employer or its insurance carrier so that my medical bills are paid?**

Employers or their workers' compensation insurance carriers need only pay medical bills which are related to a work injury. Accordingly, they are entitled to require reports and other records to properly determine whether a bill is for treatment of a work-related injury or disease.

Injured workers should make sure that their physicians are submitting regular medical reports to the insurance carrier or the employer so that these medical bills are paid.

If the employer has provided a list of medical providers, you may see a new doctor after you have treated with a company doctor for 90 days. If you change doctors, you must notify your employer within 5 days. The new physician must file a report within 21 days of your first visit and file a report once a month thereafter for the duration of treatment.

**How can I avoid delay or denial of payment of my medical bills?**

One of the most common problems faced by injured workers is their inability to obtain payments of medical bills. In order to ensure that medical bills are paid, you should make sure your provider submits bills in an organized and timely fashion. The bills should contain complete and adequate information, including correct names, dates of treatments, services provided and cost of treatment. You should make sure that your treating physicians are submitting the required monthly reports. Submitting bills with medical reports is required. Copies of all documents that you submit to the insurance carrier should be kept for your own records.

## **Section 5: Utilization review requests, medical exams, medical reports and changes in medical status**

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### **What is a Utilization Review Request?**

A Utilization Review Request is designed to determine the reasonableness and/or necessity of your medical treatment in a workers' compensation matter. Ordinarily, such petitions are filed by the insurance carrier, although injured workers are free to file such a petition. Once such a request is filed, it is assigned to a Utilization Review Organization (U.R.O.). The U.R.O. ordinarily contacts your medical providers with a request that the medical providers send copies of your records to the Organization. Under the law, your medical providers are entitled to bill \$.07 per page for copying of these documents. Please note that it is imperative that all of your medical providers send your medical records to the U.R.O. If these medical records are not sent, the U.R.O. will base its decision on whatever documents are sent to it by the insurance company. In this situation, the U.R.O. will ordinarily rule against your doctors. The failure of the doctors and other medical providers to send records is one of the most common reasons why treatment is found to be unreasonable or unnecessary. It is extremely helpful, although not strictly necessary, for your physician or medical provider to write a brief note explaining why your treatment is reasonable, necessary and causally related to your work injury.

It is also extremely helpful if you submit a short statement explaining what benefits you receive from the treatment, including pain relief and increased ability to function. If the U.R.O. finds that your treatment is either unreasonable or unnecessary, you have the right to appeal.

### **Must I submit to independent medical examinations?**

Employers or their insurance carriers may require you to submit to an independent medical examination. Employers or insurance carriers may also request that you undergo medical examinations after you are receiving compensation no more than once every six months. Employers are responsible for examination costs, reasonable travel expenses and your wage loss resulting from the examination.

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## **Must I report employment and self-employment information to the workers' compensation insurance company?**

You have an obligation to report employment and self-employment earnings to the workers' compensation insurer when you are seeking or receiving compensation. You have a duty to cooperate with the insurer in an investigation of employment, self-employment, wages and physical condition. If you are receiving wage loss benefits, the insurer may require you to complete a verification form pursuant to the statute. You must complete the verification form and return it to the insurer within 30 days of receipt. If it is not returned within 30 days, the insurer can suspend compensation until the verification form is returned. The employer does not have to pay you for wage loss benefits suspended due to your failure to return the form.

## **What happens if my disability status changes after a workers' compensation claim has been accepted?**

If you recover to the point that you remain partially disabled but you can return to work, you and your employer may execute a Supplemental Agreement to reflect the change in your disability status. If you continue to sustain wage losses after you return to employment, the Supplemental Agreement should require the employer or its workers' compensation insurance carrier to continue paying two-thirds of the difference between your post-injury and pre-injury wages. If, after returning to work (either regular duty or light duty), you become disabled once again due to your work-related condition, you should obtain a new Supplemental Agreement reflecting that you are entitled to total disability benefits.

## **Can a workers' compensation insurance company stop paying benefits to me when I return to work?**

An insurance carrier is entitled to suspend payment of wage loss benefits to an injured worker if the employee has returned to work at wages equal to or greater than his pre-injury wages. In order to do so, the insurer must send a Notification of Suspension or Modification to the employee. The employee then has the right to challenge the employer's Notification by completing the form and filing with the Bureau of Workers' Compensation within 20 days. If no challenge is received, the

Notification will become legally binding. Whenever you receive a Notification of Suspension or Modification, you should file a challenge. Filing a challenge will make sure your rights are protected, even if you have returned to work. Once a challenge is filed, the Employer has to prove that they are legally permitted to stop or reduce your benefits.

**What is the employer's obligation if I have only a partial recovery from my work injury or disease?**

If you return to work, either to a modified position or full duty, and are earning less than you did before your work injury, your employer may be obligated to pay you partial disability benefits. If you are earning less as a result of your work injury, you are entitled to partial benefits representing 2/3 of the difference between your pre-injury average weekly wage and your present earnings. If you are released to light duty or modified work and your employer does not offer you a position within your restrictions, you will continue to receive total disability benefits.

Your employer may be able to reduce your benefits by showing that you have an earning capacity and that there are jobs in the economy available to you.

**What is a vocational interview and must I submit to one?**

If you have been cleared to return to some type of work, the insurance company will try to reduce or stop your benefits by showing that there are jobs for you. The insurance company begins this process by hiring a vocational counselor to interview you about your background and abilities. There have been recent changes in the law which affect whether you are required to attend a vocational interview.

**What is a Notice of Ability to Return to Work?**

If the insurance company receives medical evidence indicating that you are able to return to work in some capacity, you may be sent a Notice of Ability to Return to Work. It indicates that you have an obligation to look for available employment and that proof of available employment may jeopardize your right to receive ongoing benefits.

The Notice does not mean you are suppose to go back to your previous job. It just means that the insurer believes you have the ability to work in some way.

## What is a Labor Market Survey?

In Pennsylvania, a labor market survey, conducted by a certified vocational counselor, determines work that you are capable of performing, considering job listings in your area. Your employer may be able to reduce your compensation benefits by showing that you are able to perform previous work or, considering your education, age, and work experience, you can engage in other substantial gainful employment which exists in your geographic area. If the employer responsible for payment of compensation has an available job which is within your physical and vocational abilities, it must be offered to you.

## Where To Go For More Information

If you have questions and would like to discuss a work injury or workers' compensation claim with us, please feel free to call Willig, Williams & Davidson and our work injury lawyers at 1-866-413-COMP (2667) or 1-215-656-3600.



## **Section 6: What to do when your claim is accepted, denied or terminated**

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### **What happens if my workers' compensation claim is accepted?**

If your claim is accepted, the employer or its insurer must complete and submit to the Bureau of Workers' Compensation a Notice of Compensation Payable and Statement of Wages. The Notice of Compensation Payable is an acknowledgment by your employer that your injury is work-related. The document obligates the company to pay wage loss and medical benefits to you. The Notice of Compensation Payable contains a description of the injury and the applicable compensation rate. The compensation rate is calculated in accordance with a formula set forth in the Statement of Wages.

Your employer can provisionally agree that you have a work injury and are entitled to workers' compensation by issuing a Notice of Temporary Compensation. Your employer can rescind this document for any reason within 90 days. If your employer does not rescind the Notice of Temporary Compensation, it will convert into a Notice of Compensation Payable. You may want to file a claim petition to protect your rights even though your employer has filed a Notice of Temporary Compensation.

### **What should I do if my workers' compensation claim is denied?**

The Pennsylvania Workers' Compensation Act requires an employer to either accept or deny a claim within 21 days of the date that notice of the work injury is provided by the injured employee to the employer. Insurance companies deny claims by issuing a Notice of Workers' Compensation Denial. Often a denial will be issued because the insurance adjuster has not had sufficient time to investigate the claim.

If you receive a Notice of Workers' Compensation Denial, you should check to make sure that the insurance company has received written confirmation from your treating physician that your condition is work-related and that you are, at a minimum, partially disabled as a result of your work injury or are incurring medical bills in connection with the injury. If the adjuster has all necessary information but persists in the denial, you should contact Willig, Williams & Davidson and its work injury lawyers immediately. You should do so even if the adjuster says that this is only a "conditional denial" and the company will

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re-evaluate its position once you have undergone an “independent” medical evaluation.

### **How long do I have to file a claim petition for workers’ compensation in PA?**

If your claim is denied, you are entitled to file a Claim Petition. A claim petition must be filed within in 3 years of the date of injury. In the case of an occupational disease, 3 years from the date of wage loss or from the date when the worker knew that the injury was work-related, whichever is later, provided it is within 300 weeks.

### **Should I hire a workers’ compensation attorney?**

Under most circumstances, you should hire an attorney to handle petitions before a workers’ compensation judge. The insurance company will always utilize an experienced attorney who will do a professional job of protecting the insurance company’s rights. While most judges will grant considerable leeway to you if you are not represented by an attorney, you must be familiar with workers’ compensation law and procedure and must be prepared to present all evidence necessary to meet your burden of proof.

### **How can I pay for an attorney?**

Most attorneys, including those at Willig, Williams & Davidson, will charge you a fee only if they are successful in obtaining or protecting your benefits. The Workers’ Compensation Act limits attorney’s fees to no more than 20% of your compensation except under special circumstances.

### **How are claim petitions processed by the Bureau of Workers’ Compensation?**

After a petition is filed, it is assigned to a location based upon the county where you live. At the same time that the petition is assigned to a judge, a copy is served upon the employer and its workers’ compensation insurance carrier. Your employer or its carrier has 20 days from the date of service to file an answer to your petition.

After your employer or its insurance carrier files a response to the petition, the judge will schedule a hearing. In attendance at the hearing

will be you, your attorney, an attorney representing your employer, a court reporter, and the judge. At the conclusion of the first hearing the judge will issue a trial schedule and the record is left open for medical or expert testimony.

If the claim is for 52 weeks or less of disability, doctors' reports may be submitted to support of the claim. For claims longer than 52 weeks, it is necessary to present testimony from your physician. This testimony will be taken by deposition at your doctor's office. Present at the deposition will be your attorney, a court reporter, an attorney for your employer, and the physician. The physician answers questions on direct testimony concerning your diagnosis, prognosis, level of disability, and cause of your condition. The doctor must then answer questions on cross-examination from opposing counsel. The court reporter transcribes the testimony in a transcript which is submitted to the judge at a later hearing.

**Are the issues in a workers' compensation case decided in a single hearing?**

The issues in a workers' compensation case are not decided in a single hearing. After a petition is filed with the Bureau, the case will be assigned to a workers' compensation judge. In most circumstances, the case will be assigned to the judge who is closest to your home. Pennsylvania workers' compensation cases may take several months to more than a year for a final decision to be made.

**Are other benefits available pending the outcome of a workers' compensation claim petition?**

Some employers provide sickness and accident benefits insurance for employees. Even where such benefits are not provided, you may seek social security disability, unemployment compensation, welfare, veterans' benefits, or pension benefits. Some of the benefits may reduce your workers' compensation payments.

**What is a Supplemental Agreement?**

A Supplemental Agreement acts as an acknowledgment by the employer that an employee's status has changed.

## **Is it legal for an employer to require me to sign a Supplemental Agreement before I go back to work?**

You are not required to sign a Supplemental Agreement to return to work following a work injury. An employer may not require you to admit that you have recovered as a condition for returning to work.

## **Under what circumstances can my employer attempt to suspend or terminate my workers' compensation benefits?**

If you return to work at the same earnings you had before your injury, your employer will suspend your wage loss benefits. This does not require a judge's approval but can be accomplished with the filing of a Notification of Modification or Suspension (LIBC-751) If you did not return to work, returned to work at a loss of wages, or returned to work but could not continue to work because of your injury, you can challenge the suspension of your benefits by completing the "Employee Challenge" section on the back side of the Notification and mailing to the Bureau of Workers' Compensation in Harrisburg. This must be filed within 20 days. A suspension of wage loss benefits does not end your right to continue to receive medical treatment for your work injury.

An employer can file a petition to suspend wage loss benefits if it has evidence that the injured worker can work either at their pre-injury job or alternative work. The employer typically relies upon an independent medical exam and a vocational expert as the basis of this type of petition. If the petition is granted by a judge, wage loss benefits will stop.

An employer can also file a petition to terminate if it has evidence that the injured worker has fully recovered from the work injury. A termination of benefits means that the claim will be closed for both wage loss and medical benefits. The employer typically relies upon an independent medical exam as the basis of this petition. If granted by a judge, the claim will be closed and likely cannot be re-opened.

## **What happens if my employer files a Petition to Terminate my workers' compensation benefits?**

If your employer files a Petition to Terminate your workers' compensation benefits, your case will be assigned to a judge who will decide whether you have fully recovered from your work injury. First, the judge will make a preliminary determination as to whether your benefits will continue while the petition is being litigated.

This preliminary determination is based on the employer's Request for Supersedes. The employer will submit documentation that you have fully recovered from your injury. In response, you will need to submit an affidavit documenting that you believe you continue to be disabled, as well as a report from your doctor confirming that you continue to be disabled and require medical treatment. The judge will then evaluate the documents submitted and can provisionally stop your benefits if your medical evidence is not sufficient to establish that you have not fully recovered and are not likely to win the case. Judges rarely grant a request for Supersedes.

Regardless of whether a judge grants Supersedes and provisionally stops your benefits, the case is not over. Additional hearings will be scheduled, at which time both you and your employer will have the opportunity to develop a full record. Depositions of both you and your employer's medical experts will be taken, and the transcripts of those depositions will be submitted into the record.

If, at the conclusion of the case, the judge finds that you continue to be disabled, the employer's petition will be denied and dismissed. If a Supersedes Order was previously granted, the judge will order that back compensation be paid to you covering the period in which the Supersedes Order was in effect.

**If I am disabled from performing my pre-injury job and I am receiving total disability benefits, are there any limits on the time during which I may receive such benefits?**

If you suffered a work-related injury or disease, you are entitled to continue to receive total disability benefits as long as you are disabled. If you voluntarily remove yourself from the job market, or take pension or social security retirement benefits, the employer may be entitled to reduce your benefits.

The Pennsylvania Supreme Court has recently ruled that Impairment Rating Evaluations (IRE) are unconstitutional. Employers can no longer stop an injured worker's wage loss benefits based upon an IRE determination that the injury was less than a 50% whole body impairment.

If you underwent an IRE, call our office to discuss how the recent decision affects your entitlement to wage loss benefits. If you receive a notice that you have been scheduled to attend an IRE, please call our office before attending the IRE to understand how attending the IRE could affect your right to continue to receive wage loss benefits.

**What should I do if my employer is taking steps to reduce or terminate my workers' compensation benefits?**

If you receive an offer of employment by your employer and your physician does not believe you should accept this offer, you should contact an attorney immediately.

If you are receiving benefits and the workers' compensation insurance company requests that you undergo an "independent medical examination" or hires a vocational expert to conduct a vocational interview, you should contact a certified workers' compensation attorney.

If you receive a Petition to Terminate, Suspend or Modify your compensation benefits, you will need an attorney.

**May the parties to a workers' compensation case settle a workers' compensation claim?**

Employees and insurers are permitted to reach a compromise and release of all liability under the Workers' Compensation Act. For example, the parties may dispute whether an injury occurred in the course and scope of the employee's job. In order to avoid the risk of an unfavorable ruling by the judge, the parties may agree to limit the claim for a particular period of time, specifically describing the sum of money which the insurance company is willing to pay and specifically describing the medical bills for which the company will be responsible.

The Workers' Compensation Act describes the information which any compromise and release must contain, and a workers' compensation judge must approve the compromise and release if it is established on the record that the employee understands and agrees to the terms of the compromise. Judges are required to schedule a mandatory mediation unless it is deemed futile.

## **What happens if the record in my workers' compensation case is closed?**

The judge will order that the attorneys prepare briefs after all the evidence has been submitted. Briefs are formal written summaries of the evidence presented in the case accompanied by arguments concerning any legal issues presented by the case. Briefs are normally submitted with proposed findings of fact and conclusions of law.

The judge will consider the entire record of the case, review the briefs, proposed findings of fact, and conclusions of law, and issue a formal written decision. It generally takes a judge three to six months to issue a decision, however, it can take longer. When the decision is issued, the losing party has 20 days to file an appeal of the decision to the Workers' Compensation Appeal Board.

## **Where To Go For More Information**

**If you have questions and would like to discuss a work injury or workers' compensation claim with us, please feel free to call Willig, Williams & Davidson and our work injury lawyers at 1-866-413-COMP (2667) or 1-215-656-3600.**



## How to Get Accurate Information About Your Rights Under Workers' Compensation

*If you want accurate information on workers' compensation in Pennsylvania, call the certified workers' compensation attorneys at Willig, Williams & Davidson at 800-631-1233.*

Most people never think about workers' compensation until they are injured. At that point, the worker is overwhelmed with being injured. Most information about an injury and claim is being provided by the employer or employer's workers' compensation insurance company. Unfortunately, employers and insurance companies are not obligated to tell you, the injured worker, about your rights under the Pennsylvania Workers' Compensation Act. In fact, they are not even obligated to tell you the truth about what injuries are covered under the Act.

It is not unlawful for an employer to tell an injured worker that their injury is not covered under workers' compensation, when in fact it is covered. Employers and insurance companies often will tell injured workers that their injury isn't being covered because it is a pre-existing condition. They will say this even though the injured worker may never have had treatment for the condition before. However, the Pennsylvania Workers' Compensation Act specifically allows for aggravations of pre-existing conditions to be covered under the law.

Misinformation about what is covered by workers' compensation is all too common. It is very important for injured workers to have someone to advise them of their rights when they get injured and are working through the initial stages of their claims. Relying on information from the employer or its insurance company almost certainly means that injured workers are being deprived of accurate information about their rights.

It is very important that injured workers have access to accurate information about their rights under the Pennsylvania Workers' Compensation Act immediately after they are injured. The workers' compensation attorneys at Willig, Williams & Davidson are all certified by the Pennsylvania Supreme Court. We offer free consultations for injured workers to ensure that you have accurate information about how your claim should be handled, including questions about treatment with workers' compensation panel doctors and the length of time you must treat with those doctors.

## **Section 7: Wage loss and specific injury benefits**

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### **What wage loss benefits am I entitled to under PA Workers' Compensation if I am injured on the job?**

If you are out of work for more than 7 days, including weekends, as a result of a work-related injury or disease, you are entitled to begin receiving wage loss benefits under the Workers' Compensation Act in Pennsylvania. If the disability lasts for 14 days or more, you are entitled to receive wage loss benefits for the entire period of missed time. To qualify for benefits, the lost work days need not be consecutive.

During your period of work-related disability, you are entitled to receive wage loss benefits equal to two-thirds of your pre-injury average wages up to a statutory maximum. Low wage or part-time workers may receive more than two-thirds of their pre-injury wages. When calculating wages, your employer or its insurance carrier must take into account wages from all sources of employment, and include overtime and bonuses.

You may also be entitled to wage loss benefits even if you never missed time from work. If your work injury results in you making less money, you may be entitled to partial disability benefits. This often occurs when an injured worker is working in a light duty job following a work injury or no longer receives overtime or shift differentials. If you frequently worked overtime prior to an injury and can no longer work overtime because of your injury, or you are no longer receiving a shift differential, you may be entitled to wage loss benefits equal to 2/3 of the difference between your pre-injury pay with overtime or shift differential and what you are making on light duty.

In addition to wage loss benefits, injured workers may be entitled to specific loss or disfigurement benefits. If your injury results in a permanent scar on your head, face or neck, you are entitled to receive benefits - even if you never missed time from work. If your injury resulted in the total or partial loss (or loss of use) of limb, finger, eye, or hearing, you are entitled to received specific loss benefits – even if you never missed time from work. Both disfigurement benefits and specific loss benefits are payable in addition to standard wage loss benefits.

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**What wage loss benefits am I entitled to under workers' comp if I am still working but am not making the same amount I did before my work injury?**

If you are partially disabled and return to work at reduced hours or wages, you are entitled to receive two-thirds of the difference between your pre-injury and post-injury wages under the PA Workers' Comp Act. Partial disability benefits are payable for a maximum of 500 weeks.

**How are my wage loss benefits calculated?**

Your compensation rate will be calculated by analyzing your wages during the 4 three-month periods preceding the date of the work injury. The compensation rate will be based on your highest quarterly earnings. Your benefits will depend upon your average earnings during the four highest thirteen-week periods preceding the date of injury. The average weekly wage is calculated by averaging your earnings during the 3 highest thirteen-week periods. If you are a seasonal employee or have worked less than 13 weeks, a different calculation method will be used. There is a Pennsylvania statewide maximum rate of compensation.

**Do wage loss benefits in PA reflect wage increases that I otherwise would receive if I were working?**

Wage loss benefits in PA do not reflect wage increases that you otherwise would receive if you were working. Workers' compensation benefits are fixed as of the date of injury. The benefits will not increase as time goes by.

**Will my wage loss benefits in PA be reduced if I receive benefits from other sources?**

Unemployment - If you receive unemployment compensation for a period of time which is later deemed to be covered under PA Workers' Compensation, your employer will only be responsible for paying Pennsylvania workers' compensation benefits minus the amount you received in unemployment. Nevertheless, you may apply for unemployment while your workers' compensation claim is pending as long as you are able to work in some capacity.

Social Security Retirement - If you begin receiving Social Security retirement benefits after you sustain a work injury, your employer can reduce your workers' compensation in Pennsylvania by 50% of the amount you are receiving in Social Security. This does not apply where you are receiving Social Security retirement benefits before a work injury.

Severance - Employers may be entitled to reduce your workers' compensation benefits in Pennsylvania if you receive severance benefits while entitled to workers' compensation.

Pension - Employers are entitled to reduce your PA workers' compensation benefits by the amount of pension benefits payable by the same employer, to the extent that the pension plan is funded by the employer paying workers' compensation benefits.

### **Am I entitled to partial workers' compensation benefits if I am working but not able to work overtime or my second job?**

If you worked overtime during the year before your work injury and are now working light duty or modified duty, you may be entitled to partial workers' comp benefits to compensate you for loss of overtime. If you worked a second job at the time of your work injury, and you are not able to work that second job because of your work injury, you may be entitled to partial benefits to compensate you for your lost income.

### **What death benefits are available?**

The dependents of an injured worker are eligible to receive death benefits in Pennsylvania when a worker dies from: (1) a work-related injury within 300 weeks of the time of injury or (2) an occupational disease within 300 weeks of the time the worker was last employed in the industry which caused the disease. The level of benefits depends on the number of dependents who survived the injured worker and the relationship between the dependents and the worker. Survivors also receive reasonable burial expenses up to a maximum of \$3,000.

Dependents do not automatically receive workers' compensation death benefits merely because the worker received compensation benefits while living. Disability and death benefits are separate and any claim for death benefits must be pursued by the dependents of the deceased worker.

**What medical benefits are available?**

If you suffer from an occupational injury or disease, you are entitled to receive reimbursement for reasonable and necessary medical expenses related to the injury or disease, though The Workers' Compensation Act limits the amount that a medical provider will be paid. You are entitled to these benefits regardless of whether any time is lost from work.

Payment of medical bills alone does not necessarily mean that your wage loss claim has been accepted.

**What workers' compensation benefits are available if I suffer an amputation or a permanent loss of use of a body part?**

If you suffer the amputation or permanent loss of use of a body part, you are entitled to receive weekly cash benefits for a specific number of weeks at two-thirds of your pre-injury average wages. You are entitled to receive specific loss benefits in Pennsylvania even after you return to work. You may be entitled to additional benefits for a healing period associated with treatment of the amputation or loss of use, provided that you are not working during the healing period.

If you suffer partial or total hearing loss as a result of your employment, you are entitled to receive hearing loss benefits which will vary, depending upon the extent of your loss.

Examples of benefits available for loss of use: Hand 335 weeks; Thumb 100 weeks; Arm 410 weeks; Half of Thumb 50 weeks; Foot 250 weeks; Big Toe 40 weeks; Leg 410 weeks; Index Finger 50 weeks; Eye 275 weeks

**Am I entitled to any workers' compensation benefits if I suffer a burn, scar or disfigurement as a result of a work injury or disease?**

If you suffer permanent burn, scar or disfigurement of the head, face, or neck, you are also entitled to weekly benefits up to a maximum of 275 weeks. If a disfigurement claim cannot be resolved between the parties, a workers' compensation judge can be asked to review the disfigurement claim and make a decision concerning the number of weeks of compensation that you should receive.

## **What are Sickness and Accident Benefits?**

Sickness and Accident Benefits are benefits for total disability not caused by work. Your employer may provide such benefits, but most employers do not. Workers' compensation benefits are far better because Sickness and Accident benefits are payable in small amounts and for a limited period. Furthermore, such benefits, unlike workers' compensation benefits, are taxable. Finally, a workers' compensation insurance carrier is obligated to pay all medical expenses with no limitations and no deductible.

When filling out a Sickness and Accident Benefits application, you may be asked to state whether the disability was caused by work. If the answer is yes, benefits may be denied. If the answer is no, such benefits may be granted, but the workers' compensation insurance carrier may try to challenge your credibility in the workers' compensation case. The best answer is to write "the workers' compensation insurance carrier has denied my claim."

Some Sickness and Accident insurance carriers will provide benefits for occupational injuries or diseases if you promise, in writing, that you will reimburse them if workers' compensation benefits are granted.

## **Q. What happens if I never fully recover from my work injury?**

**A.** You are entitled to wage loss benefits as long as you are disabled from work and to medical benefits as long as you need medical treatment for your injury. If you are released to light duty or modified work and your employer does not offer you a position within your restrictions, you will continue to receive total disability benefits. While there is no specific limitation on how long you can receive total disability benefits, your employer has several tools available to attempt to reduce or stop your disability benefits. These usually begin when the insurance company schedules you to attend an independent medical exam. Partial disability benefits are payable for a maximum of 500 weeks.

## Section 8: Other benefits

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### **What Social Security Disability (SSD) Benefits are available?**

The Social Security Administration administers 2 disability programs: Disability Insurance benefits and Supplemental Security Income.

Social Security Disability is a disability retirement program for seriously disabled workers who have been contributing to the Social Security Fund. It is not necessary for the disability to be related to employment for you to be eligible for benefits. If you are eligible, you will receive monthly benefits after a five-month waiting period. After 2 years of receiving such benefits, Medicare coverage is available.

You are entitled to SSD benefits if you are suffering from a physical or mental condition that prevents performance of any substantial gainful work and the condition is expected to last or has lasted for at least 12 months, or is expected to result in death. Supplemental Security Income is available to persons who have not made sufficient contribution to the Social Security system to qualify for Social Security Disability Benefits. The same disability test is applicable, but in addition, you must demonstrate that you have only minimal liquid assets.

### **What unemployment insurance benefits are available?**

You are eligible for unemployment insurance benefits if you leave work “involuntarily,” have sufficient wage credit, and are “able and available for work.” Employers sometimes argue that you cannot claim to be “disabled” for workers’ compensation and “available for work” for unemployment compensation. This is not correct.

Under the Unemployment Compensation Act, you are considered to be able and available for work if you can engage in a wide range of work activity. If you can perform sedentary work, you will be considered to be “able and available.” Once you have been authorized by your physician to return to restricted work, you should contact your employer and offer to return to any position within the restrictions set forth by the physician. If the company is unable or unwilling to provide employment within these restrictions, you may be entitled to receive unemployment compensation if certain requirements are met.

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Employers are entitled to a credit against your workers' compensation benefits for unemployment compensation benefits paid during periods of disability.

Any unionized employee who seeks to obtain unemployment compensation benefits should check with a union representative to determine whether to do so. Many contracts provide that an employee receiving workers' compensation benefits will be entitled to continue to accrue seniority, pension rights, medical benefits, vacation pay and other benefits. Such benefits may not be available if the worker is deemed to be "unemployed." Accordingly, before an employee seeks unemployment compensation benefits, he or she should check with his or her union representative.

**What veterans' benefits are available?**

The United States Veterans Administration provides pensions to veterans with non-service connected disabilities which are total and permanent. These pensions, however, are reduced by workers' compensation, social security, and other benefits. PA also has a limited Veterans' Assistance Program which is administered by the County Board of Assistance. If you are a veteran and have been honorably discharged, you should contact the County Board of Assistance to determine what benefits are available.

**What pension benefits are available?**

Any injured worker should check to see if pension benefits are available. Typical pension plans provide for ordinary service connected disability and non-service connected disability pensions. If you have reached normal retirement age, you may be entitled to receive an ordinary pension and workers' compensation benefits. Usually pension plans provide that the company is entitled to a credit against a disability pension for all workers' compensation benefits paid. You should check with your personnel office to determine what pension benefits may be available.

## **Are there additional benefits available to certain state employees?**

Three statutes provide additional benefits to police officers and firefighters and to certain state employees: The Heart and Lung Act, Act 534, and Act 632.

1. Heart and Lung Act. The Heart and Lung Act applies to all state police officers, enforcement officers or investigators employed by the Pennsylvania Liquor Control Board, parole agents, enforcement officers and investigators of the Pennsylvania Liquor Control Board, or the Pennsylvania Board of Parole, any member of the Delaware River Port Authority Police or any policeman, fireman, or park guard of any county, city, borough, town or township who is injured in the performance of his or her duties.

If you qualify, these benefits are available for any temporary incapacity which results from a work injury. These benefits are also provided to firefighters who, after 4 consecutive years of service or longer, suffer a disease of the heart or tuberculosis of the respiratory system, contracted or incurred and caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of covered employment. The Workers' Compensation Act provides that the employee is entitled to his or her full rate of salary until the disability arising from employment has ceased. The Workers' Compensation Act does not provide for compensation for permanent incapacity.

2. Act 534. Act 534 covers any employee of a state penal institution or correctional institution under the Department of Corrections and any employee of a state mental hospital or youth development center under the Department of Public Welfare. The Workers' Compensation Act covers injuries which occur during the course of employment by an act of any inmate or any person confined in such an institution or by any person who has been committed to an institution by any court of the Commonwealth or by any provision of the Mental Health Act. With respect to any employee of any County Board of Assistance, the injuries are covered if they were incurred by the Workers' Compensation Act of an applicant or recipient of public assistance. Furthermore, any employee of the Department of Public Welfare who has been assigned to or has volunteered to join the fire fighting force of any institution of the Department of Public Welfare and who is injured while engaging in firefighting duties is entitled to compensation.

Under Act 534, the injured employee is paid his or her full salary until he or she is no longer prevented from returning as an employee of the department, board or institution at a salary equal to that earned at the time of the injury. Please note that benefits are also available for the widow and widower and minor dependents of any employee who dies within one year as a result of such injuries. Death benefits are only available at the rate of 50% of the employee's wages, but there is no maximum statewide average weekly wage standard applied to these benefits.

3. Act 632. Act 632 applies to a limited class of correctional institution employees. If you believe you fall under this Act, contact our office for more information.

## **Section 9: Suing for negligence and recovering penalties for delays**

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### **Can I sue my employer because I was injured at work?**

If you are injured at work, the only legal action you can take against your employer is to make a claim for workers' compensation benefits. You cannot sue your employer for pain and suffering. If your work injury was caused by a third party (not your employer or co-worker), you may have the right to sue that person/entity for negligence and receive workers' compensation benefits from your employer. A worker diagnosed with a latent disease caused by exposures at work may be able to pursue a negligence action against the employer.

### **If someone other than my employer caused my work injury, can I sue them for negligence?**

In a great number of situations, the worker's injury was not caused by a fellow employee or the employer, but rather by a "third party," such as the manufacturer of defective machinery. In each of those circumstances, the worker may be entitled to receive workers' compensation benefits and bring a personal injury lawsuit for "pain and suffering" against the negligent third party. Perhaps the most frequent occasion where the Workers' Compensation Act does not prevent a third-party suit arises when an employee is injured in a car accident during work. If the other driver is negligent and is not employed by the same employer, a personal injury lawsuit may be brought.

In a factory setting, it is not unusual for injuries to arise as a result of defectively designed machines. Often, industrial machinery is lacking appropriate safety guards or similar devices. Usually the manufacturer of the machinery is a company other than the employer and, therefore, can be held legally responsible.

In many cases, workers are diagnosed with mesothelioma due to asbestos exposure. These individuals can often sue for negligence.

In construction, an employee of one sub-contractor may be injured as a result of the negligence of the employee of another sub-contractor. In those instances, a personal injury suit is not barred. One whose work takes him off the premises of his employer and onto the premises of others is always exposed to the possibility of defective conditions at

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those premises, defects that might serve as a basis for a negligence claim.

These are just a few examples of situations where the Workers' Compensation Act does not prevent you from pursuing an action for pain and suffering. The point is that you should not simply assume that suit is prohibited.

**May I recover any penalties against my employer or the workers comp insurance company if there is an excessive delay in payment of my benefits?**

Penalties under the Workers' Compensation Act may be assessed against an employer or its insurance company at the rate of 50% for a violation of the Act or any unreasonable or excessive delay in the payment of compensation. Attorney's fees may also be recovered.

**Where To Go For More Information**

**If you have questions and would like to discuss a work injury or workers' compensation claim with us, please feel free to call Willig, Williams & Davidson and our work injury lawyers at 1-866-413-COMP (2667) or 1-215-656-3600.**



# Pennsylvania Workers' Compensation Work Injury Checklist & Notebook

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If you have been injured at work, it is important to keep a record of how you handled your work injury. You should keep copies of all relevant documents together in one file and you should never sign a document without reading and understanding it completely.

You should seek the advice of a certified workers' compensation attorney **within 120 days of being injured or learning of a work-related disease or illness**. You should also seek the advice of counsel if you have been denied workers' compensation benefits, if you have been asked to settle your workers' compensation claim, and if you do not believe your claim is being handled properly.

**\_\_\_ Report your injury as soon as possible (within 120 days of the injury).**

Date of injury: \_\_\_\_\_

Location of injury: \_\_\_\_\_

Description of what happened: \_\_\_\_\_

\_\_\_\_\_

Description of injuries (be specific): \_\_\_\_\_

\_\_\_\_\_

List of all witnesses to the accident/injury (include contact information and if possible, their statements): \_\_\_\_\_

\_\_\_\_\_

Date injury was reported to employer: \_\_\_\_\_

To whom was injury reported (name and title): \_\_\_\_\_

If you stopped working, list the dates you were out of work:  
\_\_\_\_\_

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**\_\_\_ Seek treatment from a panel doctor or provider for the initial 90 days of treatment.**

Record the name and contact information of treating physician:

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Record dates of all doctor visits and results of visits:

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Record dates of all medical tests, type of test and results of test:

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**\_\_\_ Note dates of receipt of formal workers' compensation forms.**

Notice of Compensation Payable: \_\_\_\_\_

Notice of Compensation Denial: \_\_\_\_\_

If receiving workers' compensation, date it began: \_\_\_\_\_

**After 90 days of treatment with the posted doctor, get your own doctor.** *(Notify the adjuster of the change in doctor and keep them informed of your treatment.)*

Record the name and contact information of new treating physician:

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Record dates of all doctor visits and results of visits:

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Record dates of all medical tests, type of test and results of test:

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# PENNSYLVANIA WORKERS' COMPENSATION HANDBOOK

Labor Law  
Employee Benefits  
Employment Law  
Workers' Compensation



Law Offices of

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