

NEW JERSEY WORKERS' COMPENSATION:

What Injured Workers Need To Know



CRAIG VORHEES, ESQ.

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TESTIMONIALS

“He truly cares about helping his clients! Even after we moved out of New Jersey, Craig was able to help us in every way possible. He made sure we understood all the terms and conditions of our case; and was more than happy to further explain things. Very happy with how our case was handled from beginning to end. Highly recommend Mr. Voorhees and his law office to anyone seeking help! Thanks again Craig for everything you have helped us with!!”

- Cassidy Fuentes

“Craig was extremely thorough in his assessment of my situation. He gave me great legal counsel/advice including all sides of my issue. A lot of Attorneys give you one quick answer so they can move on to their next client and cash the check. Craig gives you all factors to consider including cause and effect so you can make a true informed decision based on his advice and knowledge of the law. He cares about his clientele and I highly recommend him.”

- Travis Daily

“He is an excellent lawyer. He returns your call within a day, and is always looking out for his clients. Always trying to get them the most money he can. I would recommend him in a heartbeat. One of the finest lawyers I have ever met.”

- Anna Hackett

“Craig was wonderful to work with - both smart and capable, he is also conscientious and reliable. Craig took the time explain clearly some of the complexities we were dealing with and helped guide us towards a successful outcome. I highly recommend his services, he's very easy to deal with and he will go that extra mile to insure the best outcome. Highly recommended!”

- Karen Mintz

“Nothing but a great experience with Craig! In one of my worst times, he listened carefully, helped me gather my thoughts and get done what had to get done successfully. He is a pleasant understanding man and responds quickly. Can't thank him enough.”

- Tracey Brink

“Wonderful experience. Mr. Craig was the first attorney I spoke with, to handle my case. Was impressed right away!!! He is a gentleman and handled my case very well. No nonsense, very understanding and very supportive. Would recommend him 100%.”

- Krish KV

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ABOUT THE AUTHOR



I have been a workers' compensation practitioner for over 20 years. My practice is based in central New Jersey and I solely represent injured workers. I've prosecuted hundreds of workers' compensation claims and have developed special skills and knowledge in the area of workers' compensation law. I have a solid background and a good familiarity with the judges, the courts, and the system to provide sound advice and effective representation.

Who Is This Book For? What Do You Want Readers To Gain From This Book?

This book is for the injured worker. I just wanted to provide some answers to some of the most frequently asked questions that arise in the mind of someone who has suffered a work injury. It is intended to answer those questions and provide guidance for those who have been injured at work and tell them what they should expect in the aftermath of a work-related injury.

CHAPTER 1

WORKERS' COMPENSATION LAW IN NEW JERSEY



Workers' compensation is a creature of NJ statutory law. It is a no-fault system that was designed to protect the injured worker back when it was passed in 1911. The purpose was to provide quick medical treatment, wage loss, and a permanency award for anyone who sustained a work accident.

What Are The Workers' Rights Under New Jersey Workers' Compensation Law?

An injured worker is entitled to reasonable and necessary medical treatment caused by a work-related injury, temporary disability benefits, or wage replacement when they are actively treating for a work injury. They may also be entitled to permanent disability benefits for any injuries that result in permanent restrictions or impairment to the injured body part. All of these benefits are usually paid for by the employer's workers' compensation carrier. If there is a dispute about any of the benefits, the employee has the right to file a claim with the New Jersey Department of Labor, a Division of Workers' Compensation, and have the matter heard by a workers' compensation judge.

If The Injury Sustained At Work Is My Fault, Does That Mean I Have No Chance Of Recovery?

Workers' compensation is a no-fault system; it doesn't matter if you inadvertently injure yourself and there is no other reason for the injury other than your

own inattention. As long as you do not intentionally injure yourself, you are entitled to benefits provided by workers' compensation in New Jersey.

CHAPTER 2

INDUSTRIES AND SECTORS COVERED BY NJ WORKERS' COMPENSATION LAWS



New Jersey Workers' Compensation covers all municipal, county, state, and private employees, and certain classes of volunteers, such as firefighters and rescue squad drivers. Postal workers, federal workers, longshoremen, railroad workers, and other types of non-state governmental workers have their own separate workers' compensation law and they are not handled in the New Jersey Workers' Compensation system.

Are All Employers Required To Carry Workers' Compensation Insurance In New Jersey?

Everyone but a sole proprietor with no employees is required to have workers' compensation insurance and an employer's failure to maintain workers' compensation insurance can result in severe financial penalties and assessments against the employer. The officers of the employer can be held personally liable. Unfortunately, there are some employers who fail to maintain workers' compensation insurance and this can result in a devastating impact on the injured worker. There is a New Jersey state entity known as the Uninsured Fund that will pay for medical benefits and temporary disability benefits for an employee injured while working for an uninsured employer. This process is time consuming and rather inefficient.

What Is A Compensable Injury Under New Jersey's Workers Compensation Law?

We have two recognized claims under New Jersey workers' compensation law. The first and the most common is a specific accident or traumatic injury

claim. You can identify it by an exact time, location, and date. For example, someone falling off a ladder or slipping on ice or getting into a car accident would be a specific accident claim. There is another type of claim called an occupational claim, which involves exposure to your work environment in causing injury. For example, an administrative assistant who types frequently over the course of time may develop carpal tunnel syndrome and require medical treatment. If you can prove that the work effort resulted in the carpal tunnel syndrome, the administrative assistant would have a workers' compensation claim.

You also will find occupational claims, if there has been exposure to harmful chemicals and airborne substances in the work environment that caused pulmonary disability or other internal injuries. That type of claim is also referred to as an occupational claim and may be covered under the New Jersey Workers' Compensation law.

What Steps Should I Take If I Get Injured At Work In New Jersey?

You must immediately report your specific accident to a supervisor or your employer if you are injured at work. There are strict time provisions in the law and the employer needs to be promptly notified. If you fail to report an injury within 90 days, you may be precluded from pursuing a workers' compensation claim. The reason there is a provision in the law for the timing is to afford the employer and the insurance company time to investigate the injury. If they can't perform a timely investigation, they may not be able to make the right determination. The law wants the employee to properly notify the employer of an injury and it has to be someone in a supervisory capacity. Your employer has to be aware of the injury.

CHAPTER 3

WHAT ARE AN EMPLOYEE'S RIGHTS?



An employee is entitled to three basic entitlements under New Jersey Workers' Compensation law. They are entitled to medical treatment, temporary disability benefits, and if a permanent injury is sustained, a permanency award. The insurance company is not required to advise you about your right to pursue a permanency award and they often do not. However, this is an additional benefit and additional money that you are entitled to after you have sustained a work accident that

causes permanent residuals. In terms of exercising those rights, the way you go about doing that is filing a claim petition with the NJ Division of Workers' Compensation, so the court can have jurisdiction to hear your matter.

Without the filing of a claim petition, the matter is essentially between you and your employer or their insurance company. Frequently, if there is inadequate medical treatment being provided by the insurance company, you have the right to challenge the treatment that has been provided by filing a motion for medical treatment with the workers' compensation courts. This would get your matter in front of a judge. The same goes if they are not paying you temporary disability benefits. You have the right to go before a judge to seek any benefits that are not being provided.

You are not entitled to a jury in a workers' compensation claim. It is solely an administrative proceeding where the judge is the finder of fact and makes all legal conclusions in your case. If you have received all medical treatment and temporary disability benefits and have suffered some permanent residuals,

which is a fluid concept, you would then have the right to pursue what we call a permanency award and that is additional monetary benefits you are entitled to under New Jersey Workers' Compensation law.

Will I Be Able To Choose My Own Doctor For My Work-Related Injury?

Unfortunately, you are not able to choose your own doctor in New Jersey for work-related injuries. The insurance company or your employer has the right to designate which doctor will provide treatment for you. The doctor needs to be qualified to provide that treatment, but you cannot go out on your own and expect the insurance company to pay for a treatment that they have not authorized. If you go and get that unauthorized treatment, you could be stuck for the medical bills. If you use your private health insurance and your private health insurance later determines that it is a work-related condition, they could charge back any money they paid or deny payment of anything that is related to workers' compensation under their policy.

It is important that any injured worker goes to a doctor who is designated by the insurance company. If you're not satisfied with the treatment that is being provided, the treatment is inadequate, or the claim has been denied, that is a different situation because you may be able to file a motion with the court to get the judge to order the insurance company to send you to a different doctor for additional treatment.

You would normally do this through your attorney, who would get the necessary medical evidence or opinion evidence from a treating physician or an examining physician, who would write a report in furtherance of your application with the court to change medical providers. In certain circumstances where the insurance company has denied the claim and there has been a demand for treatment, you may be able to go out and get the treatment on your own and have a judge decide later in your case whether your treatment was for a work-related injury. In any case, you always have to demand medical treatment from your employer or workers' compensation carrier in order to approach it correctly.

How Do I Get Paid When I Am Treating For My Work Injury And My Doctor Instructs Me To Stay Off Work?

You are entitled to temporary total disability benefits from the workers' compensation insurance company if you have been out of work for seven days. The amount you are entitled to is based upon your earnings before the injury. It is 70% of your gross weekly wage, but that is subject to a statutory cap set by law. If someone is a high-income earner and they get hurt, they would only be entitled to that maximum amount provided by law. It must be a doctor designated by the insurance company who deems you unable to work and the doctor has to provide a work script that you are unable to work because of your injuries.

When those conditions have been met, you would be entitled to those weekly benefits until you are discharged from the care of the doctor or the doctor returns you to work, either light duty or full duty. If you are returned to work in the light-duty capacity by the doctor, you have an obligation to

report the return to work restrictions to your employer. If your employer can accommodate the work restrictions, you must return to work. If the employer cannot accommodate the work restrictions, you are entitled to continuing temporary disability benefits until a doctor has discharged you from care. When you are discharged from care, your temporary disability benefits will stop.

Can I Sue My Employer If My Work Injuries Were Caused By My Employer's Negligence?

When you file a workers' compensation claim, you are not suing your employer. When the law was designed, it was in exchange for the injured worker giving up the right to sue their employer. Even if a co-worker causes your injury or your employer is negligent and there is a hazardous condition due to that negligence, you are limited only to workers' compensation benefits. The only exception to that is if your employer intentionally caused you injury, which is a very difficult legal standard to meet.

What If My Work Injury Was Caused By A Co-Worker Or Someone Other Than My Employer?

If your injury was caused by a third party, you may not be limited to workers' compensation benefits. You may also have a third-party case against someone other than your employer or co-workers. For instance, if you are working as a delivery driver and get into a car accident caused by another driver, you have a workers' compensation claim as well as a potential lawsuit against the driver of the vehicle. We are always looking to see if there is a potential for a third-party lawsuit in all workers' compensation claims. Frequently, on construction sites, there are multiple subcontractors present. A carpenter may inadvertently be injured by someone working as an iron worker and if the iron worker is negligent, the carpenter may have a potential lawsuit against the iron worker's employer, in addition to New Jersey workers' compensation benefits.

CHAPTER 4

WHAT IF MY DOCTOR SAYS I CAN RETURN TO LIGHT WORK WHILE I AM TREATING FOR MY INJURY?



You need to immediately advise your employer if your doctor has returned you to work with restrictions. You should obtain a copy of the doctor's work script and furnish it to your employer. If your employer is able to accommodate the doctor's restrictions, you need to return to work. If your employer is not able to accommodate those restrictions, you are entitled to continuing disability

benefits until the doctor has discharged you from her care. It is important if you are informed of a return to work status by your doctor, that you report this to your employer. If you don't get in contact with your employer, they may decide that you have voluntarily abandoned your position, which would cause you to lose your job and would also cause problems in terms of applying for unemployment benefits.

What Happens When My Treatment Is Finished and The Doctor Places Me at Maximum Medical Improvement?

If you have retained an attorney to represent you in your workers' compensation case, the attorney, if they haven't done so already, would file a claim petition with the NJ Division of Workers' Compensation. That document set forth basic information about you, your employer, the insurance company, where the accident happened, how the accident happened, and the type of injuries you sustained. Your injuries might be orthopedic in nature, neurological in nature, or pulmonary in nature, for example, but there needs to be basic information set forth on the claim petition. This includes

your job title, who the injury was reported to, whether they provided medical treatment for your work injury, and the circumstances surrounding you, your employer, and the work accident.

It is a pretty simple form that is used. Once it is filed with the Division of Workers Compensation, the court has the authority to hear your case. When a claim petition is filed, the insurance company will either refer the claim to their in-house attorney or an outside attorney for the purposes of filing an answer to the claim petition. The defense attorney will investigate the matter to confirm that you were an employee and that you did get hurt at work, and they will answer the claim petition. When they answer the claim petition, they may accept that you have an injury covered by workers' compensation.

Sometimes, after you file a claim petition, the claim will be denied and therefore, you have a fully contested workers' compensation claim. In either case, there is a medical investigation done by your attorney and the insurance company. This can take a

considerable amount of time to finish because if there is an extensive medical treatment and are numerous doctors, you have to get all the medical records. When your attorney has all the medical records and has sufficient information about your injuries and pre-existing conditions, if applicable, your attorney will send you to an expert medical witness for the purposes of reviewing the medical records, examining you, and writing a report, setting forth multiple factors and rendering an opinion on whether your injury was work related. If so, they will comment on the nature and extent of your disability.

The insurance company will do the exact same thing. They will forward all their medical records to their expert medical witness or witnesses who will also review the records, have you go to their office for a physical examination, and then write a report for the insurance company.

Is There A Time Limit For How Long I Can Receive Temporary Disability Benefits While Under Active Treatment?

You can receive temporary disability benefits for a very long time. The maximum length of time is 400 weeks and most cases are resolved before 400 weeks have passed, either by way of medical treatment or the matter has been resolved in court before the 400 weeks is up.

What Information Should I Share With My Doctor After A Work Injury?

You should be truthful and accurate about all circumstances surrounding your accident. You should also be truthful and accurate about any pre-existing medical conditions that you may have. Even if you reinjure the same body part, you want to disclose this to the doctors. It happens quite frequently where someone may not disclose that information to the doctor. Ultimately, that prior condition will most likely be revealed and if it appears that you are not being truthful during the claim, it is going to hurt your credibility and could certainly hurt your claim.

My advice to all of my clients is to provide complete, truthful, and accurate medical information to the insurance company and to the treating physicians. You cause more problems by withholding information than revealing information. In fact, sometimes pre-existing medical conditions may ultimately help your workers' compensation case. It is of utmost importance that everything is accurate when dealing with the insurance company and the doctors.

CHAPTER 5

WHAT IS A FUNCTIONAL CAPACITY EXAMINATION?



A functional capacity examination is a series of tests that are performed, usually by a physical therapy group, to determine your ability to work. They will have you perform various physical activities, such as lifting, carrying, pushing, pulling, sitting, standing, walking, and all of these movements will be analyzed by them. A functional capacity examination may be required in some circumstances, such as if a police officer is injured at work and needs to be full duty

because of her job duties. The police department may require that the officer undergo a functional capacity evaluation to make sure that they are fit and able to perform their policing duties. Frequently, the insurance company will arrange to have a functional capacity evaluation done in those circumstances. I recommend that the worker confer with an attorney because the tests are not necessarily accurate and they may not help your workers' compensation case.

The examination is not medical treatment and the law provides that an employer is required to provide medical treatment. I frequently advise my clients, if it is not required for them to return back to work, to not go to the functional capacity examination. My experience has been that a judge will not order a worker to attend a functional capacity evaluation. It is somewhat different if the doctor prescribes a functional capacity evaluation. In those circumstances, it may be considered medical treatment and therefore the injured worker may have to attend the functional capacity evaluation. Overall, I am extremely leery of functional capacity evaluations. I do not think that they are scientifically reliable and I think they are a tool

used by the workers' compensation insurance company to undermine a valid claim. The functional capacity evaluation will frequently indicate that there has been sub-maximal effort and the employee has embellished their restrictions.

If you are at the point where you are directed to go to a functional capacity evaluation, my recommendation would be for you to confer with a workers' compensation attorney to determine whether it is necessary and appropriate for you to attend the functional capacity evaluation. Again, your employer may require that you undergo the functional capacity evaluation in order for you to return to work. If the functional capacity examination demonstrates that you are not able to return to your job, you could very well be terminated from your employment.

What Is An Independent Medical Evaluation?

An independent medical evaluation is not necessarily independent. The doctors performing evaluations in the workers' compensation systems are recognized as advocates for the respective parties. The

doctor your attorney sends you to will be writing a report and advocating for you. The insurance expert medical witness will be advocating for your employer or the workers' compensation insurance carrier. It is recognized in the system that the doctors for the workers are exactly that: for the workers. The doctors for the insurance companies are expert witnesses for the insurance company. Essentially, there is no truly independent medical evaluation in the New Jersey Workers' Compensation system.

What If My Doctor Releases Me From Treatment With Permanent Work Restrictions That Cannot Be Accommodated By My Employer?

If you have been out of work for a lengthy period of time and your employer cannot accommodate the permanent work restrictions, you may very well be out of a job and you must pursue other options, such as lighter work, unemployment benefits, or Social Security disability benefits. If your injury causes you to lose your job, it would be in your best interest to pursue all that you are entitled under the law.

What If My Job Is No Longer Available After I Am Discharged From Medical Treatment?

If you have been out of work for a considerable period of time and are not covered under the Family Medical Leave Act, you will have to apply for unemployment and seek other work. Unemployment will use the wages you earned immediately before your work accident for the purposes of establishing your unemployment entitlement. Unemployment is not usually available, however, to injured workers who have been unable to work for more than 18 months.

What Should I Do If The Doctor Says My Injuries Are Minor And Does Not Recommend Any Type Of Treatment?

If you are unsatisfied with the advice of the first doctor you see, you should request that the insurance company refer you to another doctor for a second opinion. If they refuse, it would be wise to confer with an attorney to explore your options. You may be able to file a motion with the court for purposes of obtaining an order from the workers' compensation judge compelling them to provide you with treatment. Frequently, your

attorney will send you to a physician experienced in the workers' compensation system, who will write a report setting forth treatment recommendations. The report is then filed with the court to get your issue before a workers' compensation judge.

What Happens After My Medical Treatment For My Work Injury Is Over And My Temporary Disability Benefits Stop?

If your injuries have left permanent residuals impacting your work ability or activities of daily living, you have a right to pursue a permanency award through the workers' compensation system. You would most often do this by retaining an attorney to represent you in this process, who will take the necessary steps to make sure that your case is ready for court and to advise you along the way as to the way your case will resolve.

What If I Don't Want To Return To My Job After My Medical Treatment Is Over?

Your workers' compensation claim is not tied to your employment with the same employer. You are free to quit that job and pursue other career options.

CHAPTER 6

WHAT IF MY EMPLOYER REFUSES TO REPORT MY INJURY TO WORKERS' COMPENSATION INSURANCE?



If your employer refuses to report your injury, find out who the workers' compensation carrier is and reach out to the insurance company directly. If your employer is not willing to report an injury to the insurance company, it would be appropriate for you to confer with an attorney with regard to filing a claim petition, so the matter can be heard by a workers'

compensation judge. If an employer is not cooperative with a case, it would be important to retain an attorney to assist you through the process of getting the matter straightened out.

How Long Do I Have To File A New Jersey Workers' Compensation Claim?

You have two years from the date of the last payment to you by the workers' compensation insurance company or the last authorized medical treatment visit to file a claim. For example, if you got hurt on January 1, 2020 and the workers' compensation carrier accepts your injury as work related and pays you temporary disability benefits until June 1, 2020, you would have until June 1, 2022 to file a workers' compensation claim petition with the Division of Workers' Compensation. On the other hand, if you got hurt at work on January 1, 2020, and the compensation carrier denies the claim, forcing you to seek treatment outside the workers' compensation system, you would only have until January 1, 2022, to file a claim petition with the Division of Workers' Compensation. If you fail to file a claim petition within the two-year period, you cannot pursue the claim at all.

How Do I Prove That I Have Sustained Permanent Injuries?

It is your burden in court to prove that you have sustained permanent injuries entitling you to a workers' compensation award. If you have retained an attorney, the attorney will file a claim petition, gather relevant medical records, and have you evaluated by expert medical witnesses who will write a report in support of your claim. Your employer will do the same thing. These reports are used initially to see if the matter can be settled for a fair and reasonable amount. The expert reports are tools that the attorneys and judges use to ascertain what a fair disability award would be based on the injuries and the impact on the worker.

CHAPTER 7

HOW MUCH MONEY WILL I GET FOR MY WORK INJURIES?



How much money you will receive depends on the severity of your injuries, how much you were earning, and the length and course of medical treatment. If someone sustains an injury and has a quick recovery with minimal functional loss, the award will be less than for someone who sustains a more significant injury that causes them to have restrictions at work or outside of work. The value of a workers' compensation claim is based on a variety of factors,

including nature of the injury, whether any surgery was performed, the recovery of the worker, whether there has been a return to the same job, and wages.

If you are a part-time worker, your claim could be much less valuable than someone who is working full time, even though you sustain the same type of injuries. You really need to depend on someone who is experienced with the workers' compensation court system because that experience enables an attorney to advise a client as to what a fair and reasonable settlement is. Without that experience, an attorney is not equipped to make the necessary recommendations to the injured worker.

What Is The Second Injury Fund?

The Second Injury Fund is a fund established by the state of New Jersey. The purpose of this fund is to help in cases of people who have pre-existing medical conditions combined with a work accident, who are rendered totally disabled. The Second Injury Fund will participate in the workers' compensation proceedings. The purpose of the Second Injury Fund is to ensure that

your last employer is not completely obligated to pay lifetime workers' compensation benefits if you have pre-existing conditions that impacted your ability to work. The Second Injury Fund can be a very useful part of your workers' compensation case because it lessens the liability of the insurance company and you continue to receive lifetime benefits, as long as you remain totally and permanently disabled, from the state of New Jersey.

What Are Dependency Benefits?

Dependency benefits are available to family members of injured workers who meet certain criteria. For example, if a worker falls from a building while working and is married with three young children, the wife and children would be entitled to weekly workers' compensation benefits based upon the death of their spouse and father.

CHAPTER 8

WHAT TYPES OF SETTLEMENTS ARE AVAILABLE IN NEW JERSEY WORKERS' COMPENSATION?



There are two types of settlements in New Jersey workers' compensation. The first is an order approving settlement. This type of settlement usually involves an accepted work accident with authorized medical treatment and an agreement between the parties as to the nature and extent of your permanent disability. By law, the payments are paid over a course of time. Frequently, you will get a lump sum check for benefits that are past

due; we call those retroactive payments in workers' compensation. You will then get continuing weekly benefits until the award is fully paid off. With this type of settlement, you have a right to reopen your case for additional medical treatment and, if there is a material worsening of your impairment, additional compensation.

Essentially, the settlement under an order approving settlement is not a final settlement. Your settlement comes with a warranty, so you can get additional medical treatment and additional money if your injury gets worse after the settlement.

The other type of settlement is known as a Section 20 settlement in New Jersey Workers' Compensation. With this type of settlement, there are usually proof issues with the case and instead of taking your chances litigating the case before a judge, the parties come to an agreement as to a lump sum amount of money in exchange for a complete dismissal of the case. With this type of settlement, you cannot return to court for additional medical treatment or compensation. The case is closed forever when the order is signed by the judge.

All settlements must be paid within 60 days from the date your matter is settled in court.

What Factors Should Be Considered Before Settling My Workers' Compensation Case?

Settling a workers' compensation case is an important decision. The first factor to consider would be what type of settlement is being proposed. Is it an order approving settlement with continuing rights for future medical treatment and a worsening of the impairment? Is it a Section 20 settlement with dismissal? If it is a Section 20 settlement and it looks like you may need additional medical treatment for your work-related injury, you may be better off taking your chances and having your case heard by a judge.

Do I Have To Appear In Court To Settle My Workers' Compensation Case?

All workers' compensation claims must be approved in court by a workers' compensation judge. Although the parties may arrive at a proposed settlement, it is ultimately the judge's decision to determine whether you understand the settlement, are willing to approve the

settlement and that the settlement is fair, reasonable, and just. This ensures that you are protected during the workers' compensation process.

What Happens If No Reasonable Settlement Is Offered Or I Do Not Agree To The Settlement Amount?

You have a right to a trial. A trial would be where you testify in court and you bring any witnesses to testify on your behalf, such as a spouse or a co-worker. Your attorney would present the expert medical witnesses who evaluated you in furtherance of your workers' compensation claim. The attorney for your employer also has the opportunity to present their own witnesses in defense of the claim, including the medical experts who evaluated you for them. After the judge reviews all the evidence, he or she makes a decision on whether you are entitled to workers' compensation benefits. The judge has the ultimate say on whether you are entitled to benefits and, if so, how much your injuries are worth.

How Could A Workers' Compensation Settlement Or Payment Impact Other Benefits That Someone May Be Receiving?

If someone is receiving Medicaid, the workers' compensation settlement may render them ineligible for the benefits they are receiving from Medicaid. If an injured worker is receiving Social Security disability benefits, there is an interaction between the benefits paid by workers' compensation and Social Security. The law provides that an injured worker shouldn't be getting more than what they were earning by receiving workers' compensation and Social Security benefits in combination. The law provides that the worker cannot earn more than 80% of their average current earnings when receiving both workers' compensation and Social Security disability benefits at the same time. Your attorney should be able to properly advise you of the interplay between Social Security Disability payments and workers' compensation payments.

If under a lump sum Section 20 settlement, the Social Security Administration could reduce your monthly benefit, if the case is not properly submitted

to the court for approval. In addition, workers' compensation could have an impact on treatment paid for by Medicare. If you are on Medicare and have a pending workers' compensation claim, the treatment for the work injury should be paid for by the workers' compensation carrier. It could be an issue in the future, if you don't take Medicare's interests into account when you're receiving treatment for a work injury.

Are My Workers' Compensation Payments Taxable?

Workers' compensation payments are not considered income by the New Jersey state or federal government. The limited exception when the benefits may become taxable is if you are simultaneously receiving Social Security disability benefits. Depending on certain computations, your workers' compensation payments may become taxable if you receive Social Security disability and workers' compensation payments at the same time.

What If I Owe Past Child Support Payments?

If you owe past child support payments, the judge will require that your workers' compensation award be paid to the appropriate probation department for payment of the child support benefits. You are only entitled to receive \$2,000 from your workers' compensation case. Any other money is used to pay child support. It is mandatory that the workers' compensation money you receive is paid to satisfy any outstanding child support arrearages.

What Leads To A Workers' Compensation Trial? What Happens At A Trial?

If you are not able to resolve your case because you do not agree to the settlement or your employer does not agree to the settlement, you can present your case in court to the workers' compensation judge. You would have an opportunity to testify in court about the injury and medical treatment, and the permanent impact it has had on your activities of daily living and at work. You could present family members or co-workers in support of your claim, among other witnesses. Your attorney

would then call the expert medical witness who examined you in furtherance of the claim in court for the judge to hear the doctor's testimony. The attorney for the insurance company also has the right to call witnesses and medical experts on their behalf.

After the judge hears all the evidence and considers any evidence submitted, such as treating records or other medical records, the judge makes a decision on whether you are entitled to workers' compensation benefits. The judge would also decide how much you are entitled to, based on the evidence presented. A workers' compensation trial does not take place all at once. Witnesses are called usually on a periodic basis. A worker may testify one month and a month later, a medical doctor may testify, and so on. A workers' compensation trial usually takes several months to complete.

CHAPTER 9

WHAT OTHER BENEFITS MAY BE AVAILABLE TO ME?



If you have been out of work for over one year, you may want to consider applying for Social Security disability benefits. Your injuries must be severe enough that you do not anticipate that you will be returning to work in any capacity. Applying for Social Security disability benefits while your workers' compensation claim is pending is something you should discuss with your attorney before you file an application for disability benefits.

What If I Received New Jersey State Disability Benefits Because Of My Work Injury?

If you received New Jersey State temporary disability benefits because of your work injury, you will have to pay the state of New Jersey back from the workers' compensation proceeds. The state of New Jersey has a lien against your workers' compensation benefits. When you apply for New Jersey state temporary disability benefits, there are questions on the form as to whether your injury is work connected. If you respond that the injury is work connected, the New Jersey Temporary Disability Division will require that you file a claim petition with the Division of Labor to pursue workers' compensation benefits. If it turns out that your claim is covered under workers' compensation and the insurance company should have been paying temporary disability benefits, the judge can order the insurance company to reimburse the state of New Jersey for the temporary disability benefits you received.

What If I Received Private Short-Term Or Private Long-Term Disability Benefits Because Of My Work Injury?

You need to be careful, if you have received short term or long-term private disability benefits, the disability policies may be entitled to a portion of your workers' compensation award. Frequently, the policies are written in a way where they are entitled to get reimbursed or credited for any workers' compensation benefits paid. If you fail to reimburse the disability plan from your workers' compensation proceeds, you can get sued in court for them to recover those benefits. It is important that you fully disclose any private disability benefits received due to a work injury to your attorney, so they can take the appropriate action to make sure that you don't have future issues with the long-term disability plan.

Should Someone Go Back To Work While Their Workers' Compensation Case Is Pending?

A vast majority of injured workers return to work after medical treatment is over and the doctor has

cleared them to do so. It is unlikely that the return to work will be used against you, but it is certainly a factor that is considered, if you can perform all of your job duties without any type of restriction. Most people return to work while their case is pending because they have to pay their bills and provide for themselves or their family.

CHAPTER 10

COMMON REASONS WORKERS COMPENSATION CLAIMS ARE DENIED OR DISPUTED

REJECTED

There are multiple defenses available to the workers' compensation insurance companies, such as notice, the statute of limitations, intoxication of the worker, independent contractor status, horseplay, injuries not occurring in the course of employment, and injuries not arising out of employment. Probably the most frequently invoked defense is not arising out of employment or medical causation. For example, an

injured worker with a long history of pre-existing low back treatment due to degenerative disease may sprain her back lifting a box at work. The insurance company may send the employee to a doctor who might say the lifting incident didn't cause the back problems; they were there all along.

If the doctor for the insurance company decides that the injury is not causally related, the insurance company will deny the claim for lack of medical causation.

The statute of limitations is another defense, if your petition is not filed within the two-year period. Notice is also a defense. If your accident is not timely reported, your claim for benefits might fail because you didn't timely notify your employer of the injury.

Will My Medical History Be Used Against Me In My Workers' Compensation Claim?

Your medical history will not necessarily be used against you, but it is an important part of your workers' compensation case. If you have pre-existing injuries to the same body part, the insurance company may be

entitled to a credit for any pre-existing disability you had before the work accident. This would cause you to receive less money from the workers' compensation award. It is important for you to fully disclose all pre-existing conditions to your attorney and your doctor because it is likely that the insurance company will find out about any prior injuries, car accidents, or lawsuits. If you are not truthful in your medical records or history, you will have credibility problems, and that could be used against you in the course of your case.

How Can Recorded Statements Be Used Against Someone?

If your story changes during the pendency of your claim from what you initially said or if you gave false information on a recorded statement, the recorded statement could certainly be used against you to undermine your case.

Why Might Insurance Companies Obtain Surveillance Of Injured People? Is This Legal?

We occasionally encounter cases where the insurance company has obtained surveillance on an injured worker. These are usually the more significant

cases with substantial injuries. The purpose of an insurance company obtaining surveillance on someone is to disprove the severity of their injuries by recording the injured worker engaging in some type of physical activity. For example, if an injured worker is alleging that they are totally disabled and unable to work because of a severe back injury but they are videotaped by the insurance company chopping down trees in their yard, that video would certainly be relevant to whether the person is totally and permanently disabled. It is permissible and legal for an insurance company to perform surveillance on a person as long as it is in a public place.

Should I Hire An Attorney Right Away After An Injury Or Should I Wait For A Denial?

It is in your best interest to at least confer with an attorney when you get hurt at work, so you know what your rights are. You don't necessarily have to retain the attorney to pursue a case on your behalf, but gathering information about what your legal rights are is a good idea. If your claim is denied by the insurance company, it would be appropriate for you to seek out and retain an

attorney to handle the case. If the case has been denied, it is your burden of proof to demonstrate that your work injuries are covered by workers' compensation and you would be well advised to have an experienced counsel represent you in a denied claim.'

CHAPTER 11

DO I NEED AN ATTORNEY TO REPRESENT ME IN WORKERS' COMPENSATION COURT?



Although you are not required to have an attorney to represent you in workers' compensation court, it is in your best interests to have representation that is familiar with the system, so you are treated fairly. It is a rather specialized area of law that should be handled by an attorney who regularly handles workers' compensation claims. In my opinion, it

would be a mistake for someone to pursue a workers' compensation claim without an attorney.

Where Will My Workers' Compensation Court Be Located?

If you live in New Jersey, the workers' compensation court will be in the county you live or one close by. If you reside outside the state, it will be heard by the court in the county where your employer is located.

How Will My Workers' Compensation Attorney Be Compensated?

Workers' compensation is a contingency fee practice. This means that the attorney will not charge you anything during the pendency of your claim. The attorney is paid at the end of your case when the judge awards attorney fees. The judge will usually take a portion of the benefits awarded to you to pay your share of counsel fees. The rest is paid directly to the attorney by the insurance company. Typically, the award for counsel fees is 20% of the award entered in court.

What Sets You And Your Firm Apart In Handling Workers' Compensation Cases In New Jersey?

I am certified by the New Jersey Supreme Court as a workers' compensation attorney. This means that I have demonstrated sufficient knowledge, skills, and expertise in handling workers' compensation claims. In order to be certified as a workers' compensation attorney, you have to had handled numerous claims, been practicing for over five years, and obtain recommendations from other attorneys and judges supporting your ability to practice workers' compensation in New Jersey. I have been practicing workers' compensation in New Jersey for over 20 years, so I am familiar with the process and the difficulties that some cases may present. I have obtained total disability or lifetime benefits for many of my clients who are severely injured. I think my experience sets me apart from the others because workers' compensation is my sole focus.

NOTES

NEW JERSEY WORKERS' COMPENSATION:

What Injured Workers Need To Know



Craig Voorhees, Esq.

As an attorney with over twenty (20) years of legal experience, Craig Voorhees has successfully prosecuted hundreds of Workers' Compensation Claims including but not limited to traumatic orthopedic and neurologic injuries, brain injuries, repetitive motion injuries, pulmonary diseases, cardiac impairments, total permanent disability and dependency claims. He has been certified by The New Jersey Supreme Court as Workers' Compensation Attorney, a designation earned by less than 2 percent of all New Jersey Attorneys. Mr. Voorhees is admitted to practice law in New Jersey, New York and Pennsylvania.

"I know how serious work injuries impact you physically, emotionally and financially. When people call me, they are in crisis mode. They do not know how they are going to pay their bills and the stress is overwhelming, especially when you have the responsibilities of taking care of a family. My goal is to relieve that stress so my clients can focus on their health and well-being. When I take a case, my client's problems and concerns become mine. I want them to know that whatever they are facing to get their lives back on track, I am there with them and we will get there together." – Craig Voorhees, Esq.

"Craig has a heart for his clients but that does not preclude him from being a voracious advocate for his client's welfare and best interest in the courtroom."

– Angela Christmas

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