

KEY STEPS IN WORKERS' COMPENSATION

If you are hurt at work or become ill because of what you think is a work-related exposure, take the following action.

- Immediately report your accident or ailment to your supervisor. To be eligible for benefits, you should report the injury within 30 days. Continue to keep your employer informed about any changes to your condition.
- Seek first aid and medical attention.

Remember that delays can not only affect your health but also any possible compensation benefits.

Your employer reports the injury to their insurance company (or internal claims office if self-insured) and to the Office of Workers' Compensation. No further action is required from you to initiate a claim.

Your medical costs will be paid. If you miss more than seven days of work and are found eligible, you will receive compensation for a portion of your lost wages. Workers' compensation also provides benefits to dependents of workers who die as a result of a work-related incident.

If your injury is compensable, you should receive a check from the insurance company or from your own self-insured employer within 14 days after the injury. There is a seven-day waiting period; however, if you are off work more than 42 calendar days, you will receive compensation for the first seven days after the injury date. Any additional compensation for permanent disability, such as an amputated limb, will be determined after you return to work or the healing period ends.

THE OFFICE OF WORKERS' COMPENSATION ADMINISTRATION

The Office of Workers' Compensation Administration (OWCA) was created in 1983 within the Louisiana Department of Labor to administer the provisions of the Workers' Compensation Act. The OWCA investigates allegations of fraud; compiles information regarding workers' compensation claims; resolves disputes over the necessity, advisability, and cost of hospital care or services, as well as conflicts concerning medical, surgical, or non-medical treatment; provides OSHA consultation services; and assists Louisiana employers in the development and implementation of a safety management plan in their workplace.

The OWCA has exclusive jurisdiction to resolve disputes in workers' compensation matters. There are ten district offices located throughout the state which provide the framework for the resolution of disputes regarding a claim for benefits, the entitlement of benefits, or other relief under the Workers' Compensation Act.

WHAT IS WORKERS' COMPENSATION?

Workers' compensation is a legal remedy whereby an employee who is injured on the job is automatically entitled to certain benefits. The benefits can include medical care for the injury, disability compensation, rehabilitation services, and death benefits. The benefits are the obligation of the employer to the employee.

WHO IS COVERED BY THE WORKERS' COMPENSATION LAW?

Most employees in Louisiana are covered from the day they start employment. "Employees" may be full-time or part-time, seasonal or minors. Subcontractors and certain independent contractors may be considered "employees" if they are involved in the pursuit of the employer's trade, business, or occupation.

The law does contain some limited exemptions. Domestic employees, most real estate salespersons, uncompensated officers, and directors of certain non-profit organizations and some public officials are specifically exempted. Most volunteer workers would not be entitled to benefits.

Employers are required to insure their workers' compensation obligation or to be approved to self-insure. If you have reason to believe your employer is not covered, or if your employer requires you to pay for or purchase your own workers' compensation insurance policy, please contact the Audit and Security Section of the OWCA at 225-342-7555.

WHAT INJURIES ARE COVERED BY THE WORKERS' COMPENSATION LAW?

The law covers both mental and physical harm from either accidents or occupational diseases; however, mental injury must be the result of a physical injury or of a sudden, unexpected and extraordinary stress related to the employment and—in either case—must be proved by clear and convincing evidence.

The event causing the injury must arise out of—and be within—the course of your employment. Generally, the fault of the employer or employee does not affect the compensability of an injury. However, no compensation may be allowed if the injury was caused by the employee's deliberate failure to use adequate protection that was provided to him or by the injured employee's intoxication at the time of the injury, unless resulting from activities in pursuit of the employer's interests or from activities which the employer procured and encouraged the use of the beverage or substance. An employee may not be entitled to benefits if he is the aggressor in an unprovoked physical altercation. The employee may not be entitled to benefits if it is determined that he was a participant in "horseplay" at the time that the injury occurred.

MAY I CHOOSE MY OWN DOCTOR?

You may select one doctor of your choice in each specialty field; however, you must receive prior approval from your employer or their insurance carrier for any cost above a total of \$750 per provider. This limitation applies to doctors, hospitals, prescriptions, physical therapy, laboratory tests, etc.

Your employer may require you to submit to an examination by a physician of their choice. Failure to submit to any reasonable examination may cause your compensation payments to be suspended until the examination takes place.

Whenever you submit to any type of medical examination at the request of your employer and your employer receives a medical report, you are entitled to a copy of the written report within 30 days from the date of your written demand upon the employer, at no cost to you. Additionally, you are entitled to receive any medical information released to your employer by a health care provider.

WHO PAYS THE MEDICAL BILLS?

Your employer or their insurance company is required to pay all approved reasonable and necessary expenses for medical treatment and the travel to obtain the treatment. Any services over \$750 and any non-emergency hospitalization must be pre-approved by your employer or the workers' compensation insurer. If you have paid any of your medical expenses, you should send itemized receipts to your employer or their insurer for reimbursement.

WHAT IF MY DOCTOR AND THE EMPLOYER'S DOCTOR DISAGREE?

If your doctor and the employer's doctor do not agree on your medical condition, you may be entitled to an independent medical examination ordered by the Director of the OWCA. To request an independent medical examination, contact the Medical Services Section of the OWCA at 225-342-7555 or write the OWCA Medical Services Section, PO Box 94040, Baton Rouge, LA 70804-9040.

HOW IS COMPENSATION PAID?

You may be entitled to weekly compensation benefits if your injury prevents you from returning to work for more than seven calendar days. Benefits are payable beginning on the eighth day, and you should receive your first benefit check within 14 days after you notified the employer of the injury. You will be paid for the first seven days only if you are unable to work over 42 calendar days.

During the period of temporary disability, you are entitled to receive 2/3 of your average weekly wage at the time of the injury. The maximum benefit is 75%, and the minimum benefit is 20% of the state-wide average weekly wage. Maximum and minimum benefits are determined annually and apply to all claims occurring between September 1 and

August 31 of the following year. The compensation benefit received and the minimum and maximum benefit that applies to a claim are determined according to the date of the accident causing the injury and are not adjusted annually for increases or decreases in the maximum and minimum benefit allowed. You may obtain the maximum and minimum rates by calling the OWCA or visiting them on the web at www.laworks.net.

An injured employee may be entitled to supplemental earnings benefits if that employee is able to return to work but is unable to earn at least 90% of his pre-injury wage. The supplement is calculated as 2/3 of the difference between the pre-injury monthly wage and the amount of monthly wage that the employee is capable of earning. The supplement is subject to the same maximum and minimum benefits discussed above and is payable for a maximum of 520 weeks (including the time for which other workers' compensation disability benefits were paid).

If you die within two years of the last treatment as a result of the job-related accident, your surviving spouse and/or dependent children (or other dependents) will receive weekly benefits according to the schedule listed in the Act. If there are no dependents, surviving parents are entitled to a one-time benefit of \$20,000 each.

If you apply for and receive Social Security disability, benefits from an employer-provided disability plan, or Social Security old age retirement benefits, your workers' compensation benefits may be reduced in accordance with the Act. This is not a simple dollar-for-dollar reduction and must be calculated individually according to the claimant's circumstances. You cannot receive workers' compensation disability benefits and unemployment benefits at the same time.

MAY I DISPUTE MY CLAIM?

If you have a problem with your claim, you should first contact your employer or their insurance carrier. If you cannot resolve the problem, you should contact the OWCA at the district office nearest you. You will be provided a disputed claim form, LDOL-WC-1008, to complete and return to the appropriate office (this form is also available online at www.laworks.net). A filing fee of \$30 will be collected but is not required at the time of filing. You may, however, be required to pay a \$25 fee at the time of filing to cover the costs of services by the Secretary of State.

You may consult an attorney if you wish, but it is not required. If you hire an attorney, you can be charged up to 20% of the first \$20,000 recovered and 10% of any recovery above \$20,000, plus you will have to pay the attorney's expenses. The fees and expenses may be deducted from your payments. Your local bar association may be able to recommend an attorney who is experienced in workers' compensation.

MAY I SETTLE MY CLAIM?

You may enter into a lump sum or compromise settlement, upon agreement of all of the parties and with the approval of the Workers' Compensation Judge, provided that the

settlement is clearly in the best interest of all of the parties and six months have passed since the end of the temporary total disability. However, the six-month waiting period may be waived by consent of the parties.

AM I ENTITLED TO MY OLD JOB?

Your employer may not be required to hold a job open for you when you are unable to perform the duties of your job or to create a new job for you when you are able to return to work. However, your employer cannot discharge you solely because you filed a workers' compensation claim.

WHAT IF I CAN'T RETURN TO MY OLD JOB?

Under certain circumstances, you may qualify for vocational rehabilitation. Rehabilitation services are intended to return a disabled worker to work, with a minimum of retraining, as soon as possible after an injury occurs.

HOW LONG IS MY CLAIM OPEN?

There are separate time limits for filing claims for medical and disability benefits. Filing a claim for one type of benefit usually does not stop the clock from running on any other type of benefit.

Claims for medical benefits generally must be filed within one year of the date of the accident causing the injury. If your employer or their insurance company has paid medical expenses, the period for asserting a claim is extended for three years from the last payment of the medical benefit.

Claims for disability benefits, often called weekly benefits, generally must be filed within one year of the date of the accident causing the injury. If your employer or their insurer has paid disability benefits, you may still assert a claim for temporary total, permanent total, or permanent partial disability if you do so within one year after the last payment of disability. Claims for supplemental earnings benefits may be made for up to three years after the last payment of any class of disability.