



**ELFENBAUM EVERS
AMARILIO & ZIELINSKA, P.C.**

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Illinois Workers' Compensation Your Legal Rights and Responsibilities



Injured at work?
You don't have to fight alone!

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ILLINOIS WORKERS' COMPENSATION

INTRODUCTION

This Handbook was prepared to make sure injured workers and their families get all the benefits and protections the law provides. In preparing the Handbook we adopted a question and answer format so you can find answers to common questions easily. The **“Workers’ Compensation Checklist”** on the back page lists the first steps you should take when injured on the job.

In 2011, the Illinois General Assembly made some major changes to the Workers’ Compensation Act – especially in the area of medical benefits. This Handbook has been revised and updated to help you understand your rights under the new law.

This handbook is only a guide, and should not be considered as definitive legal advice about any individual workers’ compensation case. If after reading this Handbook you still have questions or problems, give us a call:

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1. What is Workers' Compensation?

Workers' compensation is a system set up in each state to compensate workers who are injured in the course of their employment. In Illinois, as in most states, the benefits are provided through private insurance purchased by employers.

- State law requires virtually all employers to purchase this insurance, and specifies what benefits must be paid.
- Disputes between injured workers and employers (or their insurance companies) are settled by the Illinois Workers Compensation Commission, a state agency.

2. What injuries or diseases are covered?

Most job-related injuries or diseases are covered by the Illinois Workers' Compensation Act. This includes "accidents" such as falls, cuts or collisions – and it also includes injuries caused by performing your normal job activities (such as repetitive lifting, squatting, keyboard use or assembly line work).

- An employee is usually entitled to benefits even if the accident was preventable, or the employee's fault. On the flip side, there are no extra benefits paid if the accident was the employer's fault.
- Injuries that happen in non-work areas like parking lots may be compensable under certain circumstances. If you are a traveling employee, injuries sustained during work-related travel may be covered. Injuries while commuting to work in your own car or on public transit are generally not covered, however.
- Injuries sustained in employer-sponsored recreational programs (softball games, Christmas parties, picnics, etc.) are NOT covered unless the employer ordered the employee to participate.

3. What is the first thing I should do if I am injured at work?

You have a lot to lose, so it is better to be safe than sorry. Even if your injury does not at first appear to be serious, always report every injury immediately to your supervisor or another person in charge.

- The most common legal flaw in otherwise valid workers' compensation claims is

failure to report an accident promptly. **ALWAYS** fill out an accident report.

- **Play it safe. Report all your injuries at once. Delayed reporting of accidents can result in discipline, denial of needed medical care and unpaid lost time.**
- **Always tell every nurse or doctor you see that an accident on the job caused your medical symptoms or problems. Tell them exactly what you wrote on the accident report or told the boss when you reported the accident. Keep your facts straight. Be specific.**
- **It is best to report your injuries within three days, and especially before taking any time off. A delay of more than 45 days can result in a complete loss of all benefits forever.**

4. Can I be fired because I reported an accident or filed a claim?

It is against the law for the company to harass, discharge, refuse to rehire, or in any way discriminate against an employee because they exercise their rights under the Workers' Compensation or Occupational Disease Acts.

- **Filing a workers' compensation claim, however, does not make you immune to being fired or disciplined for violating company rules or other alleged misconduct. Union representation is the best protection you have in these circumstances.**

5. Who can apply for workers' compensation?

You may file a claim for Workers' Compensation benefits in Illinois if:

- **You are injured in Illinois, or**
- **Were hired in Illinois, even though the accident occurred in another state, or**
- **Most of your work is in Illinois, even though you may have been hired or injured out of state (for example, Indiana or Wisconsin).**

There are no qualifying periods or work-hour requirements. Even if you are hurt on your first day at work, you are covered. Part-time and temporary employees are covered as well as full-time workers.

6. What benefits are available under workers' compensation?

If you can prove that you were injured at work, you are entitled to receive:

- All necessary medical, first aid and hospital care for the injury at no cost to you;
- Disability pay equal to two-thirds of your average weekly wage at the time of the accident, tax free; and
- An award or settlement to compensate for the permanent disability or permanent lost earning capacity you suffer as a result of the injury.

7. Do I need a lawyer? Do I have to use the lawyers my union recommends?

The law does not require an employee to have a lawyer to file or process a claim with the Illinois Workers' Compensation Commission.

- You are free to hire any lawyer you want. Find out why your union friends, family or co-workers recommend the lawyers they do.
- The company's handling of your claim is strictly guided and supervised by their lawyer – for a very good reason. It's far better to have a lawyer you don't need, than to need one you don't have.
- Being represented by a lawyer protects you from having to make statements or communicate with the insurance company or its representatives. You can direct all inquiries to your lawyer, who can safeguard your legal rights.
- Fees are fixed by law at twenty percent (20%) of what you receive, plus expenses. Fees are typically paid at the end of your case so you pay nothing out-of-pocket.

8. Can I sue my employer for negligence in circuit court?

No. In Illinois, as in most states, workers' compensation is the "exclusive remedy" for injuries sustained on the job. The Illinois Workers' Compensation Commission is the designated court for these claims, and its arbitrators are the judges.

In some cases, workers can sue a third party, such as the maker of a machine that caused

their injury, another driver involved in a collision or a customer who owns the property where they were injured. A lawyer can advise you whether you have a claim of this type.

9. Who pays for my medical treatment when I get hurt on the job?

- The Workers' Compensation Act requires your employer to pay for all first aid, medical, surgical, pharmacy and hospital services necessary to cure or relieve the effects of your work injury—if the services are reasonable and related to your injury.
- There are no deductibles or co-pays in Workers' Compensation. Maximum fees are set by law, and doctors cannot bill you for additional charges.
- Take all your injury-related medical bills straight to your employer.
- If your workers' compensation claim is disputed, you may be able to get medical care through your regular or group insurance. Ask your employer for a “denial letter”, which will inform your group insurance that the bills are work-related, but that the claim is denied or disputed. If you later win your workers' compensation claim, the workers' comp insurer will then have to reimburse your group insurer.

10. Can I select my own doctor or hospital?

ABSOLUTELY! Under Illinois law, you have the right to treatment by a physician of your own choice – and this right extends to any other providers (surgeons, other specialists, physical therapy clinics, etc.) that your doctor refers you to.

- The right to doctor choice allows you to see a physician who puts you and your welfare first – not your employer's bottom line.
- However, in 2011 the legislature made some important changes to the law that you should know about. Prior to June 28, 2011, the injured worker was allowed **two** choices of physicians, free of the employer's control.
- Under the 2011 revised law, **one** of those choices can be made by the employer – ***IF*** the employer has an approved Preferred Provider Program (PPP).

11. What if my employer has a Preferred Provider Program?

If your employer has a “PPP”, they must notify you in writing as soon as you report your injury. They must also provide a list of doctors and other providers who are approved by the PPP.

- Your first “doctor choice” will then be to use the PPP. If the first PPP doctor you choose does not meet your needs, you may choose a second doctor from within the PPP network.
- You still have the right to refuse or “opt out” of the PPP network, and see a doctor of your own choosing. This should be done in writing. However, once you do so, you will only have **one chance** to choose your own doctor – so choose wisely!
- Preferred Provider Programs are brand-new in Illinois, but some ground rules do exist: Your employer’s PPP must be approved by the Illinois Department of Insurance. It must include an adequate number and variety of providers, located reasonably close to your home and available to treat your injuries. It can negotiate prices with doctors, but it must not give the doctors any “economic incentives” to deny workers appropriate medical care.
- We can help you navigate this new “PPP” territory, and protect your right to quality medical care.

12. What if my employer does *not* have a Preferred Provider Program?

If your employer does **not** have an approved PPP that meets the requirements above, then you still have **two** doctor choices – just as you did under the previous law. The employer cannot force you to use the doctor or company clinic they prefer.

13. Can my employer refuse to pay for certain medical treatments?

If your doctor prescribes treatment that your employer (or their insurance company) considers unnecessary, they can challenge it under certain circumstances.

- However, they must follow a strict set of procedures known as “Utilization Review.” This includes getting a review of your doctor’s treatment plan by an approved Utilization Review agency that employs qualified medical professionals. Your doctor

must cooperate with this review – and he or she can submit evidence that the medical care is necessary.

- If your employer uses Utilization Review to deny you surgery, therapy or any other treatment, you can still challenge the decision. The Utilization Review expert must be available for questioning by your attorney, and the Commission's arbitrator can accept or reject their conclusions.

14. What wage benefits should I receive while I am unable to work due to my injury?

Temporary Total Disability, known as "TTD", is compensation paid to an employee who is unable to work because of an injury that he or she has sustained on the job. TTD is payable after an employee has been off the job for three (3) days.

- You are entitled to TTD payments for the entire period of time (excluding the first three days) that you are disabled and off the job. Once you are continuously disabled for fourteen (14) days, however, you are entitled to payments going back to the first day you were off work.
- The amount of TTD you are entitled to is based upon your average weekly wage in the year prior to your injury. As a general rule, an injured employee is entitled to TTD equal to two-thirds (2/3) of his or her average weekly wage.
- There is no limit on the amount of time that you can collect TTD payments, **provided** all your lost time is excused by a doctor.

15. What about light duty work?

Your employer can require you to perform "light duty" work, if (and **only** if) it is within the physical restrictions caused by your injury.

- If you are offered light duty work, get a "work status note" from your doctor listing your exact physical limitations (how much you can lift, how long you can stand, etc.). Give the note to your supervisor when you report for light duty.
- If your employer offers light duty work with shorter hours or lower wages, they must pay Temporary Partial Disability (TPD) benefits equal to two-thirds of the difference between your regular and light-duty pay.

- If your employer does NOT have light duty work that meets your doctor's restrictions, they must keep paying TTD until you return to work.

16. Can my employer have me examined by their doctor?

Yes. If you claim you are entitled to workers' compensation, your employer can compel you to attend an examination by a doctor of its choice.

- Your employer cannot force you to let this doctor treat you. Exams only.
- To keep your claim valid, you must cooperate with this examination provided it is scheduled at a reasonable time and place. If you refuse to attend this exam, your employer can halt payment of your TTD and medical benefits.
- The employer pays for this exam, too, and must also pay your travel expenses to and from the exam, plus meals and lost wages, if any.
- You do not have to supply this doctor with your medical records, MRI films or medical history. That is your employer's responsibility. Try to avoid filling out questionnaires or other forms while attending this exam.

17. Do I have to let a company nurse case manager direct my medical care?

No. Illinois law does NOT require workers to consent to nurse case management. The company may not withhold or deny benefits because you refuse to let a company nurse or case manager direct your care.

- In Illinois, you have a constitutional right to confidential medical care, even if it's for a work-related medical condition. Nobody can talk to your doctor without your written consent – ever!!
- The company can get copies of your medical records, but they do not have a right to see everything. Be careful to limit their access to records dealing with your work injury.
- We urge you to politely and firmly say “no” to nurse case managers. They work for the company, not for you. Contact your Union or talk to a lawyer right away if you are concerned about nurse case managers being forced on you.
- If you do agree to use a case manager, know your rights: The case manager cannot

talk to your doctor unless you are present. He or she cannot tell your doctor what kind of care to prescribe, or when you “must” return to work.

18. Should I sign anything?

There is no way around it: this is a tricky question.

- Sign the accident report IF it fairly and accurately describes how you got hurt.
- Sign a medical records release or authorization ONLY if it is limited to records dealing with your injury or the affected body part (same leg, same eye, low back, etc.) NEVER SIGN A “BLANKET” MEDICAL RELEASE – one that allows the company to see everything and talk to anybody about anything.
- **Safety Rule:** Always request time to show any documents you do not clearly understand to your Union or your lawyer before you sign them. “I’m not refusing to sign. I’m refusing to sign right now. I want to take this home and read it carefully.”

19. What if my injury is so severe that I can never work again?

If you are permanently disabled from any type of work because of a job-related injury, you are entitled to compensation known as "Permanent Total Disability." You are entitled to receive:

- Lifetime weekly benefits equal to two-thirds of your average weekly wage at the time of your injury, subject to a maximum weekly cap fixed by state law, and
- Free medical care for the specific disabling injury or condition for life.

20. What if I cannot return to my original job because of my injury, and have to take a lower-paying job?

If your injury permanently reduces your earning capacity, you are entitled to benefits known as “Wage Loss Differential.”

- These benefits are equal to two-thirds of the difference between the average weekly salary you would be earning if you were back at your regular job, and the amount you are actually able to earn after the accident.

- Wage loss benefits are payable until you reach age 67 or for five years, whichever is longer.

21. What kind of final settlement or award am I eligible for?

After you are done healing, and ready to go back to work, compensation is payable for the permanent physical effects of the injury, if any.

- This compensation is payable in two ways: through an award of the Workers' Compensation Commission after a full evidentiary hearing, or through a compromise settlement approved by the Commission.
- You may be asked to "waive" or sign away your rights to benefits such as future medical care or Wage Loss Differential in exchange for a lump-sum settlement. This may be a good bargain in certain circumstances – but make sure you understand all the terms of the settlement before you sign!
- The size of your settlement will depend on three factors: the specific body part(s) involved, the seriousness of the permanent effects ("permanent partial disability") and your average weekly wage at the time of the accident.
- For injuries occurring after September 1, 2011, any Commission decision on your permanent partial disability may include a doctor's rating of impairment, expressed on a percentage scale developed by the American Medical Association (AMA). This AMA impairment rating is NOT the final word on the permanent effects of your injury. The Commission **must** also consider other factors, such as your age, occupation, and evidence of disability in your medical records or witness testimony.

22. What benefits would my family receive if I died as a result of a work-related accident?

Under the Act, your spouse and children would be entitled to a weekly benefit check equal to two-thirds (2/3) of your average weekly wage, up to a maximum of \$1,398.23 per week. These benefits are payable for a maximum of twenty-five (25) years or \$500,000.00, whichever is greater.

If your spouse remarried, your children would still be entitled to benefits until they reach at least age eighteen, and your spouse would receive a final two-year lump sum payment.

23. What if I suffer a heart attack or stroke?

You may be entitled to workers' compensation benefits for a heart attack or stroke, **if** you can prove scientifically that your condition was caused, aggravated or accelerated by your job. This often requires expert medical testimony.

- Even if you have pre-existing heart disease, you may be eligible for benefits if your work was a factor in your heart attack or stroke. It does not have to be the only factor, or even the primary factor; it only needs to be one of many.
- Harsh environmental conditions or especially strenuous work have often found to be contributing factors in heart attack or stroke cases.

24. Can I get compensation for a work-related illness or disease?

Under the Occupational Disease Act, a similar statute to the Workers' Compensation Act, an employee may receive compensation if he or she can prove that:

- They contracted a disease from their work (asbestosis, etc.), or
- Their work aggravated a pre-existing illness or disease, or their pre-existing disease became disabling as a result of the work.

The medical, weekly pay benefits and permanency compensation provided in the Occupational Disease Act are identical with those provided by the Workers' Compensation Act for all practical purposes.

Occupational diseases include conditions caused or aggravated by chemical exposure, biological hazards, inadequate ventilation, constant vibration, loud noise, radiation, etc.

25. Is hearing loss due to noise exposure on the job compensable?

The law on this is tricky, but your hearing loss claim may indeed be compensable.

- The methods of testing and rating the loss are spelled out in the law.
- The hearing impaired employee must prove specified levels of noise exposure for a specified period of time sufficient to win permanent hearing loss benefits.

26. What about mental or psychological injuries?

These may be compensable – but only under certain limited circumstances.

- If your psychological problem is related to a physical injury (such as depression brought on by chronic pain), or if you develop a physical condition (such as a heart attack or stroke) because of extreme stress at work, you may be eligible for benefits.
- A post-traumatic stress disorder caused by a sudden and extreme psychological trauma at work may also be compensable. However, mental problems related to “routine” job stressors such as a heavy workload or a demanding boss are not compensable.

27. Can I be required to take a drug test if I am injured on the job?

You may be required to undergo a drug or alcohol test after an accident by the terms of your union contract or federal laws that may apply to you.

- Many employers test workers routinely after an accident – and under the 2011 workers’ compensation law, **refusal to take the test can be considered evidence of intoxication.**
- If the drug or alcohol test is positive at the company clinic, contact a lawyer or your Union immediately. Under Illinois law, a positive test must be confirmed by an accredited laboratory using established scientific methods.
- A positive drug or alcohol test, all by itself, does not automatically kill your workers compensation claim. However, your claim **can** be denied if drug or alcohol use was the “proximate cause” of your accident, or if the evidence shows you were too intoxicated to carry out your job duties.

28. Are workers’ compensation benefits subject to income tax?

No. Workers' Compensation payments are not subject to state and federal income tax and need not be reported on tax returns as income.

29. Can I collect Social Security Disability if I am disabled by a work injury?

Of course. Any worker who is incapable of substantial gainful work due to a physical or mental condition, work-related or not, that is likely to last twelve (12) months or longer is entitled to Social Security Disability benefits.

You may receive Workers' Compensation benefits and Social Security Disability benefits at the same time. However, you cannot receive more than 80% of your regular salary from a combination of Workers' Compensation benefits and Social Security benefits.

30. How long do I have to file my claim?

The Illinois Act allows an employee three years from the date of the accident, or two years from the date of the last payment of compensation, to file a claim. For occupational disease claims, the deadline is generally two years from the date of exposure.

- If you had an accident on the job within the last three years, you may still be eligible to receive some form of compensation.
- **Three years and just one day is too late. Don't delay!**
- Filing an accident report, or filing out insurance claim forms, is *not* the same thing as filing a claim with the Illinois Workers Compensation Commission.

31. What is “workers’ compensation fraud” and who can be charged with it?

Employers or workers can be charged with Workers’ Compensation Fraud for providing false information or concealing relevant facts in relation to a workers’ compensation claim. Workers’ Compensation Fraud is a Class 4 felony.

- Examples of employer fraud include lying about or concealing an accident, or submitting false information about an employee’s pay or job duties in order to pay less in benefits and/or save on insurance premiums. You can report employer fraud to the Department of Insurance at (866) 445-5364.
- Examples of employee fraud: staging a phony accident or claiming an accident as

work-related when it occurred outside of work; working for wages while receiving TTD benefits; deliberately faking or exaggerating a disability in order to collect more benefits.

- If an employer, insurance company employee or anyone else accuses you of workers' comp fraud, call a lawyer immediately. **Do not** make any statements. You have legal rights, and are presumed innocent unless proven guilty!

FOR A FREE LEGAL CONSULTATION PLEASE FEEL FREE TO CONTACT US



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