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### **Workers' Comp Benefits Explained**

#### **What is workers' compensation or workman's compensation?**

Workers' compensation insurance, often called "workers comp," is a state-mandated program consisting of payments required by law to be made to an employee who is injured or disabled in connection with work. The federal government does offer its own workers' compensation insurance for federal employees, but every individual state has its own workers' compensation insurance program. Be sure to check your own state's workers' compensation benefits laws by referring to the appropriate office in your state on the State Workers' Compensation official page of the U.S. Department of Labor's website.

In most situations, injured employees receive workers' compensation insurance, no matter who was at fault for the injury. Because these workers comp benefits act as a type of insurance, they preclude the employee from suing his or her employer for the injuries covered.

#### **What types of incidents are and are not covered by workers' compensation insurance?**

Workers' compensation insurance is even designed to cover injuries that result from employees' or employers' carelessness. The range of injuries and situations covered is broad, but there are limits. States can impose drug and alcohol testing on the injured employee, and can deny the employee workers' compensation benefits if such tests show the employee was under the influence at the time of the injury. Compensation may also be denied if the injuries were self-inflicted; where the employee was violating a law or company policy; and where the employee was not on the job at the time of the injury.

#### **What types of expenses does workers' compensation insurance cover?**

Although the payments are usually modest, workers' compensation insurance covers

- medical care from the injury or illness
- replacement income
- costs for retraining
- compensation for any permanent injuries
- benefits to survivors of workers who are killed on the job

Remember, though, that if a person collects workers' compensation benefits, he or she cannot sue the employer. Additionally, workers' compensation benefits do NOT cover pain and suffering.

Wage replacement is usually two-thirds of the worker's average wage, but there is a fixed maximum amount that the benefits will not go over. That may seem modest, but note that these benefits are not taxed. So, as long as the employee was making a fair wage, he or she should have no major problems. The eligibility for wage replacement begins immediately after a few days of work are missed because of a particular injury or illness.

#### **Does workers' compensation insurance cover long-term and permanent injuries?**

Yes. Workers' compensation insurance is not limited to just incidental accidents. It also covers problems and illnesses that are developed over a long period of time of doing the same injurious activity--for example, carpal tunnel syndrome or back problems from some sort of repetitious movement.

If the employee becomes permanently disabled from doing the job he or she was doing before the injury, he or she will probably be eligible for long-term or larger lump-sum benefits. This amount is determined based on the nature and extent of the injuries.

Permanent work disability benefits are complex and often take a long time to process, so be sure to contact your local workers' compensation office as soon as you can.

Permanently disabled employees may be eligible for social security benefits as well. These benefits would cover more expenses in the long run. Social security benefits are much harder to get than workers' compensation insurance, however,

because they require the employee's injury to

- prevent the employee from doing any substantial gainful work, AND
- last at least twelve months or result in death.

If you think you meet these requirements, contact your local Social Security Office for information about how to obtain these benefits.

### **What is the Workers' Compensations Act?**

This act is made up of state statutes that

- require employers to purchase insurance for their employees; and
- establish the liability of employers for their employees while their employees are on the job

### **Who is covered by workers' compensation insurance?**

Most types of employees are covered by workers' compensation insurance. That said, states commonly exclude some workers from coverage, such as:

- independent contractors
- business owners
- volunteers
- employees of private homes
- farmers and farmhands
- maritime employees
- railroad employees
- casual workers

Because employees of the federal government are covered under the federal workers' compensation insurance program, they are not covered by state workers' comp. Some states do not enforce the workers' compensation program on employers with fewer than 3 to 5 employees working for them. This varies from state to state.

Be sure to check your own state's workers' compensation insurance laws.

### **If I'm injured on the job, but not actually at my workplace, am I still covered by workers' compensation insurance?**

It depends, but probably. As long as you were working within the scope of your employment, you are covered. Examples include running errands for your employer, traveling for work, and even attending business-related social events required by your employer. If a bakery worker is delivering goods and gets into an automobile accident, she is covered. If a nurse is required to attend a social pharmaceutical banquet, and she is injured, she is covered. If a salesperson is injured boarding an airplane on the way to a sales convention, she is covered.

### **Can I use my own doctor for work injuries covered under workers' compensation?**

Some states allow you to use your own doctor if you stated this wish prior to the injury. Usually, however, you will be referred to a doctor who the employer will pay. Keep in mind that this doctor is an advocate for the employer. This is the doctor who will be filling out the medical report used to determine your compensation. Because the doctor may be motivated by a desire for future business from the employer or insurance company, he or she may minimize the seriousness of the condition, or determine it to be a preexisting condition. Keep this in mind when the doctor is questioning you about your medical history. If you admit a back injury that you had twenty years ago that may not even relate to your current injury, the doctor may deem the current injury a result of your previous back injury--thus, you would receive less compensation.

### **Can I see my own doctor if I've already been treated by an insurance company doctor?**

The rules in this area are a bit complicated. If you tell the insurance company that you do not like the doctor they refer you to, you can request a new one, but there is usually a waiting period for this. If you have a serious enough injury, most states allow you the right to a second opinion. Some states allow you to begin seeing your own doctor, after 90 days of seeing the insurance company's doctor. Since the workers' compensation insurance is paying for your own doctor, you may want to look into a highly reputable doctor that specializes in your injury, no matter what the cost. Be sure to look at your own state's rules and laws.

### **Who pays for workers' compensation insurance coverage?**

Employers do. Most states require all employers to purchase insurance for their employees. There are specific workers' compensation insurance companies that provide this service. As mentioned, small companies, with fewer than 3-5 employees, are not required to purchase workers' compensation insurance in some states. On the flipside, large companies are sometimes permitted to act as their own workers' compensation insurance companies. This is called "self-insuring". When an employee is injured, the insurance company, or self-insuring employer, pays the bills and benefits according to the state mandated formula.

**Can I sue my employer for a work injury?**

Yes. You may sue your employer for any reckless or intentional action of your employer that caused your injury. If you choose to do this, you will waive your right to workers' compensation insurance. If you are successful, the court may award a broad range of damages, such as punitive damages, medical expenses, lost wages, pain and suffering, and mental anguish.

**Can my employer fire me for or tell me not to file a workers' compensation claim?**

No. Most states prohibit this by law. If an employer does retaliate against an employee for filing a workers' compensation claim, the employer should be reported immediately to the local workers' compensation office.

For more information, contact your local workers' compensation office.

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