

## **THE ABC's of WORKERS' COMPENSATION**

**By Neil Abramson**

This article is meant to be a general introduction to the Workers' Compensation system and how to make a claim for a work related injury, illness, or occupational disease.

An injury is an accident at work which you can identify the date, time, and place. An example is that you lifted something at work and felt pain in your back. This type of case must be filed with the New York State Workers' Compensation Board (WCB) within 2 years of the date of accident. An occupational disease develops over time. An example would be asbestosis. You get asbestosis many years after you are exposed to it. You must file the injury case within 2 years of the date of injury with the WCB. An occupational disease case must be filed with the WCB within 2 years from when a doctor told you the disease is related to work.

Workers' Compensation is a system that replaces wages and pays for your medical bills that are related to your work injury. Workers' compensation will pay two-thirds (2/3) of your salary not to exceed \$550 per week for accidents on or after July 1 2008, if you are totally disabled. The medical bills are paid from the date of the accident by the employers' insurance company. There is a one week waiting period before an injured worker will be paid monetary benefits.

Your employer may choose to pay your full salary while you are out of work but it is not a requirement of the law and is optional by the employer. The employer may use your sick and vacation time before benefits will be paid. This time will be restored once the case is established by a Workers' Compensation Law Judge. Once the injury is established by the WCB you will have lifetime medical protection for that injured body part or disease.

When you get injured, immediately seek medical attention. Tell the medical provider how you were injured and that it happened at work. You may choose any doctor to treat you who accepts workers' compensation. Do not pay the doctor. The doctor bills will be paid by the employers' insurance company. You must notify your supervisor as soon as possible of your injury or within 30 days of the injury. Either fill out an accident report or tell your supervisor how you were injured.

**You or your attorney must file a claim with the New York State Workers' Compensation Board. Your employer or union will not do this for you.**

The claim is filed by sending a C-3 form with a medical report to the Workers' Compensation Board. You have two years from the date of injury to file the claim. If you do not send a medical report with the C-3 form you will not get a hearing before the WCB and it will not be established that you had an injury at work. If you injured that same body part before you must sign a C-3.3. A C-3.3 releases your prior medical records solely for that prior injury. If you do not release the prior medical records the WCB will not hear your case and you might not be paid any monetary benefits. By filing the claim and it being approved by the WCB you will be protected medically for the rest of your life for those parts of your body that you injured at work and you might be eligible for a small settlement depending on what you injured and if you are working. If you do not file the claim with the WCB you will not be eligible for these benefits. If you do not file a claim with the Workers' Compensation Board your medical bills might not be paid for by the insurance carrier and you will be responsible for them. **Your major medical coverage will not pay for workers' compensation medical bills.**

If you decide to retain an attorney, the attorney does not receive a fee unless you receive an award of compensation. The Workers' Compensation Law Judge determines the fee. If a fee is approved it is directly deducted from your award. It is illegal for an attorney

to take a fee or money from an injured worker without an approval of a Workers' Compensation Law Judge.

A few weeks after the claim is filed with the WCB you will receive notification from the WCB of a WCB case number. The insurance carrier will also contact you with their case number. These numbers should be given to your doctor and attorney as soon as they are received.

If you are not able to work because of your injury you must see your treating doctor at least every 45 to 60 days. Every time you see the doctor they must send a medical report, C-4 form, to the insurance company, the WCB, and your attorney. If you are out of work and the medical report, C-4, is not filed with the insurance carrier you will not receive workers' compensation benefits. If you return to work and you still need medical treatment you may continue to see your doctor.

You will receive notification from the WCB of a hearing at the WCB. The WCB has offices in Brooklyn, Queens, Manhattan, Hempstead, Hauppauge, Patchogue and Staten Island. At the hearings a Law Judge or conciliator is present to decide all issues. The Law Judge or conciliator will decide if another hearing needs to take place or the case can be closed. The Law Judge's decision can be appealed within 30 days of the receipt of the decision by either the injured worker or the insurance company. When the case gets closed it may be reopened for 18 years from the date of accident. If you receive a notification from the Workers' Compensation Board of a "Proposed Conciliation Agreement" or "Administrative Determination" contact your attorney immediately. This must be responded to within 30 days.

If you receive a C-7 (Notice of Controversy) form it means that the employer or insurance company is disputing your claim. You will not be paid compensation benefits until a judge makes a decision. You should take the C-7 form and bring it to your union. The

union will then pay you disability benefits until the case is decided. Disability benefits are taxable and only last 26 weeks. Workers' Compensation is non taxable and can pay you for up to ten years. You must file your disability claim within 30 days. If the workers' compensation case is won, then what ever you received in disability benefits is paid back with the workers' compensation award. This is known as a lien.

If the case is controverted it will be placed on what is know as the "Rocket Docket" calendar. This means that the case will be decided within 90 days instead of the usual 180 days or more. It is recommended that you hire an attorney if your case is controverted.

Lastly I wanted to write about 9/11. I have personally registered 800 workers with the WCB who did rescue, recovery, or clean up at ground zero, the piers, the Staten Island land fill, and the NYC morgue between September 11, 2001 and September 11, 2002. **You do not have to be sick to register. If you meet the above requirements you must register with the WCB by September 11, 2010.** If you do not and you become ill from exposure during 9/11 you and your family **will not get any benefits.**

**In summary if you are injured;**

- 1. Seek medical attention immediately.**
- 2. Notify your supervisor as soon as possible that you were injured.**
- 3. File a claim with the New York State Workers' Compensation Board.**

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