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Legal Matters®

Suffered an industrial injury? Here's what to know

Many of the most severe workplace injuries are suffered in industrial settings like factories, refineries, power plants and construction sites. For example, construction workers face risks such as collapsing scaffolds, crane accidents, getting tangled in machinery, and falling from high places.

In factories and manufacturing plants, workers can get injured by malfunctioning equipment, moving parts, forklift accidents, and exposure to dangerous chemicals, among other things.

Similarly, workers at oil refineries and chemical plants risk gas explosions, fires and toxic fumes, while power plant workers are vulnerable to hazards posed by high-voltage equipment.

In all these settings, improper safety training and noncompliance with safety standards can heighten the risk.

A lot of the time, recovery for injury will be limited to workers' compensation. But if a worker can establish that someone other than their direct employer, for example, a third-party contractor or an equipment manufacturer, is at fault, they may be able to pursue a lawsuit against the responsible party.

Take, for example, a recent case from Connecticut involving a factory worker who tried to clear a jam while operating a machine. He attempted to clear the jam manually, as he was trained to do, but his hand was pulled under the guarding and got crushed. Doctors ended up having to amputate several fingers. He



also developed post-traumatic stress disorder.

As it turned out, a company that had rebuilt the machine before the accident failed to verify that the safety guarding met industry standards. As a result, a jury awarded the injured worker a substantial recovery reflecting how severe his injuries were and how they affected his life.

Meanwhile, in a Pennsylvania case, a 42-year-old construction worker was working in an excavated trench at a residential construction site when an eight-foot, three-ton wall of dirt collapsed and crushed him against the concrete foundation being built. The

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Steps to take in order to recover 'parked car' injury claims



The vast majority of automobile accidents involve collisions between moving vehicles.

Sometimes, however, a vehicle will strike a parked car, injuring someone inside.

If you or a loved one suffered an injury while sitting in a parked vehicle, it's important to call a personal injury lawyer with auto accident expertise who can help you assert your rights.

In the meantime, there are important steps you should take if this happens to you.

First, exchange insurance and contact information with the other driver right away, making sure you get a picture of their driver's license and license plates. This will make it much easier to file a claim.

Similarly, it's important to get the contact information for any witnesses and write down a description of what they saw. In fact, it could be a good idea to use your phone to record them describing the accident.

It's also important to call the police. If you're hurt, they can help you get immediate medical attention and, if you're in no condition to do so, take down the other driver's information, as well as witness's information.

In fact, immediate medical attention is crucial. For one thing, you may be hurt worse than you realize, since some injuries aren't immediately apparent. Get-

ting treatment right away will also help your attorney prove that the accident was actually the cause of your injuries.

It's equally important that you enlist an attorney as soon as possible to help you gather the evidence you need to present a strong case to the at-fault driver's insurance company and, if necessary, to prove your case in court.

A lawyer can also guide you through the process of applying for personal injury protection, or PIP, benefits from your own insurer to cover your medical expenses and applying for underinsured/uninsured, or UIM, benefits if the at-fault driver doesn't have sufficient coverage to pay for your injuries.

Sometimes, however, your claim won't be so simple. For example, perhaps the driver who hit your parked car lost control of their vehicle because of faulty brakes or a steering system that failed. In that case, it could be the manufacturer who is at fault, creating a much different case. Or if the driver was working at the time, perhaps running an errand for their boss, making a delivery, or driving an Uber or Lyft, their employer or rideshare service may be your best source of recovery.

Of course, if you were parked illegally at the time of the accident, that could complicate your case. But in many if not most instances, there will likely be some grounds for recovery.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

Proving emotional distress damages in court

Just as physical injury after an accident can be debilitating, so can the emotional distress a person suffers as a result of having gone through a traumatic experience.

It may come in the form of increased anxiety, depression, post-traumatic stress disorder, or other manifestations of mental injury.

Fortunately, an injured person can be compensated for their emotional distress just as they can be compensated for their medical bills, lost wages and physical pain. Obtaining emotional distress damages can be challenging, however, because unlike broken bones or lost limbs, emotional distress isn't visible. Still, there are certain things your attorney would look for in order to make your case.

First, your lawyer looks for evidence of intense suffering. For example, being able to document panic attacks and night terrors would help build your case.

Being able to show emotional suffering over an extended period, as attested to by a mental health professional who can testify on your behalf, would be useful evidence as well.

Additionally, emotional distress can manifest through physical symptoms such as insomnia, headaches and ulcers.

In all these cases, it's critical to have documentation from a psychologist or treating physician attesting to your pain and suffering. A personal injury attorney can help you navigate this process.

Strategies for proving a ‘product liability’ case

Consumers anticipate that a product will work the way it’s supposed to and not cause them harm. But for any number of reasons, sometimes a product turns out to be dangerous and hurts someone.

When this happens, the injured person may have what’s called a “product liability” case in which they can seek to hold the manufacturer accountable for their injuries.

In order to recover, the injured person (or “plaintiff”) needs to prove that the product had a defect, that the defect was the direct cause of their injury, and that they were using the product the way it was meant to be used.

In terms of establishing a defect, there are several ways you could go.

For instance, you might be able to show that there were flaws in the product’s design that those involved in the design process should have been aware of and remedied. This is what’s known as a “design defect” case.

A plaintiff might also seek to establish that problems occurred in the process of manufacturing the product that caused it to be unreasonably dangerous.

A third strategy might be to show that there were marketing defects. In other words, the product’s manufacturer or seller provided unclear instructions or failed to warn against certain injury risks that it knew or should have known about.

If you have been hurt by what you believe to be a defective product, it’s important to talk to an attorney right away.

For one thing, if you wait too long, you may miss the “statute of limitations” — the deadline for filing a case before you lose your rights.

Additionally, an experienced product liability attorney can investigate the case and determine who’s responsible. It could be the manufacturer, but in some circumstances it may be one of the companies that supplied a defective part or material or it could be the store that sold the product.

Determining all the potentially responsible parties is critical for ensuring that you receive all the compensation to which you’re entitled.

Your recovery obviously depends on the circumstances, and product liability cases can be complicated, but working with a good attorney will put you in the best position to fully vindicate your rights.



Suffered an industrial injury? Here’s what to know

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worker didn’t survive the accident.

His family sought to hold responsible the company that dug the trench. The company apparently failed to slope or “bench” the walls of the ditch to prevent cave-ins.

In their lawsuit, the family obtained evidence that the company had received three citations for violating Occupational Safety and Health Administration standards. Rather than risk going before a jury, the company agreed to settle the case out of court, paying a significant sum to the worker’s survivors.

Along similar lines, an Oregon man who worked in a shipyard during the 1970s and 1980s recently recovered a seven-figure verdict after being diagnosed with mesothelioma, a serious

and often fatal form of cancer that affects the mesothelium, a thin layer of tissue that covers internal organs.

During his years repairing ships, the worker was exposed to products containing asbestos, which causes mesothelioma. With the help of medical experts, a jury found the manufacturer of the asbestos products to blame for the worker’s harm and compensated him accordingly.

The outcome of any case will depend on its unique facts, and industrial accident cases can be very complicated given the potential number of parties involved and intensive investigation required. However, working with an experienced attorney can put you at an advantage.



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Should I arbitrate my personal injury case?

If you're hurt in an accident and seek to hold another party responsible, it's possible their insurance company might offer to have your case decided by "arbitration" instead of going to court.

Arbitration involves the parties submitting their dispute to a neutral third party, known as an "arbitrator," who hears evidence and arguments from both parties and makes a final decision.

Depending on the circumstances of your case and your individual needs, this may or may not be a good idea, so it's important to consider the pros and cons.

The biggest benefit of arbitration is that you're likely to get a quicker resolution of your case than if you go to court and litigate.

Arbitration can also offer more flexibility than going to court. The parties can set their own schedule instead of waiting for a court date and it can be less formal and, accordingly, less stressful.

Additionally, parties can agree to limit the range of an arbitrator's award through mechanisms such as "high-low" agreements that set a minimum and maximum recovery, regardless of the arbitrator's decision. That way, you can know going in that you'll receive something, even if the arbitrator awards nothing (though in many states, parties can make such agreements before going to court as well).

Finally, arbitrations are private, whereas a trial happens

in open court and becomes a matter of public record.

On the other hand, arbitration presents significant disadvantages.

First, there's the issue of "discovery" — the phase of a dispute when each side gathers evidence and information from the other side that helps build their case. Discovery, which includes each side producing documents requested by the other party and the ability to take "depositions" (questioning important witnesses under oath before trial), is usually more limited in arbitration than in litigation, which may make it harder to prove your case.

Additionally, most arbitration is "binding," meaning the result is final and, under most circumstances, can't be challenged in court.

Meanwhile, the insurer usually chooses the arbitrator. Since the insurer appears before the same pool of arbitrators constantly while you, the injured person, sees them just once, the insurers are in a position to choose friendly arbitrators, structuring the whole process to their advantage.

But perhaps the biggest drawback is that even when an injured party wins their arbitration, arbitrators are less likely to award as much money as a jury might in the same case.

Whatever your needs may be, when you opt to go to arbitration, you're agreeing to give up important rights. That's why it's critical to talk to an experienced attorney before making that call.