

WORKERS' COMPENSATION IN RHODE ISLAND

A SUMMARY OF THE LAW

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Workers' compensation law in Rhode Island is comprised of statutes passed by the General Assembly, cases decided by the Workers' Compensation Court and Supreme Court, and regulations issued by State agencies. The law is complex and constantly evolving. The following is not intended to be a summary of every statute, case and regulation. It is intended to provide an overview of those laws that are of most concern and interest to injured workers.

INJURIES COVERED BY WORKERS' COMPENSATION

In general, any injury, illness or disease that arose out of and in the course of employment is covered for workers' compensation. The injury, illness or disease can be one that was caused, contributed to, or aggravated by a specific incident or by the constant stress or nature of the job over a period of time. The following represent circumstances under which injuries are not considered to have arisen out of and in the course of employment and are, therefore, not covered for workers' compensation.

Coming and Going Rule

As a general rule, injuries that occur while coming to work or going home from work are not within the course of employment and, therefore, not covered. However, there

are exceptions to this rule.

Despite the rule, an injury is covered if it occurred during the period of employment, at a place where the employee might reasonably have been expected to be and while the employee was fulfilling the duties of his/her job conditions under which those duties were to be performed.

For example, if an injured worker parks his/her car in a parking lot designated for company employees and is injured while walking from the lot to the employer's building, then he/she is entitled to workers' compensation. In such a case, the injury occurred during the period of employment (the period of employment includes a reasonable time before and after actual workday hours), at a place where he/she is expected to be and while doing something under conditions created by the employer (walking in the company parking lot). There are many factual situations that will allow an injured worker to collect workers' compensation under an exception to the Coming and Going Rule.

Deviation from Employment

As a general rule, if an employee deviates from performing his/her job duties, i.e., does something for a personal benefit, then any injury that occurs during the period of deviation is not within the course of employment and, therefore, not covered. Once the employee returns to the workplace or returns from the deviation to the course of employment, then any injury that occurs after that point is covered. If the deviation is solely for the employee's benefit, then any injury that occurs during the period of deviation is not covered; if the employer derives some benefit from the deviation, then the injury would be covered.

Horseplay

Injuries that occur during horseplay among employees are not within the course of employment and, therefore, not covered. However, if the employer was aware of such activity and acquiesced to it, then an injury that occurs during horseplay would be covered as being within the course of employment.

Fighting

An injury that occurs during a fight is only covered if the fight was about some matter related to employment.

Intoxication/Intentional Act

An injury that is intentionally caused by the injured worker or by his/her intoxication is not covered.

AGGRAVATION OF PRE-EXISTING CONDITION

An employer takes its employees as it finds them. Therefore, an employee's pre-existing condition that is worsened by a work related injury is covered for workers' compensation, regardless of whether or not the pre-existing condition itself was work related. This is commonly referred to as an aggravation of a pre-existing condition. The determining factor is whether the work injury or activity contributed to the injury by accelerating or aggravating the pre-existing condition. The work injury or activity can be a specific incident or the constant stress or nature of the job that worsens the pre-existing condition over a period of time.

RECURRENCE OF INJURY

A recurrence is a prior work related injury which has resulted in a return of disability without being aggravated by a new injury. There is often a dispute between

insurance companies as to whether a disability is the result of an aggravation or a recurrence. The dispute arises because the determination of whether a disability is the result of a recurrence or aggravation determines which insurance company is responsible to pay workers' compensation. If the prior injury becomes disabling without being aggravated by a new injury or work activity, then the insurance company for the employer where the original injury occurred pays workers' compensation for disability as a recurrence. On the other hand, if there is a subsequent work related injury or activity that worsens the prior injury, then the insurance company for the employer where the subsequent injury occurred pays workers' compensation as an aggravation.

If an injured worker returns to work for at least 26 weeks, after having collected compensation for an injury, and then suffers a recurrence of disability from the previous injury, the weekly compensation rate for the recurrence is recalculated based on a recalculation of the average weekly wage.

FLOW-FROM CONDITIONS

A "flow-from" is a term used to define an injury or medical condition that results from a work related injury. For example, if an injured worker suffers an injury to his right hand and, as a result, begins to overuse the left hand to compensate for the useless right hand, then any injury to the left hand that results from overuse is considered an injury that "flowed from" the original work related injury. Other examples would be a knee injury caused by a person who fell when their leg gave out because of a work related back injury and depression which resulted from the psychological effect of a work injury. A "flow-from" injury is covered just like any other work related injury. In fact, if an injured

worker recovers from the original work related injury but continues to be disabled as a result of the “flow-from”, then weekly benefits will continue.

DEFINITION OF DISABILITY

A person is considered disabled when he/she has lost the ability to earn wages because of an injury. Workers’ compensation does not pay weekly benefits for the injury itself or for pain; it pays for the loss of the ability to earn wages caused by the injury, i.e., the loss of earning capacity. There are two categories of disability under the law – total disability and partial disability.

TOTAL DISABILITY

A person is considered totally disabled when he/she is unable to earn any wages in any type of work due to the effects of the work injury. A totally disabled person is someone whose injury prevents him/her from performing his/her regular job as well as any other type of light work, i.e., a person who has a total loss of earning capacity.

PARTIAL DISABILITY

A person is considered partially disabled when he/she is unable to perform his/her regular job due to the effects of the work injury but still has the ability to perform other types of light work. It does not matter whether light work is available from the employer. The determining factor is the ability to perform light work, not the availability of light work.

ODD LOT DOCTRINE

The law provides an exception to the above definitions of total and partial disability. Known as the odd lot doctrine, this law allows some injured workers who are partially disabled to receive workers’ compensation for total disability. This law provides

that an injured worker who is partially disabled based solely on his/her work injury may be considered totally disabled when he/she is unemployable because of the injury combined with his/her age, education, background, abilities and training. Under such circumstances, the Court may consider such a person to be among the “odd lot” of unemployable persons and, therefore, totally disabled.

WEEKLY COMPENSATION BENEFITS

AVERAGE WEEKLY WAGE

An injured worker is entitled to a weekly payment as compensation for lost wages due to the inability to work. The weekly compensation rate is based on an injured worker’s average earnings before the date of disability. That average is called the average weekly wage.

For full time employees, the average weekly wage is calculated by adding the gross wages earned from all sources of employment, including self employment, for the 13 week period prior to, but not including, the week of disability. The total is then divided by the number of weeks actually worked during that period of time and the result is the average weekly wage.

For part-time employees, the average weekly wage is based on the gross wages earned during the 26 weeks prior to the injury from all sources, including self employment, divided by the number of weeks actually worked.

There are some special considerations that affect the calculation of the average weekly wage. For seasonal occupations, the average weekly wage is based on the total gross wages earned during the 52 weeks prior to the injury divided by 52. For employees who were injured after working less than two weeks for an employer, the average weekly

wage is based on the hourly wage multiplied by the number of weekly hours scheduled by the employer for full-time employees. Overtime pay and bonuses are averaged over the length of employment, but not more than 52 weeks. Paid vacation time is included in the calculation of the average weekly wage.

If an injured worker returns to work for at least 26 weeks, after having collected compensation for an injury, and then suffers a recurrence of disability from the previous injury, the average weekly wage for the new disability is recalculated based on the period of time prior to the date of the recurrence.

COMPENSATION RATE

For injuries on or after January 1, 2022, an injured worker's weekly compensation rate is equal to 62% of his/her average weekly wage.

For injuries on or before December 31, 2021, an injured worker's weekly compensate rate is equal to 75% of his/her spendable base wage, i.e., 75% of net (take-home) pay. The spendable base wage is based on tables published each year by the Department of Labor which convert the average weekly wage into the spendable base wage. The compensation rate may not exceed the maximum rate that is established by the State of Rhode Island on September 1 of each year. The compensation rate is different for total disability and partial disability as follows:

Total Disability

Weekly compensation for total disability is equal to the compensation rate as stated above plus an extra \$15.00 per week for each dependent. A dependent is generally defined as a non-working spouse and a child who is either under the age of 18 or under the age of 23 and enrolled as a full-time student. Also, a cost of living adjustment is added on May

10 of each year if the injured worker had received benefits for total disability for the previous 52 consecutive weeks

Partial Disability

The compensation rate for partial disability is equal to the compensation rate only as set forth above. No additional amount is paid for dependents or cost of living adjustments.

REDUCTION IN WEEKLY BENEFITS

Weekly payments of compensation for total disability cannot be reduced except in cases involving retirement (see below). Compensation for partial disability may be reduced based on the following circumstances.

RETURN TO WORK

If an injured worker earns wages while receiving benefits for partial disability, he/she will receive compensation payments equal to 75% of the difference between his/her spendable base wage before the injury and the spendable base wage after the injury. In other words, an injured worker is still entitled to weekly compensation, based on this formula, if he/she returns to work at a job that pays less than the average weekly wage earned at the job where the injury occurred. Weekly benefits are calculated each week based on the amount of wages earned each week in the new job and converted into a spendable base wage

An injured worker has a duty to report all wages earned while receiving workers' compensation benefits to the insurance company so the proper amount of compensation owed may be determined. The failure to report earnings may result in the suspension and forfeiture of benefits. On occasion, an insurance company may send an injured worker a

form called “Report of Earnings” which requires the injured worker to report any and all wages earned while receiving workers’ compensation. Regardless of whether this form is sent to an injured worker, the law imposes a duty to report wages to the insurance company. Obtaining or attempting to obtain workers’ compensation benefits through fraudulent means is a crime.

MAXIMUM MEDICAL IMPROVEMENT

Maximum medical improvement (MMI) is defined as a point in time when an injury has become stable and no further treatment is reasonably expected to materially improve the condition. In other words, it is that point when a doctor says that nothing more can be done to improve the condition. Under such circumstances, weekly compensation benefits may be reduced by 30 percent upon order of the Workers’ Compensation Court. The reduction does not apply to injured workers who are working. Also, an injured worker may receive a delay in the implementation of the reduction by proving that, despite having reached MMI, he/she has made a good faith effort at looking for work.

SUITABLE ALTERNATIVE EMPLOYMENT

Suitable alternative employment (SAE) is an employer’s offer of a job to an injured worker which the worker is physically able to perform, bears a reasonable relationship to his/her qualifications, background, education and training, and does not result in the loss of seniority or other employment benefits. If the job is accepted, weekly compensation will be paid equal to two-thirds of the difference between his/her average weekly wage and the gross wages earned in the SAE job. If the injured worker refuses an offer of SAE, then the Court can reduce weekly compensation benefits to the amount which would have been

payable if the job had been accepted, i.e., two-thirds of the difference between the employee's average weekly wage and the gross weekly earnings the employee would have received if he/she had accepted the offer of suitable alternative employment.

An offer of suitable alternative employment has to meet certain technical requirements of the law. In order to be considered an offer of suitable alternative employment, the employer must comply with those technical requirements in its written offer; otherwise, the offer will be considered invalid and weekly benefits will not be reduced for an injured worker who refuses the offer.

If an injured worker returns to suitable alternative employment and is later laid off or terminated for any reason other than his/her misconduct, then full weekly compensation benefits will resume automatically. This protection is not provided to an injured worker who returns to a light duty job which is not classified as suitable alternative employment. In this way, a return to suitable alternative employment provides a form of job security to an injured worker. A return to work at light duty is not the same as a return to work at suitable alternative employment. A light duty job is only considered suitable alternative employment if it is documented in writing and notice of the return to suitable alternative employment is filed with the Department of Labor.

RETIREMENT

If an injured worker who was injured after September 1, 1990 retires while receiving workers' compensation benefits, the workers' compensation benefit will be reduced by the amount of the retirement benefit. This offset will not be applied to retirement benefits derived exclusively from employee contributions. Also, such an offset will not be applied to persons who were injured before age 55 and had been receiving

workers' compensation for at least 5 years prior to retirement. If a person retires less than 2 years after an injury, then all workers' compensation benefits will be terminated.

DURATION OF BENEFITS

The length of time that weekly compensation benefits continue depends on whether compensation is being paid for total disability or partial disability.

Benefits for total disability continue for as long as total disability continues, even if that means the rest of an injured worker's life. If there is an end of total disability and a person becomes partially disabled, then benefits will continue for partial disability.

Benefits for partial disability, for employees who were injured after September 1, 1990, continue for a maximum of 312 weeks (6 years). After 6 years, benefits for partial disability continue only if the injured worker can establish that his/her injury poses a "material hindrance" to obtaining employment suitable to his/her limitations.

Only benefits that are paid for partial disability are included in the calculation of the six year period. Benefits that are paid for total disability are not included in the six year benefit period for partial disability. For example, if an injured worker is totally disabled following an injury and then becomes partially disabled, the six year period begins to run when benefits start for the period of partial disability. Furthermore, periods of disability may be broken up with different periods of partial disability and total disability. For example, an injured worker who is partially disabled may become totally disabled upon undergoing surgery. In that event, benefits paid for the period of total disability following the surgery are not included in the six year calculation of partial disability. The six year "clock" does not begin to tick again until the injured worker again becomes partially disabled. When all periods of partial disability total six years, then

benefits will stop subject to a continuation of benefits if “material hindrance” can be proven.

Any change in disability status from partial to total or vice-versa must be legally documented in order to count toward calculation of the six year period for payment of partial disability benefits. The initial documentation of disability status is contained within the Memorandum of Agreement or Court Order establishing the claim. Changes in disability status may be documented by Court Orders or by written agreements (Mutual Agreements) signed by the injured worker and the insurance company.

MEDICAL CARE

Injured workers have the right to make the initial choice of their doctor. Treatment at an emergency room or with a doctor under contract with the employer does not count as the initial choice of a doctor.

After having made such a choice, injured workers also have the right to be referred to a doctor of their choice who is a specialist for their type of injury. Afterwards, if an injured worker wants to switch to a different doctor, then he/she may only see a doctor who is included on a list maintained by the insurance company, called a Preferred Provider Network (PPN), or get approval from the insurance company to see a doctor who is not on the PPN. If the employer has no PPN, then the injured worker may switch to any doctor whom he/she chooses.

In general, an insurance company is required to pay for all medical services and expenses that are necessary to cure, rehabilitate, or relieve an injured worker from the effects of a work related injury. There are protocols of treatment that vary depending on the nature of the diagnosis which may limit the type of treatment that an injured worker

may receive at a particular point in time. Also, there are some limits on medical treatment that an injured worker may receive after reaching at maximum medical improvement.

Although an insurance company is required to pay for medical services, they are not required to give permission for any type of testing or treatment. Permission for medical services is only necessary for major surgery. If an insurance company refuses to grant permission for major surgery or any other type of treatment or testing, then permission may be obtained by the injured worker from the Workers' Compensation Court.

SCARRING AND LOSS OF USE

In addition to weekly compensation, an injured worker is entitled to compensation for any disfigurement on his/her body as well as compensation for loss of use of a body part (hand, arm, leg, etc.). An injured worker is entitled to this type of compensation even if he/she did not lose any time from work because of the injury.

Disfigurement is defined as any disfigurement of the body such as a scar or swelling, limp, etc. The amount of compensation for disfigurement is entirely subjective. Loss of use is expressed by a physician as a percentage degree of impairment of a body part. The amount of compensation for loss of use is calculated according to a formula based on the percentage degree of impairment expressed by the physician.

VOCATIONAL REHABILITATION

Any employer or injured worker with a total or permanent partial disability may submit a proposal for a vocational rehabilitation program. The rehabilitation program will be submitted by a certified rehabilitation counselor who will also administer the program. The program may include anything ranging from job search assistance to formal retraining

and schooling. Once the proposal is approved, the insurance company is required to pay for all aspects of the rehabilitation program. Workers' compensation benefits may not be reduced or terminated while a proposal for approval of a program is pending or at any time while the injured worker is participating in the program. However, compensation benefits may be suspended if an injured worker refuses to participate in a rehabilitation program that was approved by the Workers' Compensation Court or agreed to by the injured worker and the insurance company.

REINSTATEMENT TO EMPLOYMENT

An injured worker is entitled to be reinstated to his/her former job if the employer has more than 9 employees and the job remains available when the injured worker is able to return to the job. If the injured worker has some physical limitations that prevent him/her from performing all of the regular duties of the job, then the employer has an obligation to make a reasonable accommodation that will allow him/her to return to the job with those limitations. An injured workers' former job is considered available even if it was filled by a temporary worker while he/she was out of work. If the job is not available, then the injured worker has the right to another existing job which is vacant and suitable.

There are limitations on the right to reinstatement that may prevent an injured worker from enforcing the right and there are technical requirements that must be met to be entitled to reinstatement. In general, reinstatement must be requested by the earlier date of one year from the date of disability, 30 days from a finding of maximum medical improvement, or 10 days from the date that an injured worker is notified in writing that the treating doctor has released him/her to return to work.

PROCEDURE FOR OBTAINING BENEFITS/FORMS

The workers' compensation system uses many forms to document the payment and termination of compensation benefits. The following represents an explanation of some of the forms that are used.

NON-PREJUDICIAL AGREEMENT

An insurance company may make initial payments of weekly compensation benefits by filing a form called a Non-Prejudicial Agreement. This form allows the insurance company to pay benefits for up to 13 weeks without accepting legal liability for the injury. Payments may be stopped at any time within the 13-week period for any reason. If payments continue for more than 13 weeks, then this creates the acceptance of liability for the injury. The Non-Prejudicial Agreement sets forth the description of the injury for which benefits are being paid as well as the average weekly wage, compensation rate and disability status. The purpose of this form is to allow an insurance company to pay benefits without giving up its right to deny a claim while it is being investigated.

MEMORANDUM OF AGREEMENT

An insurance company may also make payments of weekly compensation benefits by filing a form called a Memorandum of Agreement. This form documents an insurance company's acceptance of liability for an injury. Unlike a Non-Prejudicial Agreement, benefits that are paid under a Memorandum of Agreement cannot be stopped without the written agreement of the injured worker (see Suspension Agreement) or a court order.

The Memorandum of Agreement sets forth the description of the injury that the insurance company has accepted as well as the average weekly wage, compensation rate and disability status. The insurance company is only responsible to pay weekly

compensation and medical bills related to the injury as it is described in the Memorandum of Agreement.

NOTE: The insurance company has the choice of whether to pay benefits using the Non-Prejudicial Agreement or the Memorandum of Agreement. An injured worker who is not satisfied with the payment of benefits under a Non-Prejudicial Agreement has the right to petition the Workers' Compensation Court for an order establishing the legal liability of the insurance company for the injury. See Original Petition, below.

TERMINATION OF BENEFITS

When payments under a Non-Prejudicial Agreement are being terminated, the insurance is required to file a Report of Indemnity Payment form and check the appropriate box. View form. By using this form with a Non-Prejudicial Agreement, the insurance company is able to pay workers' compensation benefits without accepting legal liability for an injury.

If an injured worker receives benefits under a Non-Prejudicial Agreement for less than 13 weeks and then returns to work, the insurance company is not legally responsible for any problems that may develop in the future with regard to the injury, including the payment of medical bills. This is because a Non-Prejudicial Agreement does not establish legal liability on an insurance company for an injury.

SUSPENSION AGREEMENT

The Suspension Agreement is a form that is used to document an agreement between an injured worker and an insurance company that weekly compensation benefits may stop as of a certain date.

The signing of a Suspension Agreement does not mean that the insurance company is not responsible for the claim in the future. Suspension Agreements are only used when the insurance company has already filed a Memorandum of Agreement. Unlike a Non-Prejudicial Agreement, the Memorandum of Agreement means that the insurance company has accepted liability for the injury so any problems that develop after signing a Suspension Agreement will be covered by the insurance company. This includes recurrence of disability from the injury as well as payment of medical bills for treatment related to the injury.

ORIGINAL PETITION

The Original Petition is a form that is filed by an injured worker at the Workers' Compensation Court requesting a court order establishing legal liability upon an insurance company for an injury. This petition can be filed when an insurance company has denied a claim or is paying compensation under a Non-Prejudicial Agreement. This petition seeks a court order that establishes liability on an insurance company in the same manner as a Memorandum of Agreement.

MUTUAL AGREEMENT

The Mutual Agreement is a form that is used to document an agreement between an injured worker and the insurance company regarding changes to a Memorandum of Agreement or Court order that established liability for an injury, e.g., change in compensation rate, change in disability status from partial disability to total disability, etc. It is also used to document an agreement between an injured worker and the insurance company for the payment of compensation for scarring and loss of use.

EMPLOYEE'S PETITION TO REVIEW

The Employee's Petition to Review is a form filed by an injured worker at the Workers' Compensation Court for several different reasons such as to establish a new period of disability for a previous injury (recurrence), to establish an increase in disability status from partial to total, to enforce payment of medical bills or obtain authorization for medical treatment, to change the description of injury on a Memorandum of Agreement and any other relief which has been denied by the insurance company.

EMPLOYER'S PETITION TO REVIEW

The Employer's Petition to Review filed by the insurance company at the Workers' Compensation Court for a variety of reasons such as to discontinue benefits, to establish a decrease in disability status from total to partial, to obtain a finding of maximum medical improvement, and other forms of relief.

COURT PROCEDURE

After the filing of a petition with the Workers' Compensation Court (Original Petition or Petition to Review), the case will be assigned to a Pre-Trial Hearing within 21 days. This is an informal conference at which no testimony is taken. The judge hearing the case will listen to both parties, review medical records and enter a Pre-Trial Order denying or granting the petition. The order is binding immediately. Any party not satisfied with the order may appeal by claiming a trial within 5 business days. The case will then be assigned for a hearing to the same judge who heard the case at pre-trial. Before scheduling a hearing for testimony, the judge may schedule an Initial Hearing for the attorneys to appear in Court and advise the judge as to what witnesses and other evidence they intend to present in the case. The injured worker and the employer are not

required to appear for the Initial Hearing. The Pre-Trial Order remains binding on both the injured worker and the insurance company while the case is on appeal. The hearing process may require one or more hearings for the taking of testimony. At the conclusion of the hearings, the judge will render a decision. Any party not satisfied with the decision may appeal to the Appellate Division.

SETTLEMENT OF CLAIMS

A settlement is a payment by the insurance company to an injured worker in exchange for the injured worker giving up the right to all future workers' compensation benefits. The settlement may be paid in a single lump sum or structured over a period of time.

A case that settles before liability is established is commonly called a "denial and dismissal" type of settlement. This type of settlement is used in cases of disputed claims. In exchange for the payment of money, the injured worker agrees that his/her claim shall be denied and dismissed. The insurance company is not responsible for the payment of any medical bills in this type of settlement. The money paid in such a settlement is not considered a workers' compensation benefit and is therefore not subject to TDI or welfare liens.

A case that settles after liability is established is called a commutation. In exchange for the payment of money, the injured worker agrees that the insurance company will have no further responsibility for the injury. All medical bills for services rendered up to the date of the settlement hearing will be the responsibility of the insurance company.

An injured worker is not entitled to a settlement. A case will settle only if the

injured worker and the insurance company can agree on an amount. An injured worker cannot force an insurance company to settle and an insurance company cannot force an injured worker to settle. The Court does not get involved in settlement negotiations. The Court only gets involved after an agreement is reached and the matter is referred to the Court for approval.

ATTORNEYS FEES

The Workers' Compensation Act provides that the Court shall order the insurance company to pay an attorney's fee to an attorney who has successfully represented an injured worker before the Court. The Act further provides that when the Court awards an attorney's fee to be paid by an insurance company, the attorney cannot charge any additional fee to an injured worker for services rendered in connection with the particular court case. Typically, attorneys do not charge injured workers for any work, including work done without Court involvement, except in cases of settlement. The Workers' Compensation Act limits attorney's fees in settlements to 20% of the settlement.

SOCIAL SECURITY DISABILITY BENEFITS

Social Security Disability pays benefits to people who are unable to work. Generally, to be eligible for benefits, an individual must have worked for at least five years and have one or more medical conditions that have lasted, or are expected to last, for more than one year. Social Security also considers an individual's age, education and work history in determining whether the individual can work.

An injured worker is entitled to collect Social Security Disability benefits and workers' compensation benefits at the same time. The amount of workers' compensation benefit does not change because of Social Security Disability. However, the amount of the

monthly Social Security Disability benefit may be reduced based on the amount of workers' compensation received. If an injured worker settles the workers' compensation claim, then an order may be prepared at the Workers' Compensation Court which contains language that may cause the Social Security Disability benefit to increase following Court approval of the settlement.

NEGLIGENCE CLAIMS

In general, people who have been injured as a result of someone else's negligence may make a negligence claim against the party that was at fault. Negligence claims allow injury victims to recover for pain and suffering. Workers' compensation, however, is a no-fault system where benefits are payable to an injured worker regardless of whether the injury was caused by the negligence of the employer, the injured worker or a co-worker. Fault does not play a role in the workers' compensation system.

Therefore, an injured worker may not make a negligence claim against his/her employer. The only remedy an injured worker has against an employer for a work related injury is to collect workers' compensation. The injured worker may not sue an employer for pain and suffering even if the injury was caused by the employer's negligent, reckless or intentional act. An employer is simply not liable to an injured worker for anything other than workers' compensation benefits for on the job injuries.

However, if an injury was caused by the negligence of someone other than the employer or co-worker, then that other individual or company may be sued for negligence. For example, if a person is driving for his employer and is injured in a car accident, then the injured worker may sue the individual who caused the accident. If a person is injured while operating a machine because the machine was designed poorly, then the injured

worker may sue the manufacturer of the machine for negligence. If a person working for a sub-contractor on a building site is injured because of an unsafe work site, he/she may sue the general contractor for negligence. If a person slips and falls because of a defective condition, then the owner of the land or building as well as any company responsible for maintenance may be sued for negligence, provided that it is not also the employer.

A negligence claim allows an injured worker to recover for the cost of medical bills, lost wages, and pain and suffering. The insurance company that paid workers' compensation benefits is entitled to be reimbursed from any money that is received from a negligence claim to recover its payments of weekly compensation and medical expenses.