

Wisconsin Worker's Compensation Basics

Information Every Wisconsin Worker Should Know if Injured

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A. Reporting Your Injury

It is critical that you report all injuries to your employer. Frequently, the necessity for medical care or time off work from an injury does not occur for weeks or months after an injury, and failure to promptly report your injury when it occurs may prevent you from obtaining compensation you are entitled to. Employers may try to discourage you from reporting an injury, or try to persuade you to "run the claim" through your health insurance. Do not be discouraged by these tactics, and report your injury and ask for a copy of the injury report. If your employer refuses to supply you with a copy of your injury report, document the date and time you reported the injury, who you reported it to, and who informed you they would not report the injury or supply you with a copy of the injury report. If the injury is minor, you may never need this information, however, this information may be critical in the future if your medical condition worsens.

B. Types of Work Injuries

Wisconsin recognizes three main categories of work injuries.

1. Traumatic Injury.
A traumatic injury is an injury where a specific event can be identified as causing the injury, such as your hand being crushed by a machine part or you herniating a disc in your back when lifting something heavy or awkward.
2. Occupational Injury / Repetitive Stress Injury.
This type of injury occurs over the course of time due to the physical demands of employment, rather than occurring on a specific date. The most common example is carpal tunnel syndrome caused by doing repetitious job tasks, although you can also sustain many types of occupational injuries, including an occupational back injury from repeated work exposure. This

classification also covers diseases caused over time by work exposure such as lung conditions, hearing loss or chemical exposure sensitivity.

3. Aggravation of Pre-existing Condition.

If you have a pre-existing health condition which becomes symptomatic because of your work, you can claim Wisconsin Worker's Compensation benefits if work aggravates and accelerates the pre-existing condition beyond normal progression and causes the need for medical care, lost time or permanent disability.

C. Choosing a Care Provider

1. You Decide Who Your Doctor Will Be

Under Wisconsin Worker's Compensation law, an injured employee has the right to decide who his/her medical care provider will be. It is always in your best interest to choose your own medical provider who you trust and who is independent from the employer or the worker's compensation insurance company. Your employer or their worker's compensation insurance company does not have the right to determine who your medical provider is.

2. You Are Not Required To Go To The "Company Doctor"

Employers will often state it is "company policy" or a requirement that you see a company doctor or certain medical facility. There is no such requirement under Wisconsin Worker's Compensation law. Under Wisconsin law, the employer does not have the right to force you to see a company doctor or any specific medical facility. It is your right to see the medical provider of your choice, and often the doctor or clinic suggested by the employer is more concerned about the employer's bottom line than your health. If you accept your employer's invitation to see the doctor they are recommending, and there is a dispute later in your case, going to the company doctor or company facility will be considered your voluntary choice, and employers and insurance carriers will uniformly deny at a future hearing that they forced or required you to see their doctor. The employer or their insurance company do have the right to have you evaluated by an IME doctor (discussed below) but they must give you a special written notice to exercise this option.

3. Your Right to a Second Choice

Under Wisconsin law, you not only have a right to choose your own care provider, you also have a right to a second choice. It is important you "save" this second choice, if possible. Under Wisconsin Worker's Compensation law, any referral from one doctor to another doctor is not considered a second choice. For example, if you start treatment with your family doctor and he or she refers you to a specialist, seeing that specialist is not considered a second choice. Likewise, seeing multiple doctors within one facility are normally not considered second choices. It is recommended you "save" the second choice until after you have exhausted all reasonable and necessary care within your first choice or referrals from your first choice of medical care providers. This issue can get complicated, and do not hesitate to contact a qualified worker's compensation attorney with further questions. Contact Attorney Stuart J. Spaude at Spaude@BollenbeckFyfe.com.

4. Medical Care / Communications With Your Doctor

Obtaining appropriate medical care and communicating with your care providers is critical. Be certain every care provider you see is aware of the fact that your injury is work related. Provide a complete and accurate description of how your injury occurred to every care provider, because if your claim is disputed this information must be accurately recorded in your medical records. Never assume your doctor knows how your injury occurred; tell him or her how you were hurt at work. Do not skip or miss scheduled medical appointments. If you do a poor job of caring for your injuries the Wisconsin Worker's Compensation system will not work for you.

5. Selecting the Right Doctor

You will not be able to prove your claim without the cooperation of your physician. For your claim to succeed, your doctors will be required to complete various worker's compensation forms. Many doctors will refuse to complete these forms, or will state they can not give an opinion (in order to avoid this paperwork). **This is a particular problem with specialists, such as a surgeon, whom your regular doctor might refer you to for treatment.** The doctor or specialist will not tell you about this before you start treatment. You need to discuss this issue with the doctor or specialist at your first visit. If the doctor will not support your claim, then you either need to find a new doctor or

continue care with the understanding that you will not be able to successfully prove your worker's compensation claim.

D. What Benefits am I Entitled to?

There are three main benefits when you are injured in a Wisconsin work injury.

1. Medical Expense

Your employer and their worker's compensation insurance carrier are required to pay for all reasonable and necessary medical expenses to cure and relieve your work injury. If you have sustained a work injury, be certain to inform your medical care provider that your injury is work related so your charges are billed to the worker's compensation carrier, rather than to your personal health insurance.

2. Lost Time

Under Wisconsin Worker's Compensation law, your claim for lost time is known as total temporary disability (TTD). You are entitled to total temporary disability when you meet two criteria:

- a. You are off work because of the injury,
- and
- b. You are in the healing period

Under the first requirement, you need to be off work because of the injury. If you are able to return to work with restrictions, even if it is not a return to your pre-injury job, this benefit stops. The second requirement, being in the healing period, means that you are still treating and recovering from your injury. Once you have completed your treatment, and reached end of healing, your entitlement to TTD benefits ends.

3. Permanent Disability

Under Wisconsin law you are entitled to payments for permanent partial disability (PPD) if you have sustained a permanent injury. Permanent partial disability benefits are paid based upon a rating by your medical care provider, and are paid over a series of weeks. Your entitlement to permanent partial disability

payments begins after you reach end of healing, and permanent partial disability benefits are paid to you whether or not you are able to return to your pre-injury job. The amount of permanent partial disability benefits varies based upon the type of injury you sustained. Extremity injuries are paid under what is known as scheduled injuries (from the shoulder to the fingertips and from the hip to the toes). Injuries to the torso, neck and head are normally paid out as what are known as non-scheduled injuries. There are exceptions and special rules for certain types of injuries, and if you have questions, contact an experienced Wisconsin Worker's Compensation attorney. Contact Attorney Stuart J. Spaude at Spaude@BollenbeckFyfe.com.

4. Pain and Suffering

Under Wisconsin Worker's Compensation law, you are not entitled to pain and suffering. Pain and suffering is a concept that applies to injuries sustained through the negligence of another person (i.e., an auto accident caused by a careless driver). The Wisconsin Worker's Compensation system is not based upon negligence or fault, and therefore, there is no compensation for pain and suffering.

5. Other Benefits

There are other benefits which you may be entitled to, including vocational retraining and/or loss of earning capacity if you lose your job because of your injury, safety violation penalties, wrongful termination penalty benefits, and other potential claims. Pursuing these types of claims will often require the help of an experienced worker's compensation attorney, and if you lose your job because of your injury, it is normally a good idea to contact an experienced and qualified worker's compensation attorney. Contact Attorney Stuart J. Spaude at Spaude@BollenbeckFyfe.com.

E. Work Restrictions

1. Provide Your Restrictions to Your Employer

It is your obligation to ensure that your employer has your work restrictions. Do not rely on others to take care of this task for you. It is your responsibility to supply all of your work restrictions to your employer. Keep a copy of the restrictions for yourself and mark down on the restrictions the date and time

you supplied them to your employer. Supply your employer restrictions showing that you are completely off work, as well as any restrictions allowing you to return to work, with or without medical limitations. Many injured employees make the mistake of assuming their employer is aware of their medical condition or restrictions. Do not make that mistake. If you are going to be off work, you need to be certain your employer has received your medical restrictions.

2. Working With Restrictions

Once you provide your medical restrictions to your employer, it is the employer's obligation to inform you whether or not they have work for you within your restrictions. If your employer offers you work within your restrictions, you must return to work, even if it is not at your pre-injury job. Employers will often have you perform "busy work" while you are on restrictions, and injured employees often resist doing these tasks. However, if your employer offers you work within your restrictions, you should not refuse it, as doing so can jeopardize your worker's compensation claim and your employment status.

3. Employers Not Following Your Restrictions

Employees often complain that their employer is not following their work restrictions. This can often be a difficult situation, and if the employer is not following your work restrictions, you need to document what is occurring and how your employer is not following your work restrictions. If your health is being jeopardized, return to see your doctor and inform them of the problem, and your doctor may remove you from work completely until you recover from your injuries and are safe to return to work.

4. Permanent Restrictions

After you have recovered from your injuries, you may have permanent limitations and permanent work restrictions. It is your employer's obligation to provide you work within your permanent restrictions, if they have work available. If you are not able to return to your pre-injury employment due to your permanent work restrictions, you may be entitled to additional benefits, including vocational retraining and possibly loss of earning capacity. If you are unable to return to your employer due to your permanent injuries, it will be in your best interest to

consult with an experienced worker's compensation attorney. Contact Attorney Stuart Spaude at Spaude@BollenbeckFyfe.com.

F. Record Keeping

It is crucial that you keep records of everything that occurs regarding your worker's compensation claim. You should keep notes of all conversations you have with anyone regarding your worker's compensation claim, keep copies of all of your medical restrictions, copies of all of your bills, copies of all letters you receive from the worker's compensation insurance carrier or your employer. You may never need these documents, but if there is a dispute in your case, that information may be critical to the success of your claim at a future hearing.

G. The Worker's Compensation Insurance Company

1. Cooperate With Care

The worker's compensation insurance carrier has an obligation to act in "good faith" in the payment and handling of your claim. However, the worker's compensation insurance carrier is not "on your side", and you should handle your interaction with them in a careful manner. The worker's compensation insurance carrier is entitled to receive copies of your medical records, and it is okay to provide them with an authorization to release your medical records. Document your communication with the worker's compensation insurance carrier and request that they put everything in written form. You will be amazed by what people will tell you over the phone, yet refuse to confirm in writing.

2. No Recorded Statements

Worker's compensation insurance carriers regularly request a recorded statement. Do not give a recorded statement. The worker's compensation insurance carrier is entitled to know how you were injured, and it is acceptable for you to speak with them regarding how you were injured and what medical care you are undertaking. However, there is no requirement that you give a recorded statement, and you should not give a recorded statement. A recorded statement can never help your claim, but will often be used at a later hearing by the worker's compensation insurance carrier and their attorneys to try to defeat your claim.

3. Nurse Case Manager

The worker's compensation insurance company will often assign a nurse or a nurse case manager to your claim. Your cooperation with this person is purely voluntary, and you are not required to cooperate with them. Do not allow the nurse or the nurse case manager to be present while you meet with your medical care providers. They do not have the right to be present while you are meeting with your care providers, although they will often act like they have that right. The worker's compensation nurse or case manager can request to speak with your doctor about your care and treatment, however, your doctor's cooperation with them, like yours, is voluntary. The nurse case manager may try to befriend you or suggest that they are acting in your interest; they are not. In representing injured workers over the last twenty years I have often had nurse case managers appear at hearing and testify against an employee to try to defeat an injured worker's claim, and have never had one appear at hearing to support an injured worker's claim. They are paid by the worker's compensation insurance carrier, and that is where their interest and loyalty lie.

H. Do Not Quit Your Job

If you are injured, you should never quit your employment until you speak with an experienced worker's compensation attorney. People are often upset or frustrated after a work injury, either with the nature of their injury or how they are being treated after the injury. A common reaction is to tell the employer that they quit. Do not do so, as quitting your job can jeopardize your entitlement to worker's compensation benefits.

I. IME (Insurance Medical Exam)

The employer and their worker's compensation carrier have the right to have you seen by a doctor of their choice known as an IME. An IME is not a second choice or a second opinion and is not intended to treat or diagnose your medical condition. An IME doctor is chosen and paid by the employer and their insurance company and will issue a report in their favor. The employer and their insurance company must give you a special written notice and pay you mileage if they wish to have you seen by their IME doctor. This is a single visit evaluation, and if you are asked to see a second or repeat IME you should contact an experienced worker's compensation attorney, as this is permitted only in special circumstances. Contact Attorney Stuart J. Spaude at Spaude@BollenbeckFyfe.com.

J. Inability to Return to Your Prior Employment

If you are unable to return to your pre-injury employment due to permanent restrictions, you may be entitled to benefits for retraining or loss of earning capacity. These are often complex claims, and it is recommended that you consult with an experienced worker's compensation attorney if you find yourself in this situation. Contact Attorney Stuart J. Spaude at Spaude@BollenbeckFyfe.com.

K. Wrongful Termination

It is a violation of Wisconsin Worker's Compensation law for an employer to terminate you because of a work injury. If you feel you have been terminated because of a work injury, it is recommended you contact an experienced Wisconsin Worker's Compensation attorney to evaluate your termination and whether you may be entitled to penalties against your employer for terminating your employment because of your work injury. Contact Attorney Stuart J. Spaude at Spaude@BollenbeckFyfe.com.

L. Safety Violations

Under Wisconsin Worker's Compensation law you do not have the right to sue your employer, however, if you are injured because of a safety violation by the employer, you may be entitled to increased compensation. Common safety violations include removal of guards from machines, failure to have appropriate lockout/tagout procedures, or lack of adequate fall protection procedures and equipment. If you feel your injury was caused by an unsafe work place condition, it is recommended you contact an experienced Wisconsin Worker's Compensation attorney for assistance. Contact Attorney Stuart J. Spaude at Spaude@BollenbeckFyfe.com.

M. Third Party Claims

Under Wisconsin Worker's Compensation law you normally cannot sue your employer or a co-employee for causing your injury. This limitation is known as the "exclusive remedy" under Wisconsin Worker's Compensation law. (There are limited exceptions to this rule involving intentional assaults by a co-employee and auto accidents caused by a co-employee.) However, if your injury was caused by a "third party", you may be entitled to bring a claim against such person or corporation for causing your injury. A third party is someone other than your employer or a co-employee who causes your injury. A common example is a car accident which occurs during the course of

employment, or an employee who is injured while making a delivery to another employer's premises. These types of claims are often complex, and if you are injured as the result of the negligence or carelessness of someone other than your employer, it is recommended you consult with an experienced Wisconsin Worker's Compensation attorney. Contact Attorney Stuart J. Spaude at Spaude@BollenbeckFyfe.com.

N. Union Requirements

If you are subject to a collective bargaining agreement, any conflict between the requirements of that agreement and Wisconsin Worker's Compensation law needs to be evaluated by an attorney on a case by case basis.

O. Hiring an Attorney

All attorneys are subject to Wisconsin Worker's Compensation rules which limit attorney's fees to 20% of disputed primary compensation benefits. Medical expenses are not part of primary compensation benefits, and attorneys can not charge a fee on medical expenses. If you are being paid worker's compensation benefits (meaning benefits are not in dispute), an attorney can not charge you for representation. In general, attorneys will only agree to undertake representation when there has been a denial of primary compensation benefits. If your claim is medical expense only, or primary compensation is not in dispute, it will be unlikely that an attorney will be able to undertake representation.

P. More Help

Worker's Compensation is a state program. More information is available at the State's website: dwd.wisconsin.gov. On the Worker's Compensation page click on WC Publications for more information or contact Attorney Stuart Spaude at Spaude@BollenbeckFyfe.com.