



Law Office of
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— LLC —

**ILLINOIS
WORKERS' COMPENSATION
HANDBOOK**

COMPLIMENTS OF:

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INTRODUCTION

This Handbook will help you identify your rights as an employee who has experienced work-related injuries or occupational diseases. It will provide some answers to questions frequently asked by those who have been injured at work by a sudden accident; repetitive motion injury; or contraction of an occupational disease.

Please note that this Handbook is not intended to explain all the benefits or conditions pertaining to specific cases. The compensability and benefits of each case are determined by applying the law to the facts of each case. As a result, this Handbook should not be considered a substitute for legal advice from an experienced workers' compensation attorney.

If you have sustained an injury you feel is compensable under the Law, it is important that you seek competent legal advice from an attorney whose practice focuses on representing injured workers in Illinois. At JLS Law Office, our attorneys practice extensively in representing injured workers in the Workers' Compensation Courts. Our attorneys have successfully tried and settled thousands of cases. Regardless, our attorneys take the time with each client to answer your questions and keep you informed each step of the way.

WHAT IS WORKERS' COMPENSATION?

Workers' Compensation is a system of benefits provided by law to cover most employees who were injured due to job-related accidents or diseases. Almost every employee who is hired, injured or whose employment is localized in Illinois is covered under the Workers' Compensation laws.

If you sustain a work injury, you may be entitled to medical treatment, lost-time benefits, and possibly a permanent disability payment. These benefits are to be paid directly by the employer or their workers' compensation insurance carrier.

WORKERS' COMPENSATION BASICS: WHAT TO DO
WHEN YOU ARE HURT AT WORK

After you have been hurt at work, your actions following the accident are crucial to preventing your case from being denied by the workers' compensation insurance carrier. After you have suffered a work injury, you must:

- A. Report the injury to your supervisor.**
- B. Seek immediate medical attention with a doctor of your choosing.**
- C. Forward any disability slips to your employer.**
- D. Keep a notebook surrounding details of the accident, missed days and medical care.**
- E. Discuss with the insurance company's adjuster but do not allow recorded statements to be taken.**
- F. Beware of signing medical releases.**
- G. Beware of visits from vocational rehabilitation nurses.**
- H. Do not settle your case without verifying that your medical bills are paid.**
- I. If you do not feel comfortable with the way your case is going or the way the adjuster is attempting to steer your case, seek immediate legal consultation from a competent attorney.**
- J. Statements made by adjusters are not the law, nor are they opinions from arbitrators and therefore should not be considered the final opinion on your case.**

A. Report the Injury to Your Employer:

After you have been hurt at work, you must advise your employer within forty-five (45) days after the date of the accident. For occupational disease, you must give your employer notice as soon as practicable after you are aware of the condition. It is always recommended that the notice be given in writing by way of an e-mail or text and that you save a copy of the writing in case the issue is later disputed.

B. Seek immediate medical attention:

Injured employees are entitled to receive all necessary first aid, medical, surgical and hospital services reasonably required to cure and relieve the effects of the injury or disease. Where necessary, the employee may also be entitled to physical, mental and vocational rehabilitation.

Most importantly, the EMPLOYEE retains the right to choose his/her own treating physicians: The employer cannot force or require employees to go to the employer's choice of physician. If an employer ever requires you to go to a treating physician of THEIR choosing, seek immediate legal assistance. [Please note that the employer may require that the employee be seen for purposes of an independent medical examination. This examination is not the same as evaluating the employee for purposes of treatment.]

The employee may seek treatment from a physician of his/her choosing as well as that physician's subsequent referrals. Additionally, the employee may seek a second opinion from a physician of their choosing, unless the employer has set up a special panel of physicians from which an employee may choose, called a Preferred Provider Program. If the employer has set up such a program, the employee can reject participation in the plan, and instead, make his/her own choice of doctor. In that case, rejecting the employer's plan counts as the employee's first choice of treatment.

However, if the employee seeks treatment beyond two choices without prior approval from the employer, he/she may be held responsible for those medical bills.

C. Forward any disability slips to your employer:

If you are taken off work by the treating doctor, you have an obligation to provide your employer with any disability slips. Additionally, you should advise your doctor to forward medical records and medical bills to your employer or their workers' compensation insurance carrier.

D. Keep a notebook surrounding details of the accident, missed days and medical care:

Many work injuries take months to years to reach a final resolution. Once medical treatment is completed, a final trial may be needed to determine the extent of permanent disability caused by the work injury. However, by the time the trial rolls around, the injured employee may have forgotten many of the specific details regarding the injury and subsequent treatment. In order to help to remember the details at a later date, it is recommended that injured employees keep a notebook or calendar of important events in his/her case. These important events include the following:

1. Detailed description of the accident, including location, witnesses, and a list of the areas of injury.
2. Detailed listing of all the medical care facilities where you were treated, including addresses and dates of treatment.
3. Listing of any medical bills that you continued to receive or paid out of pocket.
4. Listing of specific dates that you missed work as a result of being taken off work by an authorized treating physician.

E. Discuss with the insurance company's adjuster but do not allow recorded statements to be taken:

Following your work injury, you will be contacted by an insurance adjuster representing your employer's workers' compensation carrier. He/she may seek to take a recorded statement from you regarding the facts of your work injury. We recommend that regardless of whether the workers' compensation carrier has accepted, denied or investigating, that you only answer questions specifically relating to the work injury.

Most importantly, we do NOT recommend that you give a recorded statement under any circumstance: There are absolutely no legal requirements that you provide a recorded statement prior to the workers' compensation carrier being obligated to pay your benefits. Recorded statements are only taken by the insurance company so that they can be used

against you at a later trial. If a workers' compensation carrier insists that you provide a recorded statement prior to them authorizing treatment or lost-time benefits, seek immediate legal counsel.

F. Beware of signing medical releases:

Following your work injury, the workers' compensation carrier will send you paperwork that may include a report of injury and almost always includes a medical authorization. If you are sent a report of injury, review the report thoroughly and make any and all modifications as you see fit. Make certain to retain a copy of the report in case it is needed for subsequent litigation.

If you are sent a medical authorization, you should thoroughly read the authorization. If the authorization is limited exclusively to obtaining copies of your medical records pertaining to the present work injury, you can sign and return that document. However, if the medical authorization allows the insurance company to communicate directly with your treating doctors, delete those entries before signing the authorization. The Workers' Compensation Act allows injured employees to retain the doctor-patient privilege and therefore the workers' compensation insurance carrier can only discuss the case with your treating doctor if you grant them authority. Otherwise, the workers' compensation insurance carrier is limited to the reports and disability slips generated by your doctor.

G. Beware of visits from rehabilitation nurses:

While undergoing treatment following a work injury, you may be assigned a rehabilitation nurse. Many rehabilitation nurses are helpful in expediting medical treatment and benefits. However, many rehabilitation nurses are merely investigative agents for the insurance company. Their purpose is to extensively question you to try to provide the workers' compensation insurance carrier with a possible defense to deny your case altogether.

Additionally, many rehabilitation nurses meet with your treating doctor regarding your treatment without you being present or

even being aware of the meeting. These rehabilitation nurses may seek to have the doctor alter the off work slips and return you to work sooner than originally scheduled. Additionally, the rehabilitation nurse may seek to encourage the doctor to release you from his/her care sooner than the doctor may have planned.

Once a rehabilitation nurse is assigned to your case, we would recommend that you seek legal counsel. If you opt to continue representation on your own, we recommend that you do not sign any medical releases with the nurse that includes language allowing him/her to have any direct conversations with your treating physicians or therapists. Additionally, we would recommend that you advise him/her that any conversations with your doctor must take place in your presence. Do not answer questions about your medical condition with the rehabilitation nurse other than updating them on your current status following the work injury.

H. Do not settle your case without verifying that your medical bills are paid:

After your medical care is complete, you may be contacted by the workers' compensation insurance carrier regarding a potential settlement of your case. However, before considering any settlement of your case, you should verify with your healthcare providers that your medical bills have been paid by the worker's compensation carrier. If there exist any remaining balances, you should either require payment of the medical expenses from the worker's compensation carrier or seek legal counsel. If you settle your claim without resolution of the medical bills, you may become responsible for the medical bills. If the insurance company refuses to pay the related medical bills, SEEK IMMEDIATE LEGAL COUNSEL.

I. If you do not feel comfortable with the way your case is going or the way the adjuster is attempting to steer your medical care, seek immediate legal consultation from a competent attorney:

During the course of your case, you will have conversations with adjusters and rehabilitation nurses. While the adjuster may appear amicable during these conversations, please keep in mind that

his/her main loyalty remains with their clients, your employer. The adjuster has extensive training in investigating work injuries to look for ways to either deny your claim outright or find ways to close your case while spending the least amount of money.

As a result, be aware that anything that you tell these individuals may be used against you as testimony at trial. If you ever feel uncomfortable with the direction that the adjuster or rehabilitation nurse is steering your case, **SEEK IMMEDIATE LEGAL COUNSEL**. In many instances, the use of legal counsel early in your case may help to prevent the workers' compensation insurance carrier from denying benefits you may otherwise be entitled to under the law.

Additionally, during the duration of your case, if the adjuster or rehabilitation nurse attempts to steer you to one of their physicians or therapists, you are not required to take their advice. Remember, you have the right to seek treatment with a physician of YOUR choosing. If the adjuster refuses to allow you to see your choice of physician, **SEEK IMMEDIATE LEGAL COUNSEL**.

J. Statements made by adjusters are not the law nor are they opinions from arbitrators and therefore should not be considered the final opinion on your case:

Injured workers may receive letters from adjusters indicating that their case has been investigated and found not compensable under the Workers' Compensation Act. These letters, while looking official, are not final determinations in your case. Instead, these letters are merely opinions from the insurance company's adjusters attempting to convince you to not proceed in your case. However, the adjuster's opinion is not the same as an opinion by an arbitrator and has absolutely no legal impact on your case. If you feel that the adjuster is wrong and that your case arose out of your employment activities, **SEEK IMMEDIATE LEGAL COUNSEL**.

WHEN DO I NEED AN ATTORNEY?

If you have sustained a work injury, the first question that is usually raised is, “Do I need an attorney?” While the Workers’ Compensation system was originally set up for all employees to obtain benefits without needing an attorney, the current financial and legal trends often require the assistance of legal counsel. As a result, if your case falls into one of the categories below, you will need to seek advice from a competent attorney:

- 1) You are not comfortable dealing with the workers’ compensation insurance adjuster or their attorneys and would prefer legal counsel advising you on your rights at the outset.
- 2) The employer or workers’ compensation insurance carrier refuses to report your case to the Illinois Workers’ Compensation Commission.
- 3) Your case was denied by the workers’ compensation insurance carrier but you feel that your injury was due to an accident or occupational disease that occurred at work.
- 4) The workers’ compensation insurance carrier has accepted your case but has attempted to control or restrict where you can receive medical treatment.
- 5) The workers’ compensation insurance carrier has accepted your case but has not been paying your lost-time benefits; has not been paying your lost-time benefits in a timely manner; or has not been paying your lost-time benefits at the correct rate even though you were taken off work by the treating doctor.
- 6) The workers’ compensation insurance carrier has accepted your case but has not paid the medical bills associated with your treatment.
- 7) The workers’ compensation insurance carrier has assigned a rehabilitation nurse to monitor your case.

- 8) The treating doctor has released you from his care, but you still feel that you need medical care.
- 9) The work injury has removed you from your profession and you need a vocational rehabilitation expert to assist you in returning to work.
- 10) The work injury has removed you from your profession and you have questions regarding whether you will ever be able to return to work in any capacity.
- 11) It has been more than one year since your injury occurred and you have not filed an Application for Adjustment of Claim.
- 12) You have sustained a disabling occupational disease such as silicosis or asbestosis that you feel is related to exposure at work.

The bottom line is that you may be able to settle your case without an attorney if your case has been accepted and all medical and lost-time benefits have been paid. These settlements would be subject to approval by an Arbitrator which will require that you appear in court to complete the paperwork. However, please note that while the Arbitrator will review the settlement to make certain that the settlement offer is within a range of value, he/she will not spend an extended period of time reviewing your medical records to identify whether the settlement is fair based upon the unique problems associated with your case.

As a result, many injured employees do not feel comfortable negotiating a settlement without the assistance of an attorney. Many employees are concerned that they may be at the mercy of the insurance company's adjuster or its attorneys who may be more knowledgeable about the Workers' Compensation laws. Additionally, these employees are concerned that they may mistakenly give up a potential benefit such as future medical treatment or vocational rehabilitation of which they may not have been aware.

It should be noted that attorney’s fees are contingency based, which means that it is a percentage of the final settlement. The same percentage of attorney’s fees applies whether the attorney is hired at onset of the injury or at the time of settlement. As a result, many injured employees choose to obtain legal advice early in their case to make certain that they have someone on their side protecting their legal rights and to make certain that they are treated fairly by the workers’ compensation insurance carrier.

WHAT INJURIES ARE COVERED BY THE WORKERS’ COMPENSATION ACT?

A. ACCIDENTS

Accidents are covered under the Workers’ Compensation Act if they “arise out of and are in the course of employment.” Injuries are considered accidental if they happen unexpectedly, without plan or design. These accidents include a multitude of scenarios such as injuries resulting from slipping and falling or from lifting objects. These accidents also include repetitive use of a body part, strokes or heart attacks or any other physical problem caused by work.

It should be noted that the accident need not be the cause of the underlying problem. If the accident aggravates a pre-existing condition, benefits are still allowed. This becomes significant with employees who have degenerative arthritis in a body part but have little to no symptoms until after the work injury. In such cases, the workers’ compensation insurance carrier is responsible to the degree that they aggravated the pre-existing condition.

B. OCCUPATIONAL DISEASES

Occupational diseases are covered under the Workers’ Compensation Act if the disease was either caused or aggravated and rendered disabling as a result of exposure associated with employment. As with accidents, occupational diseases must still “arise out of” and be “in the course of employment” in order to be considered compensable under the Act.

Examples of occupational diseases include asbestosis, silicosis, hearing loss, lead poisoning, radiation exposure, some chemical exposures, and some mental diseases.

Due to the complexity in establishing that an occupational disease is covered under the Workers' Compensation Act, traditionally an attorney is needed on these cases. Additionally, the notice requirements and statute of limitations are sometimes different in occupational diseases than with accidents depending upon the medical condition. If you feel that you have sustained a disability from an occupational disease, it is recommended that you seek immediate legal advice from a competent attorney.

ARISING OUT OF EMPLOYMENT

In order for an accident to be covered under the Workers' Compensation Act, the employee must prove that the accident occurred as a result of the activities performed at work. Traditionally, this element is not difficult to establish in specific accidents that occur at work. If an employee is injured lifting an item at work or falls while performing work activities, this element is satisfied.

However, when the accident involves a repetitive motion injury, this element becomes more difficult to prove. Traditionally, these cases turn on the medical experts as well as whether there are any repetitive activities that the employee may perform outside of work.

IN THE COURSE OF EMPLOYMENT

In addition to performing work activities at the time of the accident, an employee must also show that the accident occurred where he/she would normally be performing his/her normal work activities. This element is usually not difficult to establish with accidents that occur while the employee is on the employer's premises. However, this element becomes more difficult when the accident occurs off the employer's premises.

A. **Traveling Employee:** Traditionally, a traveling employee is

covered during the period that he/she is performing work activities as a traveling employee. Exceptions may also exist when the employee is out of town and not performing work activities but merely attending to personal comforts such as showering when the accident occurs. In such cases, the courts have still covered such events as stemming from the traveling aspect of the job.

B. Going to and Coming from Work: Injuries that occur while traveling to and from work are generally not compensable. However, there are a number of exceptions based upon whether the accident occurred on the employer's premises; whether the employer compensated the employee for travel time; whether there was something unique to the employee's job duties that put him/her at greater risk for injury during the travel when compared to the general public.

C. Parking Lot Injuries: Injuries that occur while on the employer's parking lot while either going to or coming from work may be compensable injuries under the Act. However, these cases are usually fact specific on issues such as whether the parking was open to the general public; whether the employer required the employee to park at the location; and whether there was a defect in the parking lot that led to the injury.

PLEASE NOTE THAT THE EXAMPLES ABOVE ARE BASED UPON PAST CASE LAW. THESE CASES MAY BE SUBJECT TO CHANGE AND REVIEW. AS A RESULT, IF YOU FEEL THAT YOU HAVE AN INJURY THAT SHOULD BE COVERED UNDER THE WORKERS' COMPENSATION ACT, YOU SHOULD CONSULT WITH AN ATTORNEY BEFORE GIVING UP ON YOUR CASE.

WORKERS' COMPENSATION BENEFITS PROVIDED UNDER THE LAW

Under the Illinois Workers Compensation Act and the Occupational Disease Act, there are three basic benefits provided to injured workers. These benefits include the following:

- A. Payment of medical bills;**
- B. Payment of lost-time benefits;**
- C. Payment of permanent disability benefits;**

A. Payment of Medical Bills

After you have been injured at work, your employer must pay for all the medical bills that are necessary to cure and relieve the effects of the work injury. This medical includes all emergency room visits, doctor visits, physical therapy, testing, nursing care, medications, orthotics, splints, braces and medications. You are never be required to pay a co-pay or deductible as the full amount of the bill is your employer's obligation.

YOU retain the right to choose your healthcare providers. However, there are limitations to the number of physicians that you may choose. After your emergency room treatment, you are entitled to your choice of two treating physicians and their referrals. If the employer has a Preferred Provider Program, it may have you select one of its providers, but you are not required to go to their doctor. If you decline to participate in the employer's plan, that simply counts as one of your two choices of treatment; you still retain the right to choose your own provider and any referrals from that provider. If you seek treatment with a third choice of physician, the employer may be able to deny all liability, leaving you to pay the outstanding medical bills.

Independent Medical Examinations: Although you have the right to choose your treating physician, the employer still has the right to have you periodically evaluated by a doctor of their choosing. If the employer schedules you for such an examination, they must pay you for your mileage traveling to and from the doctor's office. Many

times the employer seeks to schedule employees for “second opinions.” If the employer seeks to schedule you for a “second opinion,” it is not the same as an independent medical examination and you may not need to attend. If you are faced with this situation, you may need to obtain legal counsel.

If you are asked to attend an independent medical examination by the employer and you refuse to attend, the employer may be able to terminate your benefits until such time as you agree to be seen by their doctor. IF you are considering not attending such an examination, SEEK IMMEDIATE LEGAL COUNSEL to prevent the potential termination of your benefits.

B. Payment of lost-time benefits

i. Temporary Total Disability

While your treating doctor has you off work due to your work injury, you are entitled to be paid two-thirds of your average weekly wage. The average weekly wage is determined by totaling the gross wages for the 52 weeks prior to the date of accident and dividing those wages by the weeks or portions of the weeks that you actually worked. Overtime is included if it is mandatory but it is only calculated at straight hourly rate.

However, there exist statutory ceilings on the amount that you can receive for either temporary total disability. These ceilings are based upon the date of injury and are updated annually.

Temporary total disability benefits are not paid for the first three work days lost after a work injury, unless the disability continues for 14 or more calendar days. After missing 14 days, you are entitled to be paid for the first three days of lost time.

ii. Temporary Partial Disability

If you are released by your doctor to return to work for less than a full workday, you are entitled to receive disability payments for those portions of the days that you are not entitled

to work. For example, if the treating doctor limits you to 4 hours of work out of an 8 hour shift, the employer is responsible for paying you for the 4 hours worked while the workers' compensation carrier is responsible for paying you two-thirds of the remaining 4 hours.

iii. Maintenance Benefits

If you are released by your doctor with permanent restrictions that your employer cannot accommodate, you may be entitled to maintenance benefits. These benefits are at the same rate as temporary total disability and cover the period of vocational rehabilitation while you seek re-employment within your restrictions.

To be entitled to maintenance benefits, you **MUST** be able to prove that you are in an active job search. This traditionally requires that you keep an extensive job log of all the locations where you have sought re-employment. This includes newspapers, internet, friends, postings, and even assistance of job placement services. This job log should also include any potential employers that you have contacted or with whom you interviewed to obtain re-employment.

iv. Vocational Rehabilitation Specialist

If you are released by your doctor with permanent restrictions that your employer cannot accommodate, in addition to maintenance benefits, you may be entitled to have a vocational rehabilitation specialist assigned to your case. The vocational rehabilitation specialist will help you identify alternate career paths. This specialist traditionally will also contact employers to try to match your skills and work restrictions with potential job openings.

C. Payment of Permanent Disability

i. Permanent Partial Disability

After your treatment is complete, your doctor will release you from his care, indicating that you have reached a point where your condition will get no better. This condition is known as “maximum medical improvement.” If you are able to return to work, you may still be entitled to a final settlement based upon the permanent loss or loss of use of a part of your body or the whole body.

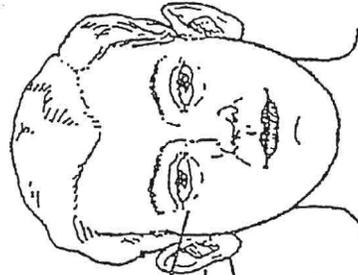
Factors that are considered in determining the extent of the permanent partial disability include the physical impairment and the effect of the disability on the injured worker’s life including pain, stiffness and limitation of motion caused by the work injury. Other factors include occupation, age at the time of the injury, impact on future earning capacity, and medical documentation of disability. It should be noted that not all injuries or diseases result in permanent partial disability.

Permanent partial disability begins by determining the appropriate body part. The Workers’ Compensation Act divides the body into potential weeks of permanent partial disability. Due to recent changes in the law, the weeks of compensation have some variation based upon the date of the injury. For injuries occurring on or after 6/28/2011, the values are as follows:

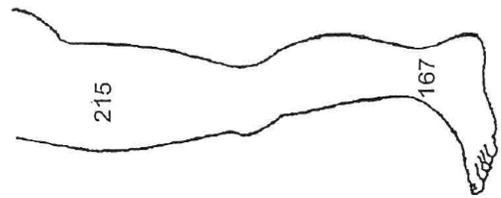
ILLINOIS WORKER'S COMPENSATION

PERMANENT PARTIAL DISABILITY SCHEDULE

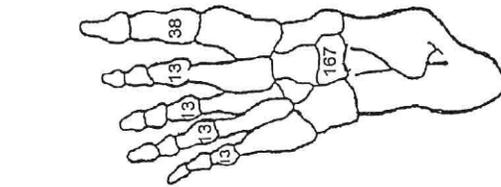
- 1) Amputation of arm above elbow add 17 weeks
- 2) Amputation of shoulder joint add 70 weeks
- 3) Amputation above knee add 27 weeks
- 4) Amputation at hip joint add 81 weeks
- 5) Enucleation of eye add 11 weeks



Complete Loss of Sight
in One Eye - 162
Complete Deafness
Both Ears -
(Occupational) - 215
One Ear
(Occupational) - 54 or
O.D. 100



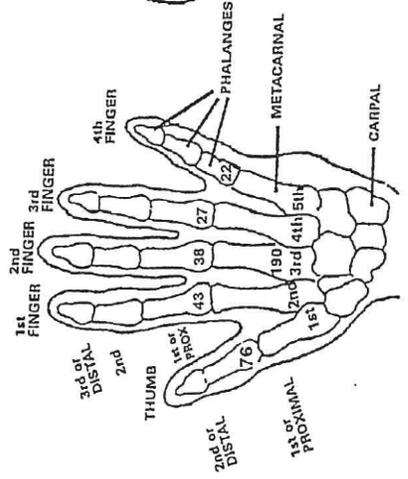
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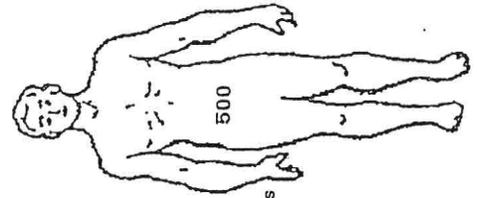
FOOT



ARM



HAND



ENTIRE PERSON

Unscheduled injuries or injuries occurring to the neck or back automatically go to the level of 500 weeks.

EXAMPLES OF SETTLEMENTS

Settlements based upon permanent partial disability use the following math formula:

$\% \text{ of Disability} \times 60\% \text{ of Average Weekly Wage} = \text{Settlement}$

However, as with temporary total disability, there exist statutory ceilings on the amount that you can receive for each week of Permanent Partial Disability. These ceilings are based upon the date of injury and are updated annually.

SETTLEMENT EXAMPLES:

Example 1:

An employee has a neck injury which requires a surgery. Following the surgery, the employee is able to return to his same job but has permanent restrictions. At the time of the injury, the employee was making \$400 per week.

If the case settled for 20% permanent partial disability, the settlement would be as follows:

$500 \times 20\% = 100 \times \$240 = \$24,000$

$500 \text{ (unscheduled injury)} \times 20\% = 100 \text{ weeks}$
 $100 \text{ weeks} \times \$240 \text{ (60\% of Average Weekly Wage)}$

Total settlement is \$24,000.

Example 2:

An employee is diagnosed with carpal tunnel syndrome in his left hand that requires surgery. Following the surgery, the employee is able to return to his same job but has ongoing problems with weakness in the hand. At the time of the injury, the employee was making \$750 per week.

If the case settled for 12.5% permanent partial disability, the settlement would be as follows:

$$190 \times 12.5\% = 23.75 \times \$450 = \$10,687.50$$

WARNING:

Please remember that when you settle your case, it traditionally closes out your medical benefits. So, before you discuss settling your case make certain that your medical condition has reached a point where nothing further can be done to improve your medical status.

Alternatively, if your medical condition requires ongoing medical care, you will probably need a final trial and will not be able to settle your case. As part of the final award, the Arbitrator will provide a written award detailing the percentage of disability as well as awarding the future medical care.

ii. Disfigurement

If you suffer a serious and permanent disfigurement to the hand, head, face, neck, arms, legs below the knee, or chest above the armpits due to a work injury, you may be entitled to up to 162 weeks of disfigurement. These benefits are paid at the same rate as permanent partial disability.

However, if you receive settlement for disfigurement, you are not entitled to permanent partial disability as well. As a result, you must choose between settling for the disfigurement or permanent partial disability.

iii. Wage Differential

If you are released by your doctor with permanent restrictions that your employer cannot accommodate, you will then be left to find new employment in the open labor market. After you have obtained a new position, if there is a significant loss in wages, you may be entitled to 66 2/3% of the difference in your lost wages at the time of trial.

EXAMPLE:

An employee injures his back which requires surgery. When he is released by his doctor, he is given work restrictions that his employer is unable to accommodate. At the time of the injury, the employee was making \$25.00 per hour. He is able to get a new position with a new employer but it pays only \$10.00 per hour. At the time of trial, the employee would have had pay raises that would have brought his hourly rate to \$27.00 per hour.

Based upon these facts, employee would be awarded \$453.20 per week until he reaches age 67, or 5 years from the date of the award, whichever is later. The calculations are as follows:

$$\begin{aligned} & \$27.00/\text{hr (rate at time of trial)} - \$10.00/\text{hr (current rate)} = \\ & \$17.00/\text{hr (lost wages per hour)} \times 66 \frac{2}{3}\% = \$11.33/\text{hr} \times 40 \\ & \text{hr/wk} = \$453.20. \end{aligned}$$

This wage differential is set at the time of trial but continues until the employee turns 67 years old or for 5 years from the date the award becomes final, whichever is longer, regardless of whether the hourly income with the new employer increases. It also continues if he retires or stops working prior to age 67. Please note that this benefit takes the place of the permanent partial disability, permanent total disability, or disfigurement and is not in addition to any of those benefits.

WARNING:

IF YOU BELIEVE THAT YOU ARE ENTITLED TO WAGE DIFFERENTIAL, YOU WILL PROBABLY NEED IMMEDIATE LEGAL ASSISTANCE.

Wage differential cases traditionally are denied or fought by employers due to the employer's potential financial exposure.

If you are a member of a union, you should also contact your benefits office since some disability policies take effect

when you are deemed unable to return to work in the same capacity as a union member.

iv. Permanent Total Disability

If you are unable to return to work at any position because of your work injury, you may be entitled to receive two-thirds of your average weekly wages for the remainder of your life. There are two ways that you can be permanently and totally disabled.

First, you can be medically disabled. This occurs when your treating doctor concludes that you are medically unable to return to work in any capacity. Second, if your doctor places permanent restrictions on you as a result of the work injury with the effect being that you are unable to return to work, you may be vocationally permanently totally disabled.

Under the first scenario, the employer will traditionally require that you undergo an evaluation by a doctor of their choosing. If their doctor agrees with your doctor that you are medically unable to return to work (which rarely happens) then weekly benefits may be agreed upon. However, if the employer's examining doctor feels that you are medically able to return to work, then it will be up to an arbitrator to decide which doctor correctly identified your work capabilities.

Under the second scenario, your status of being unemployable and permanently totally disabled only occurs after your efforts for vocational rehabilitation fail. If you have used all reasonable efforts to obtain re-employment, including the use of a vocational rehabilitation specialist, but have been unsuccessful due to your physical limitations, then the vocational rehabilitation specialist will reach a point where he/she concludes that you are unemployable in the open labor market. As with the medical conclusions, this vocational opinion may be challenged by the employer.

WARNING:

IF YOU BELIEVE THAT YOU ARE PERMANENTLY TOTALLY DISABLED, YOU WILL PROBABLY NEED IMMEDIATE LEGAL ASSISTANCE.

Almost all cases of permanent total disability require at least one trial to establish the weekly benefits. Additionally, most permanent total disability cases include issues of future medical care and/or medications which require an arbitrator's award following a trial.

If you find yourself unable to return to work in the open labor market, you will also need to consider benefits outside of the workers' compensation system. These benefits can include social security disability, short-term disability, and long-term disability. Union members should also inquire regarding disability policies at both the local and international levels.

When considering benefits outside of the workers' compensation system, you should be aware that there is a complex and complicated interplay between each of the benefits. If you seek legal counsel, make certain that they are familiar with the interplay of the various benefits and can provide you with the most favorable results from each benefit.

v. Average Weekly Wage

As with Temporary Total Disability, the average weekly wage is determined by totaling the gross wages for the 52 weeks prior to the date of accident and dividing those wages by the weeks or portions of the weeks that you actually worked.

TIME LIMITATIONS FOR FILING WORKERS' COMPENSATION CLAIMS

Employees must file an Application for Adjustment of Claim within 3 years from the date of the accident/occupational disease, or within 2 years

following the last workers' compensation payment of lost-time benefits, whichever is later. It should be noted that merely advising the employer or completing an injury report is not enough to stop the statute of limitations from continuing to run. Failure to file a claim within the time provided by law generally results in a complete loss of benefits.

JLS LAW OFFICE

Jerome, Lindsay and Salmi, LLC

JLS Law Office is committed to protecting your rights and welfare when you have suffered a work injury. We help you and your family navigate the court system. We understand how daunting the legal system can be and strive to put your mind at ease by answering your questions. These questions can include common questions such as:

1. Who will pay for my medical treatment and lost time benefits while I recover from my work injury;
2. Can my employer fire me or retaliate against me due to me filing a workers' compensation claim;
3. Does it cost me anything to hire an attorney;
4. How long will it take for my case to conclude.

Together, we will work to bring about a just and fair resolution of your case. We have aggressively and successfully represented injured workers in both Missouri and Illinois. When you enter a courtroom with one of our attorneys, you enter knowing that our attorneys are highly skilled and have handled hundreds of trials. We will work hard and use our knowledge and experience to obtain the result for you.

ATTORNEY DAVID JEROME:

David has limited his practice to representing injured workers for work accidents occurring in both Missouri and Illinois. David has tried hundreds of cases throughout Missouri and Illinois.

David began the first seven years of his legal career as a defense attorney representing employers and their insurance carriers exclusively in workers' compensation matters. He now uses that knowledge and experience against

the insurance carriers in aggressively representing injured workers and helping them to obtain the benefits they are allowed under the law.

David also has extensive experience representing union members and is able to help coordinate the union's disability benefits with the workers' compensation benefits. For seriously injured workers, David can also assist in coordinating the workers' compensation benefits with Social Security Disability as well as Medicare.

David graduated with Bachelor of Science Degree (Political Science/English) from Southern Illinois University at Edwardsville, IL. He graduated St. Louis University School of Law in 1994. David has been admitted to the Illinois Bar and Missouri Bar. David is also a member of the Illinois Bar Association; Missouri Bar Association; Association of Trial Lawyers of America; Missouri Association of Trial Lawyers; Illinois Trial Lawyers Association; Metropolitan Association of Trial Attorneys; Workers' Injury Law Advocacy Group; The American Association for Justice; Kids' Chance of Missouri; and Kids' Chance of Illinois.

ATTORNEY RICK SALMI:

Rick Salmi began representing injured people exclusively in 2011, concentrating on workers' compensation, social security disability and personal injury cases. He started in private practice in 1995 and has extensive trial experience.

Prior to focusing his practice exclusively on the protection of injured people, Rick worked as a defense attorney representing insurance companies throughout Missouri and Illinois for eight years. He has also handled hundreds of social security disability cases throughout the country. His trial experience has assisted him in properly preparing witnesses for trial and identifying areas that could be subject to cross-examination.

Rick graduated with a Bachelor of Science Degree (Economics) from the University of Illinois in 1991. He then went on to graduate from Marquette University Law School in 1995. Rick is a member of the Illinois Bar Association and the Missouri Bar Association. He is also a member of the Illinois Trial Lawyers Association and the Missouri Association of Trial Attorneys.

FOR A FREE CONSULTATION, CALL



Law Office of
JEROME LINDSAY SALMI
— LLC —

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