

**Workers' compensation** is an important benefit that protects North Carolinians who are unable to work due to a work-related illness or injury. Most employers are covered by North Carolina's workers' compensation laws, meaning that they are required to carry workers' compensation insurance. As a result, workers are almost always entitled to benefits so long as their illness or accidental injury was sustained in the course of their employment.

The workers' compensation claim process is designed to be accessible to both workers and employers, and many claims are paid without issue. However, some claims are more complex than others, and the process can be complicated. To help employees who are unable to work due to a workplace injury or illness, the workers' compensation lawyers at Martin & Jones have written this guide to provide an overview of the process so that workers can understand their rights and have some idea of what to expect while navigating the process.

## Understanding Workers' Compensation

To begin, it may be helpful to review the basic concept of workers' compensation. Workers' compensation is a no-fault insurance benefit that pays both medical and disability benefits to employees who are unable to work due to an accidental injury or illness that arose from their job.

### No-Fault Compensation

"No-fault" means that the injured or ill employee does not need to prove that it was their employer's fault, either intentionally or due to negligence. The employee does not need to prove that it was anyone's fault, but they do need to demonstrate that their injury or illness arose in the course of their employment.

### Two Categories of Workers' Comp Benefits

Workers' compensation pays two types of benefits:

1. **Medical benefits**, to cover any current and future medical bills related to the employee's injury or illness; and
2. **Disability benefits**, which cover a portion of the employee's current and future lost income.

Workers' compensation will pay all of a worker's medical expenses related to their injury or illness. Disability benefits, however, will only pay a portion of the worker's lost income. Disability benefits are subdivided into the following categories:

- **Temporary Total Disability (TTD).** These are disability benefits paid when a worker is unable to work at all on a temporary basis. The worker may receive these benefits even if they are expected to make a full recovery at a later time.
- **Temporary Partial Disability (TPD).** These are disability benefits paid to workers who are not totally disabled but whose injury or illness requires them to be placed on "light duty," work reduced hours, or be assigned to another position that results in a loss of income. In these situations, workers may be entitled to compensation for any income they lose due to their temporary partial disability. And again, workers may be entitled to these benefits even if they are expected to make a full recovery.
- **Permanent Partial Disability (PPD).** Not all workers make a full recovery. In cases where the workers are not expected to make a full recovery, a doctor may determine that they have reached "maximum medical improvement" (MMI) and assign an impairment rating. If the worker is able to return to work at normal wages, the worker's impairment rating will determine the amount of disability benefits they will receive.
- **Permanent Total Disability (PTD).** These are benefits that are paid if the worker is permanently disabled and unable to work at all.

In general, workers' compensation will pay up to two-thirds of your average weekly income. The average weekly income is determined by reviewing all of your pre-tax income for the 52-week period prior to the injury or illness. The average weekly income calculation should also account for any overtime, bonuses, and any other compensation in addition to your base salary or wage.

Mistakes are common when calculating the average weekly income. And because workers' compensation will not pay compensation for pain and suffering or other similar non-economic losses, it is important that this amount be correctly calculated to ensure that you get the benefits you deserve.

## Inability to Work

It may seem obvious, but you cannot seek workers' compensation disability benefits unless you are unable to work or have a permanent impairment. There is a seven-day waiting period before disability benefits start. However, you may be entitled to medical benefits for any medical treatment you received for a work-related injury, even if you were unable to work for less than seven days.

## Is Your Injury or Illness Work-Related?

The threshold issue in many workers' compensation claims is whether the employee's illness or injury arose from their employment. Workers' compensation does not pay benefits to workers who were injured while off the job or became ill due to conditions unrelated to work. For example, you would normally not be entitled to workers' compensation if you were injured in a car accident on your way home from work. There are exceptions to that general rule.

Cases involving injuries suffered in a work-related accident are typically more straightforward. For example, a worker who is severely injured in an [industrial accident](#) will likely have very little issue in proving that their injuries were work-related. The accident was a single, definite event that occurred in a specific place and at a specific time. This makes it easy to identify the cause of the injury and how it arose from the worker's employment.

## Proving that Your Illness or Repetitive Use Injury Is Work-Related

Claims involving illnesses and repetitive use injuries can be more challenging. This is because they arise over time or in response to prolonged environmental exposure or other conditions that led to the injury or illness. In other words, there is no single, definite event that occurred at a specific place and time that caused the illness or injury.

Repetitive use injuries, such as back problems caused by a herniated disc, are often not caused by a single accident. Instead, they may be caused by a "specific traumatic incident" (STI) – something that occurs in performing routine job duties. For example, if you hurt your back while lifting a heavy box and are subsequently unable to work for several weeks, you may be entitled to workers' compensation for your injury even though the underlying condition developed over a long period of time.

Work-related diseases and illnesses may be even more complicated. Thankfully, workers do not need to prove that their job is the sole cause of their disease or illness. Instead, they must prove that their work conditions significantly contributed to the development of their illness or disease. They may even be entitled to workers' compensation for an illness or disease that was not caused by their job but was aggravated or accelerated. There are many illnesses and diseases that are specifically provided for by North Carolina's workers' compensation law. If a worker's illness or disease is not listed, then they must prove that their employment placed them at greater risk for contracting the illness or disease than the public at large.

## What to Do if You Have Suffered a Work-Related Injury or Illness

The steps you take with regard to your injury or illness are vital to protecting your right to workers' compensation. If you are feeling overwhelmed and do not know what to do, call a North Carolina workers' compensation attorney for

guidance.

## 1. Report Your Illness or Injury to Your Employer

For injuries suffered in an accident or incident that occurred on the worksite, this is relatively straightforward. You should report the accident and your injury to your employer (either your supervisor or other managing employee) as soon as possible even if they are already aware of the accident. You should make the report in writing. Your employer may provide an incident report form for you to complete and make sure that you request a copy for your records.

If your injury prohibits you from immediately filing a written report with your employer, make sure that you or a family member makes a written report within 30 days of your accident. Failure to report your injury to your employer could compromise your right to workers' compensation.

This process is a little more complex if you are suffering from a work-related illness. You should provide your employer with written notice within 30 days of the latter:

1. The first onset of your disability related to your condition; or
2. Being advised by a doctor that you have suffered an occupational illness.

## 2. Seek Appropriate Medical Attention

Because workers' compensation is an employer-provided insurance benefit, your employer has the right to direct your medical treatment. This means that they may require you to see a doctor of their choosing who has been pre-approved by their workers' compensation insurance carrier. There are situations where you can choose your own doctor, but doing so can complicate your claim.

You should seek medical attention even if you are certain what your injury is and what treatment you need. This is an important step because it will document your claim. Make sure that you tell the doctor that you were injured at work so that the documentation is clear. Workers' compensation claims can be denied because the employee failed to submit sufficient medical documentation.

## 3. Follow the Recommended Treatment

Many workers jeopardize their claims by failing to follow the treatment recommended by the doctor. For example, they may miss follow-up appointments or fail to get prescriptions filled. If your doctor has told you to remain in bed or not lift heavy objects, you should follow their recommendations even when you are at home. Failure to follow your

recommended treatment can be used to deny your claim as evidence that you are not as injured as you claimed.

## 4. File Your Claim

In order to receive your workers' compensation benefits, your claim must be filed with and approved by the North Carolina Industrial Commission (NCIC). Your employer may handle your claim on your behalf, but you can also file the claim yourself. In either event, Form 18 must be filed with the NCIC within 2 years of your accident or STI for injuries or within 2 years of your diagnosis or disability for illnesses. We recommend that you file your claim as soon as possible. The sooner it is filed, the sooner it is approved, and the sooner you can receive your benefits.

## How the Workers' Compensation Process Works

The NCIC is responsible for reviewing, investigating, and administering workers' compensation claims. Once your claim has been filed with the NCIC, the employer is required to accept or deny liability. If your claim is accepted, you can expect to begin receiving payment shortly.

Your case becomes more complicated and more urgent if your claim is denied. If your claim is denied, we strongly urge you to contact a North Carolina workers' compensation attorney as soon as possible.

Workers whose claims have been denied always have a right of appeal, but you must act quickly to protect your rights.

- The first step in the appeal process is to file Form 33, requesting that the matter be set for a hearing. In the meantime, your lawyer can determine what needs to be done in order to address the reason why your claim was denied.
- Before your hearing, you will have to attend mediation. Mediation is a proceeding whereby a neutral third party (a mediator) will attempt to help the parties resolve the claim to the satisfaction of both sides. You may be represented by counsel at the mediation.
- If the mediation is unsuccessful, you will then proceed to a formal hearing on your claim before a Deputy Commissioner. Again, you can be represented by counsel and will have the opportunity to introduce evidence and call witnesses.
- The next step in the process, if your hearing is unsuccessful, is to request a review and hearing before the Full Commission. You must file your notice within 15 days of the Deputy Commissioner's decision.

It cannot be overemphasized that you must take immediate action if your claim has been denied in order to protect your right to compensation. An experienced North Carolina workers' compensation attorney can help you get control

of the situation and help you get your claim approved.

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