

## **Your Guide to Filing a Workers' Compensation Claim in New Jersey**

Do you know what to do if you've been hurt on the job?

Every New Jersey worker needs to understand their rights. Accidents happen every day, in every type of workplace, and the decisions you make immediately after the injury can affect your ability to get the compensation you're entitled to receive by law. Too many workers end up with less than they need because the insurance companies take advantage of the system.

New Jersey's [workers' compensation](#) system provides robust benefits for injured workers, but in order to get those benefits, you have to know your rights. Here's what you need to know.

### **Report the injury to your employer promptly**

The first step in any worker's compensation case is notifying your employer of the injury. There are strict requirements for how much time you have to notify the employer depending on certain types of injuries, so the injury must be reported immediately.

*What the law requires:* Give notice of the injury, preferably in writing, to your supervisor or someone in authority at your workplace immediately after the accident occurs. Based on various laws that apply, in some cases if you wait even more than 48 hours, your claim could be barred. You should contact us right away if you have any questions about the various time restrictions depending on the type of injury so our attorneys can explain the process to you in greater detail.

Either your employer or its workers' compensation insurance carrier must file a First Report of Injury with the New Jersey Division of Workers' Compensation within 21 days after you report the injury to them. The insurance carrier will then contact the injured worker, employer and medical provider to assess whether the claim is compensable.

*Our attorneys recommend:* Don't delay giving notice. You may legally have between a 48-hour and a 14-day window, but it's in your interest to notify your employer as soon as possible, ideally immediately after the accident. Remember that notice must be given to a supervisor or authority figure at your work: telling your manager, your manager's manager or human resources is fine. Telling a coworker, in and of itself, is not considered notice of an injury to the employer.

Always report a work injury in writing and keep a copy for your own records. Written notice creates a record of the report that you can fall back on in the event of a dispute, whereas verbal notice can be disputed. Make sure you note the exact date and time of the report, as well as the name and job title of the person (supervisor, foreman, human resource manager, etc.) who you notified.

### **Get immediate medical treatment**

As we explained above, reporting the injuries immediately is vital to pursuing your worker's compensation claim. When reporting the injury, you also need to request to see a doctor authorized by the employer's worker's compensation insurance.

*What the law requires:* You need to go to your employer's pre-selected hospital or clinic for (non-emergency) medical treatment. If you don't go to the pre-authorized provider after your work injury, there is a risk that your medical bills won't be covered by workers' comp. If your work injury causes a medical emergency, you can go to the emergency room or a similar setting without pre-authorization; however, you must notify your employer as soon as possible that you received emergency treatment.

*What our attorneys recommend:* See the pre-selected doctor as soon as possible and tell them about every symptom, from head to toe, even if it seems minor. A little pain or discomfort could be indicative of a more severe underlying injury. Notifying the provider of all complaints preserves your ability to pursue treatment for all those injuries. If you don't report some of the injuries, thinking they are minor, the insurance company will attempt to deny treatment later, claiming it is not related to the accident.

You also need to tell the medical provider your injury happened at work. They need to know exactly what happened to treat you effectively, and also need to know it was work-related for billing purposes.

While you are undergoing treatment, it is very important that you follow your doctor's instructions. Take your medications as prescribed and be cognizant of any restrictions on your day-to-day activities. You should also save copies of all medical records, including appointment summaries, discharge instructions, prescriptions, doctor's orders and bills so that we can obtain copies of these for your case.

### **Certain benefits should start right away**

*What the law requires:* If the injury is found to be compensable, the insurance company will start paying the two types of benefits that begin shortly after a work injury. If there is a dispute regarding these immediate benefits, our office can file a Motion for Medical and Temporary Benefits on behalf of the employer to get a hearing before a Judge of Compensation to resolve the dispute.

**Medical benefits:** Workers' compensation pays for the full cost of all "necessary and reasonable" medical treatment for a work injury, including prescription medication, hospitalization and medical procedures. There are no co-pays, deductibles or other out-of-pocket expenses. However, the employer does have the right to designate an authorized treating physician.

Medical benefits last as long as treatment is needed for the work injury while the case remains open. There are various procedures, and protocols in place pursuant to the worker's

compensations statute that our attorneys can explain to you based upon the type of injury you are dealing with, and the circumstances of your case.

*Our attorneys recommend:* The insurance company is required to pay for your medical treatment, but they might dispute whether a particular treatment is “necessary and reasonable,” or whether a particular condition is part of the work injury as opposed to being solely a pre-existing medical condition. You need to operate on the assumption that the insurance company will be difficult to deal with. It can be helpful to keep records of all your symptoms and your doctor’s recommendations so that you’ll have a paper trail to show that each treatment or medication is necessary. Also, document your injury with photographs that can be used to assist your case.

**Temporary total disability:** If you are unable to work for a period of more than seven days (the “waiting week”), temporary total disability (TTD) benefits must be paid by the worker’s compensation insurance carrier to replace your lost income. In general, TTD pays 70% of your average weekly wage (AWW), but there is a maximum temporary disability rate set by the State each year. The rate changes every year, but the maximum particularly affects high income earners whose normal salary or wages exceed the State maximum amount. Contact our attorneys today to discuss this.

Temporary disability benefits are paid while you are unable to work and under active medical care. If the disability lasts for all or part of three weeks following the “waiting week,” then the waiting week will be retroactively compensated.

*Our attorneys recommend:* For the purposes of temporary disability, the calculation of your average weekly wage (“AWW”) is a very important step to make sure you are being properly compensated for your lost time from work. The AWW calculation should include your overtime, tips, and any other non-cash remuneration you received.

The amount of the average weekly wage is often the subject of disputes with the insurance company, as they have an interest in trying to use the lowest wage possible. There are various ways we fight the insurance company to ensure you are properly compensated. It is important to have available any documentation regarding how much you were told you would be making when you were hired, and provide copies of any written documentation including your employment contract, or union agreement so we may properly advise you on all of your legal options. Also, please have a pay stub from before the accident which shows your proper wages.

## **The transition to permanent benefits**

This section deals with the period of time following your release from medical care by your authorized doctors.

*What the law requires:* The next milestone in the process is when you either return to work or reach maximum medical improvement (MMI) with permanent working restrictions. You are at

MMI when your doctor determines that your healing process has reached a plateau and further improvement in your condition is unlikely. Within 26 weeks of either the return to work or MMI, the insurance carrier is required to send a Subsequent Report of Injury form to the Division of Workers' Compensation. Generally, the law requires a period of approximately 6 months from the time you are released by your doctor before expert examinations can be set up to determine what percentage loss of function you are experiencing from your injuries.

At this point, if the doctors agree you have a permanent, disabling injury, you may qualify for either permanent partial disability (PPD) or permanent total disability (PTD) benefits depending on the level of impact the injuries have had to your ability to function. If only our expert feels you have a permanent loss of function, our attorneys can take your case to trial to challenge the insurance company's expert.

**Permanent partial disability** sets a benefit based on a percentage of certain "scheduled" or "non-scheduled" losses for when you have a percentage loss of function but are able to return to work in some capacity. In New Jersey, "scheduled" losses involve arms, hands, fingers, legs, feet, toes, eyes, ears or teeth. Each body part is assigned a "scheduled" number of weeks, and the number of weeks of disability benefits is a percentage of that number of weeks based on the percentage of loss of use. For instance, loss of an eye is worth 200 weeks according to the schedule; if the examining doctors determine that you have lost 50% of use of the eye, you would be paid 100 weeks of disability benefits.

"Non-scheduled" losses are damage to other parts of the body not specifically identified in the schedule of disabilities, such as the back or lungs. Again, the treating physician will assign a percentage disability rating, and this percentage is multiplied by 600 weeks to calculate the number of weeks of disability benefits. The number of weeks determines the amount of compensation the insurance company has to pay you for your injury.

**Permanent total disability** is awarded if you are otherwise unable to return to any type of gainful employment as a result of your worker's compensation accident. Total disability benefits in worker's compensation are awarded for 450 weeks but can be extended beyond that time, possibly the rest of your life, if you are able to show that you are still unable to return to any type of employment.

Occasionally, a worker may be totally disabled because of a combination of a work-related injury and a pre-existing condition. In those circumstances, you still get the full Total Disability benefit. The workers' compensation insurance company pays for whatever percentage of your disability is work-related, and the State of New Jersey Second Injury Fund pays the rest. Our attorneys are extremely experienced in dealing with both the attorney for your employer, and the deputy attorneys general who represent the State of New Jersey. We routinely pursue all available means of obtaining compensation in this regard for you.

There are also avenues in which the insurance company may try to provide compensation in the time period between your release from treatment and the expert examinations.

A **voluntary tender** is an offer of an advance payment made by the insurance company against any future award of permanent disability benefits. There are complexities involved with this process that our attorneys can explain in greater detail.

*Our attorneys recommend:* If you have a permanent injury, it's always worth talking to a lawyer about the extent of your injuries to ensure that you are getting the maximum benefits you are entitled to receive. Remember, the insurance company has a financial interest in playing down the extent of your disability.

## **How to dispute a decision**

If you disagree with a decision made by the insurance carrier, we recommend you contact us immediately. There are a number of options we have in trying to resolve the dispute. Some of the options include:

### **Request an informal hearing**

***We do not recommend this option.***

An informal hearing is typically reserved for certain types of injuries, for example, an injury that only affects your finger as defined by worker's compensation. An informal hearing may also be available just to you alone, where you and the insurance carrier will go before a Judge of Compensation for non-binding mediation. We **do not recommend** this option as you do not have the benefit of an experienced worker's compensation attorney, like our team here at Shebell & Shebell, fighting on your behalf.

### **File a formal claim petition with the Division of Workers' Compensation**

***Our attorneys recommend you contact us to pursue this option.***

A claim petition is a document filed with the Division of Labor and monitored by the worker's compensation courts which are located in various locations throughout the State. The court where your claim will be heard is typically determined by your home address, but may be impacted by other factors. A formal claim petition begins the process of pursuing a formal trial when a settlement agreement cannot be reached. The trial is presided over by a Judge of Compensation, and would include testimony from the injured worker, physicians, and witnesses. The judge's decision at the conclusion of the trial is binding on both parties, though it can be appealed to the New Jersey Appellate Division.

Not all formal claims actually go to trial. A settlement can still be reached between the injured worker and the insurance company at any time prior to the final decision. Settlements are much more common than trials in worker's compensation, but our experienced trial attorneys will never back down from a trial when we feel the amount of compensation is not appropriate.

*Our attorneys recommend:* While you're not legally required to have an attorney, you absolutely should talk to a lawyer. The insurance company has legal representation, and their

lawyers know how to exploit the system to protect the company's interests. Our experienced workers' compensation team fights for you, to get you the most compensation possible.

Our attorneys can review your situation and advise whether an informal hearing or a formal claim is the right step. Your attorney can also keep you advised of any upcoming deadlines and take prompt action to ensure your rights are protected throughout the process.

**If you've been hurt on the job, we can help.**

Again, we do not recommend you venture into the workers' compensation system alone. Our team of attorneys are in the best position to pursue compensation on your behalf for any issues arising out of your case. These issues may range from the degree of any permanent injury or the insurance company denying you some of your medical treatment or temporary disability. There is no upfront fee for our services, and if we don't get you compensation, you won't owe us anything.

**You have rights under New Jersey law.** Our experienced workers' compensation lawyer can help protect them. [Contact](#) Shebell & Shebell, LLC today for a free and confidential consultation.