

A Workers' Compensation Guide to
HELP YOU AVOID COSTLY
MISTAKES



YOU, *your* EMPLOYER,
and your ADJUSTER



A RESOURCE FROM WARD BLACK LAW

www.wardblacklaw.com

Table Of Contents

I

Determining Whether You Have a Case

II

Common Claims

III

Dealing With the Insurance Adjuster

IV

Addressing Concerns With Your Employer

V

Stories From Injured Workers

VI

Getting answers from an Attorney

Determining Whether You Have a Case



If you've been hurt on the job, you probably have a lot of questions about workers' compensation and your rights. You may be wondering whether you have a claim, whether you need a lawyer, or how to proceed without jeopardizing your

career. The process can be stressful and confusing. Not only are you recovering from an injury, you may be trying to avoid rocking the boat with your employer while making sure your financial needs are met while you're out of work.

Here are some of the things you need to know:



If your injury was a direct result of your environment or job responsibilities, you could have a claim.



Timing is crucial. In North Carolina you must generally notify your employer about the incident that caused your injury within 30 days. If 30 days have passed, you may still be able to bring a successful claim, but consider contacting a workers' compensation attorney.



Benefits are available for a variety of injuries, not just "slip, trip, or fall" injuries.

DETERMINING WHETHER YOU HAVE A CASE

Your Initial Steps

After you have notified your employer of your injury, you will likely be connected with the company's workers' compensation insurance carrier. The adjuster will arrange a time with you to take a recorded statement. During the recorded statement, the adjuster will ask questions about the accident as well as your injuries. He or she will also inquire about your need for



medical treatment. Often, the adjuster will conduct an investigation before deciding whether to accept or deny your claim and will speak to coworkers who may have witnessed what led to your injury. Whether there it's considered "an accident" or "an incident", as long as something unusual happened at work that caused you harm, you may have a compensable claim.

Here are some examples:



Tom is at his desk when a ceiling tile suddenly falls and hits him in the head. **Tom has a claim.**



Tom is at his desk and his head randomly starts hurting. **Tom does not have a claim.**



Sue, a retail worker, faints and hits her head when an angry customer pulls a gun on her. **Sue has a claim.**



Sue is texting while walking and hits her head on one of the clothing racks at the store. **Sue may not have a claim.**

As you can see, being confronted with a medical emergency while at work does not necessarily give rise to a workers' compensation claim. However, unusual events that cause harm to an employee can lead to a workers' compensation claim!

Common Claims



Back Injuries

Back or neck injuries that happen at work in North Carolina can be considered viable claims even in the absence of an accident; however, the injured worker must be able to identify a “specific traumatic event.”

For example:

> Rick is working at his desk when his boss asks him to bring in a stack of books. When he lifts the books, he feels a pain in his back. Although there was not what we normally consider an “accident,” **Rick has a claim.**



Occupational Diseases

Sadly, many people across the country develop diseases or disorders as a direct result of their working conditions. These are known as occupational diseases and can range from lung cancer to carbon monoxide poisoning. To qualify for workers’ compensation, your disease must have developed due to your workplace exposures. A medical expert must also be willing to recognize and acknowledge the causal connection between your disease and the substances to which you were exposed. In addition, your work must have made you more likely to develop the disease than the general public.

Common Case Type: ASBESTOS DISEASE

- **Mesothelioma**, a deadly cancer of the lining of the chest cavity.
- Cancers of the **lung**, colon, larynx, **throat**, or pharynx.
- **Asbestosis**, a scarring of delicate lung tissue. This scarring can spread through the lungs and can cause breathing problems.
- **Pleural plaques**, calcifications on the lining of the chest wall, lungs, or diaphragm.

Although the use of asbestos, a heat-resistant mineral, was outlawed in some kinds of products in the United States more than 30 years ago, it was widely used at one time in manufacturing plants, power plants, shipyards and other industries. Asbestos is still being used in some products in the US and many plants still have old asbestos in place that can still lead to dangerous and sometimes deadly diseases. Each of the conditions that asbestos causes takes many years to develop. These are injuries that require medical monitoring and sometimes treatment. If you have one of these conditions and believe it stems from your current or former workplace, you should act as quickly as possible to secure workers’ compensation benefits. Those benefits can include your lost wages, coverage for your medical bills and if you die as a result of a work related disease, compensation to your spouse or next of kin.

Dealing With The Insurance Adjuster



Many people view dealing with the adjuster as the difficult part of the process. There's no need to dread conversations with the adjuster assigned to your case. Remember, you know much more about your claim than he/she does, and they're simply looking to collect all the facts.

Adjusters Are People Too

It is important to remember that some adjusters handle hundreds of injury cases on a monthly basis. They are busy people — but they are not bad people. In fact, although they are expected to save the insurance company money by handling claims properly, adjusters are not allowed to deny a claim without conducting an investigation first. If you've heard it is their job to minimize your compensation, be assured: the role of the North Carolina Industrial Commission is to oversee workers' compensation cases and make

certain claims are paid according to the law. Its staff includes an "ombudsman" and nurses who assist claimants when things go wrong.



The Process:

1. The adjuster is notified of a claim, either by the employer or the claimant (you).
2. The investigation begins. The adjuster may want to have a conversation with you over the phone to ask some initial questions. If you feel uneasy about giving a recorded statement, call an attorney before you schedule the appointment to talk with your adjuster.
3. If it is obvious your injury occurred due to an accident or incident at work, the adjuster should accept your claim after interviewing your employer and completing the investigation.
4. If you require medical treatment, the adjuster will tell you where to go for treatment.
5. When you have completed the treatment recommended by your authorized treating physician, your doctor informs you and your adjuster that you have reached maximum medical improvement, commonly called MMI.
6. Your doctor will assign a disability rating, a number between zero and 100 percent.



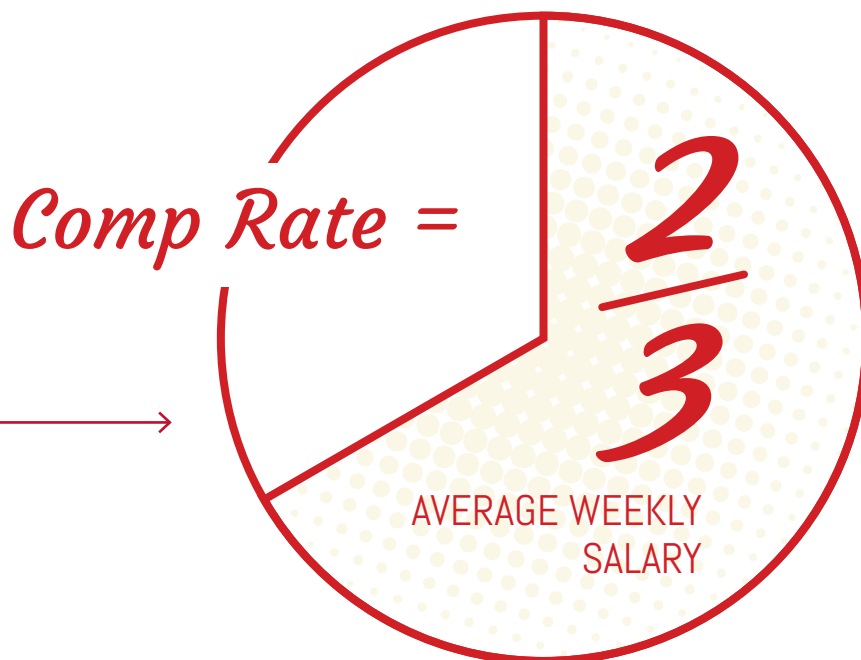
DEALING WITH THE INSURANCE ADJUSTER

How to Compute Your Benefits



If you're not working, you are probably eager to learn what your wage-replacement payments will be. To get this figure, find out your average weekly wage from your employer, then determine the "comp rate" — which is defined under North Carolina law as two-thirds of your average weekly wage, up to a yearly maximum amount.

If you have hired an attorney, he or she will request a "Form 22" from the adjuster, which will show how much you earned and how much you worked in the 52 weeks before your injury.



FAQs About Working With an Adjuster

1. What should I say/not say to my adjuster during a recorded statement?

Seek the advice of an attorney before giving the statement. An understanding of the law will shed light on the questions you'll be asked and on how to answer them.

2. I feel like my adjuster is trying to take advantage of me. What should I do?

The adjuster does have an advantage over you, since he or she has experience with North Carolina workers' compensation claims and that gives them the edge. If you don't feel you're getting everything you deserve, contact an attorney.

3. If I have to travel, will my adjuster reimburse me for mileage?

State law provides for reimbursement of your mileage to and from medical appointments when the distance exceeds 10 miles each way.

4. I tried to manage my case on my own, but my adjuster has stopped returning my phone calls. How can I proceed?

One option is to report the behavior to the adjuster's supervisor. If the adjuster is going to be out of the office for an extended time, it is likely that another adjuster will be assigned to handle his or her cases.

5. How long before I see some money?

If the adjuster decides your claim is compensable and should be paid, you should receive your first check for lost wages after you've been out of work for two weeks.

6. How can I know when to expect my checks if my adjuster sends them on a different day, randomly?

Although this makes budgeting difficult, North Carolina law does not provide for a penalty until a check is 14 days past due.

7. My adjuster won't approve my latest medical treatment. How will I afford this?

If you don't have health insurance, you can file an emergency medical motion with the North Carolina Industrial Commission. If your case is an accepted case, the Commission may order the insurance company to comply with the recommended treatment.

8. How should I go about getting my prescriptions filled?

If you have an accepted case, the pharmacy will bill the insurance company directly, or the insurance carrier may give you a prescription card to use for payment.

9. Can I also get short-term disability?

This depends on whether short term disability has been provided by your employer or whether you have independently purchased a policy. If a viable policy is in place, there will be provisions in the policy that determine whether you are eligible to receive benefits at the same time that you receive workers' comp.





How an Attorney Can Help



Although your adjuster is not usually out to get you, it is important to remember that they are working on behalf of your employer. An attorney can serve as your voice,

helping to balance the equation.

If you feel you need strong advocacy and representation, a workers' compensation lawyer can maximize your chance of success.

Other important ways an attorney can help you:

1. Verifying the adjuster is paying you the correct comp rate and providing your checks in a timely manner.
2. Teaching you the language that adjusters and rehabilitation professionals - and even doctors - use in talking about your workers' compensation claim, such as TTD, TPD and PPD.
3. Minimizing stress as you recover from a traumatic event — you focus on getting better while your lawyer focuses on your claim.
4. Making sure you know your rights as an injured worker. With an attorney, you will have a full understanding of compensation to which you are entitled.
5. Giving you a clear picture of the “whole story.” With an attorney on your side, the insurance company or employer are less likely to adversely affect the outcome of your case.
6. Maximizing your settlement. In cases where parties are working to reach a settlement, an attorney is a valuable resource.
7. Leveraging a powerful voice. Adjusters sometimes work with attorneys toward amicable solutions that might not be offered to an unrepresented employee.

Addressing Concerns With Your Employer

The most common misconception about workers' compensation is this: filing a claim pits you against your employer. Remember, it is possible to maintain a positive work environment and strong relationships while pursuing your recovery.



Debunking the Myths:

Common Misconceptions About Workers' Comp

Filing a claim means you're suing your company.

- ✗ A workers' compensation claim is not a lawsuit. By filing a claim, you are simply applying for benefits through a form of insurance that your employer has purchased to take care of people with on-the-job injuries.

I don't have to cooperate with my adjuster; after all, he's out to get me.

- ✗ This is a damaging, yet all too common, mindset. A positive relationship with your adjuster is important. Although it should not matter, goodwill goes a long way when you are depending on someone to mail checks. **View them as an ally — not as the enemy.**

My employer has my back.

- ✗ Employers aren't usually dishonest. Nevertheless, play it safe: Once you've reported an injury, request a copy of the written report. That way you'll know the injury has been documented.

I can't get benefits if I caused the accident.

- ✗ Regardless of whether the accident was caused by you, your manager, a co-worker, or the maintenance man, your claim may still be covered by workers' compensation.

My employer will choose the adjuster.

- ✗ Your employer is unable to select a specific person to handle your case. Generally the adjuster is assigned by the insurance company and allowed time to conduct an investigation before making a decision on whether to pay benefits.

I can sue my company for more than I'll get through workers' compensation.

- ✗ Not necessarily. Almost every lawsuit brought by workers against employers is thrown out in court. The law states workers' compensation is the "exclusive remedy" for most on-the-job injuries. If you were hurt at work, you'll likely have your case handled through a state agency that acts as the court system for workers' compensation cases, known as the North Carolina Industrial Commission.

FAQs

1. I'm still in pain. Can my company make me come back to work?

If our doctor releases you to return to work and the employer can provide a job within those restrictions, you may be required to return to work; however, if there is any chance that your doctor would not approve the position being offered to you, your attorney would likely request a description of job for your doctor to consider.

2. Upon return, can my company pay me a different rate than what I was receiving before the injury?

If the company offers you a job that pays less than you were earning at the time of the injury, you will be entitled to "temporary partial disability benefits", commonly referred to as TPD. This benefits pays you two-thirds of the difference between what you were earning before the injury and your new wages. However, this benefit does not last indefinitely..

3. Can my company put me in a different position than I held previously?

Yes, as long as that position is within the restrictions that your doctor has assigned.

4. If I return to work, am I still eligible for workers' compensation benefits?

Although you cannot receive wage replacement benefits while you work, workers' comp will continue to pay for your medical treatment until your authorized treating physician releases you from care. If you return to work and are unable to do your job, you can reapply for benefits using a "Form 28U".

5. How long before I see some money?

The duration of payments for lost wages depend on when your injury took place. Before the law changed in 2011, a worker was entitled to benefits for as long as he or she did was unable to return to suitable employment. As a result of changes in North Carolina law, benefits are now capped at 500 weeks for workers who are unable to return to work.

6. My spouse died due to an accident at work. Can his claim be passed along to me?

Not all claims survive a workers' death. However, if a worker was owed money for his permanent partial disability rating, that money may be paid to dependents. Or, if the injured worker died as a result of an accident at work or occupational disease contracted at work, the dependents may have a significant claim.

7. How long will this process last before I can expect to get my settlement?

The time span from injury to settlement varies greatly. The critical question in any accepted case is when will the injured worker complete medical treatment and get restored to health as much as possible (called "Maximum Medical Improvement" or MMI). That's when the settlement process can begin.

8. I was goofing around at work when the accident happened. Does it matter if my injury was my fault?

Not necessarily. Workers' comp may still accept your claim, although cases involving horseplay are frequently denied.

9. I got hurt at work, but the company is claiming I'm an independent contractor. Am I eligible for any benefits?

It will depend on whether you are an independent contractor. North Carolina Courts look at several factors in deciding these cases, including who provides your tools and who sets your work hours.

10. Are my workers' compensation benefits taxable?

No.

11. My settlement demand has been rejected. Now what?

If you are represented, your attorney will continue to negotiate on your behalf if you allow him or her that leeway. If you are representing yourself, be sure you understand the factors that adjusters consider in evaluating cases for settlement.

How an Attorney Can Help



Attorneys are often valuable when communicating with your adjuster. They can also help ensure your relationship with your employer is not damaged while you're pursuing a claim. Here are a few specific ways working with a lawyer may benefit you and your family:

If you have hired an attorney, he or she will request a Form 22 from the adjuster, which will show how much you earned and how much you worked in the 52 weeks before your injury.

Other important ways an attorney can help you:

1. Serving as an intermediary between you and your employer on difficult topics like health insurance and your rights under the Family Medical Leave Act (FMLA).
2. Informing you of rights about which you may be unaware, such as those provided under the NC Retaliatory Employment Discrimination Act (REDA). If you are fired or demoted because you filed a workers' compensation claim, an attorney can help rectify the situation.
3. Filing motions that can help quickly resolve issues that interrupt your case, such as medical motions and motions to reinstate benefits.
4. Ensuring that all important factors are taken into account in computing the settlement value of your case.

Stories From Injured Workers

Clarence's Story:

Clarence had been driving a tractor trailer for more than 20 years when he had his first accident. After surviving a terrifying rollover, his company let him go. They felt the accident could've been prevented, despite Clarence's years of experience and clean driving record. However, because he was injured on the job, he was entitled to compensation for his medical expenses and lost earnings. Clarence sought legal guidance from Ward Black Law.

I knew as soon as we arrived at the office — the way they welcomed us and talked to us — that I didn't have to look any further. They make you feel like you're family. You're not just a client coming here; you're family. I'm very grateful to them for what they have done for me.

- Clarence Richards

Myra's Story:

Faith was the first thing that drew me to Camille Payton and Ward Black Law. They knew from my initial meeting that I was unsure about proceeding with my case and suggested I go home and pray about it. Together with my husband, I did just that. This was the best advice I could've ever received from an attorney. The Ward Black Law team was open and honest — you just don't find that everywhere. Ultimately, I believe my workers' compensation settlement was larger because I enlisted the help of Ward Black Law. I'm glad I didn't try to handle it on my own and feel confident that I made the right decision.

- Myra Montgomery

Getting answers from an Attorney



Meet

S. Camille Payton,

*Head of the Workers Compensation Department
of Ward Black Law*

Camille Payton is a passionate ally for victims of workplace accidents. Focusing on workers' compensation and personal injury cases, she knows how to deal with large insurance companies and other corporations, taking up the cause of injured individuals. Payton has chaired the Workers' Compensation section of the North Carolina Bar Association and co-authored the Workers' Compensation Forms Manual. Her vast knowledge and extensive trial experience make her uniquely equipped to see that injured employees receive the workers' compensation benefits they deserve.



Meet

Gerard Davidson,

Workers' Compensation Attorney

With 37 years of experience, Gerard brings a wealth of knowledge to clients struggling with the complexities of their workers' compensation case. Legal expertise and personal integrity allow him to earn the respect of adjusters, employers, and other parties essential to a successful outcome. Like Payton, Davidson remains on the forefront of NC workers' compensation laws and is highly equipped to defend those who have been hurt on the job.

Take the Next Step with a Free Consultation - *by phone, in person or online*

If you would like to speak with an attorney about your workers' compensation case, contact Ward Black Law today. The initial consultation is absolutely free. In fact, there is never an upfront fee involved in a workers' compensation case — all fees paid must be approved by the N.C. Industrial Commission.

What Will Having an Attorney Cost Me?

Our attorneys are only paid a small percentage (25%) of the benefits we get for you, and then only if the NC Industrial Commission approves payment! You will never have to pay us by the hour or write a check for any of our work on your case. We will only get paid for our work if we successfully resolve your claim for you!

What To Expect From Your Free Consultation

When you come in for your initial consultation at Ward Black Law, we want you to know what to expect. Our friendly staff will welcome you and introduce you to a workers' compensation attorney. He or she will go over the typical timeline for a workers' compensation case, giving you a comprehensive look at the process from start to finish. For your first consultation, you can expect us to do more listening than talking. It is



our goal to hear the whole story from you, collecting as many details about the accident as possible. We will also answer any questions you might have, introduce you to the paralegal that will assist with your case, and reassure you that we will never rush your workers' compensation case along. Until you are well, our team will be working on your behalf.

A Workers' Compensation Guide to Help You Avoid Costly Mistakes

A RESOURCE FROM WARD BLACK LAW



What to Bring With You:

Check Boxes



Your adjuster's name and contact info



Anything you've received from your adjuster in the mail



Your injury story, as well as anything that supports your story (You do not have to provide this to the firm in writing.)



Your spouse or another support person, if you desire



Forms filed with the N.C. Industrial Commission (If you don't have any forms, Ward Black Law will file them for you.)



Accident report from your employer (If you do not have a copy, Ward Black Law will request one from your adjuster.)



Accident report from your employer (If you do not have a copy, Ward Black Law will request one from your adjuster.)



800.531.9191 **wardblacklaw.com**

208 W. Wendover Ave. | Greensboro

