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## **UNDERSTANDING RHODE ISLAND WORKERS' COMPENSATION**

By Attorney Gary J. Levine

### **OVERVIEW**

Workers' compensation is a system of laws that are designed to provide prompt benefits to workers who were injured at work. The system was created by the legislature to prevent injured workers from ending up in poverty due to loss of income and medical expenses. The goal of workers' compensation is to protect injured workers by providing them with partial wage replacement, appropriate medical care and, when necessary, vocational rehabilitation to assist them in returning to work.

The workers' compensation system places the burden of caring for injured workers upon employers as a cost of doing business rather than upon taxpayers through welfare and other forms of public assistance. In Rhode Island, virtually all employers are required to maintain insurance or self-insurance to cover work related injuries.

Workers' compensation provides for the payment of benefits to injured workers regardless of whether anyone was at fault for the injury. In this way, workers' compensation is a sort of compromise where the injured worker can receive benefits quickly without having to "sue" for negligence and, in return, the employer is protected from liability for negligence claims. However, injured workers retain the right to make a

negligence claim for pain and suffering against anyone else who may have negligently caused their injury other than their employer and co-worker.

## **COVERED INJURIES**

In general, any injury that arises out of the course of employment is covered by workers compensation. There are some exceptions such as an injury that is caused intentionally by the injured worker or from his/her intoxication. Some examples of covered injuries include:

- Injuries caused by a specific and identifiable incident such as lifting or falling.
- Injuries that occur over a period of time due to the constant or repetitive stresses of the job.
- Pre-existing conditions that are aggravated by a specific injury on the job or by the constant or repetitive stresses of the job.
- “Flow-from” injuries. This is a term used to describe an injury or medical condition that results from a work related injury. A typical scenario is when an injured worker loses the use of one arm due to a work injury and begins to overuse the opposite arm. Any medical condition to the opposite arm due to the overuse is considered a “flow-from” injury. Workers compensation is payable for the “flow-from” injury even if the injured worker recovers from the original injury.

## **BENEFITS TO INJURED WORKERS**

Rhode Island law provides several benefits to the injured worker. Some of the key components of these benefits are as follows:

- Weekly compensation for disability is paid at roughly 75% of the injured workers take home pay based on an average of earnings from all jobs before the injury. Injured workers who return to light duty work continue to receive a weekly check based on any loss of income from being on light duty. Total disability benefits continue without any time limitation. Partial disability benefits are limited, with some exceptions, to six years of payments.
- Injured workers have the right to choose their own doctor and have all medical expenses paid.
- Vocational rehabilitation and retraining is available to injured workers who are permanently disabled with the cost of the rehabilitation program paid for by the insurance company.
- Compensation is paid for any scar or disfigurement that was caused by an injury as well as for any permanent loss of use of a body part (finger, arm, leg, etc.). These payments are made in addition to the weekly compensation check and are payable even if an injured worker did not lose any time from work due to the injury.
- Injured workers have the right, subject to certain limitations, to return to their job.

## **PAYMENT OF CLAIMS**

An employer is required to report any work related injury that requires medical care or results in disability to its insurance company. After receiving notice from the employer, the insurance company will assign the claim to a claims adjuster. The adjuster will investigate the claim to determine whether it should be accepted or denied.

Typically, the adjuster will interview the injured worker (sometimes requesting to take a recorded statement) as well as co-workers and supervisors and will review medical records of treatment of the injury.

Ultimately, there are three things that the adjuster can do with the claim – 1) accept the claim and pay benefits with full liability, 2) neither accept nor deny the claim and pay benefits without accepting liability, or 3) deny the claim.

1. **Accept the claim and pay benefits with full liability.** If the adjuster accepts the claim, he or she will file a Memorandum of Agreement with the Department of Labor. This form signifies the acceptance of the claim and the insurance company's agreement to pay full benefits for the injury. It is a legal document that prohibits the insurance company from stopping payment without the injured worker's written consent or a court order. When benefits are paid using this form, the insurance company remains responsible for the injury even after the injured worker returns to work.
2. **Pay benefits without accepting the claim.** The adjuster may decide to pay benefits on a temporary basis without accepting legal liability for the injury. The adjuster will do so by filing a Non-Prejudicial Agreement with the Department of Labor. This form allows the adjuster to pay benefits for up to

thirteen weeks without giving up the right to deny the claim. The purpose of this form is to allow an injured worker to receive benefits while the insurance company investigates the claim. By paying benefits with a Non-Prejudicial Agreement, the adjuster may deny the claim and stop payments at any time during those thirteen weeks without the injured worker's consent and without a court order. Also, if the injured worker returns to work at regular pay within thirteen weeks while paid under a Non-Prejudicial Agreement, the insurance company may deny the claim at any later date if the injured worker claims that the injury requires further medical treatment or has again become disabling.

3. **Deny the claim.** The adjuster may decide to deny the claim without payment of any benefits. Notice of denial by the adjuster is not required to be made to the Department of Labor or to the injured worker. If benefits are being paid under a Non-Prejudicial Agreement and the adjuster decides to deny the claim, he or she will file a Termination of Benefits with the Department of Labor.

Whichever of the above actions the adjuster decides to take, he or she is required to send the injured worker a copy of any form that is filed with the Department of Labor.

## **CLAIMS DISPUTES**

Not all claims are accepted by Memorandum of Agreement. Some are paid under a Non-Prejudicial Agreement while others are denied or simply not acted on promptly. In those cases, injured workers have the right to petition the Workers' Compensation Court for acceptance of their claims. The Court will assign the case to a Pre-Trial Hearing twenty-one days after the filing of a petition. A judge will review medical records, hear about the claim from both sides without taking any testimony, and then

make a determination as to whether the claim should be accepted. If the judge decides to award benefits, then he or she will enter a court order that has the same force and effect as a Memorandum of Agreement. Any party not satisfied with the judge's decision can appeal to a full hearing where testimony is taken under oath.

Aside from initial determinations as to whether a claim should be accepted, there are many complexities to workers' compensation claims even after the insurance company's legal liability has been established. As time passes, issues frequently arise that result in disputes between injured workers and their employer and the insurance company. These disputes arise because injured workers, employers and insurance companies often have different interests in a claim. Each has certain rights and obligations that can clash when the other seeks to enforce their rights. For example, the insurance company may seek to discontinue or reduce benefits based on the results of an independent medical examination that contains a medical opinion that is different than the opinion of the injured workers' doctor. Other disputes may be over the description of the accepted injury, medical treatment, payment for scarring and loss of use, return to work issues, vocational rehabilitation, etc. When these disputes arise, the claim often lands back in the Workers' Compensation Court for resolution by a judge.

### **ATTORNEY'S FEES**

Fortunately, the Rhode Island workers' compensation system is designed so that all injured workers can have an attorney protecting their interests. Attorney's fees are ordered to be paid by the insurance company to an attorney who has successfully represented an injured worker in court. Typically, attorneys do not charge injured workers for any work except in cases of settlement. Thus, injured workers can have an

attorney protecting their rights at all times to be sure that they receive all benefits available under the law and understand their legal obligations while receiving benefits.

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