

THE INJURED WORKER'S GUIDE TO PENNSYLVANIA WORKERS' COMPENSATION LAW

Paperwork Re...
do not need to answer these...
Instructions, gather the facts, and answer...
Government agencies in your telephone directory...
SSA, 6401 Security Blvd, Baltimore, MD 21235-6401. Same...

1. What type of benefit are you receiving, did you receive of

WORKERS' COMPENSATION:

- Workers' Compensation - State (including occupational disease payments)
- Black Lung Benefits
- Longshore and Harbor Workers' Compensation
- Federal Employees' Compensation (FECA-workers' compensation for Federal employ

2. For each benefit checked above, enter the claim

TYPE OF BENEFIT	CLAIM NUMB

By

Daniel J. Siegel, Esquire

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www.PaWorkersCompLaw.com

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Workers' Compensation Law
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**About the Author:
Attorney Daniel J. Siegel**

Mr. Siegel's cases have changed the law in workers' compensation for countless workers in Pennsylvania, and he is regularly consulted not only by injured workers but also by other lawyers who represent injured workers, who seek his guidance and often retain him to handle their complex workers' compensation cases and appeals. He is also the author of *Pennsylvania Workers' Compensation Law: The Basics (3rd Edition): A Primer for Lawyers, Workers, Medical Providers, Insurance Professionals & Others*.

Mr. Siegel is the principal of the Law Offices of Daniel J. Siegel, LLC, a law firm based in Havertown, Pennsylvania. He has represented injured workers in workers' compensation, Social Security disability and employment-related matters in Pennsylvania since 1984. He received his law degree from Temple University in 1984 and his bachelor's degree from Franklin and Marshall College in 1981.

PENNSYLVANIA WORKERS' COMPENSATION LAW: THE BASICS

➤ Introduction

The concept seems simple – in exchange for giving up their right to sue their employers, injured workers in Pennsylvania receive workers' compensation benefits, which pay medical expenses and wage loss benefits for work-related injuries, regardless of fault. In practice, however, workers' compensation in Pennsylvania is one of the more complicated areas of law, encompassing a broad range of statutes, regulations, and case law.

The purpose of this booklet is not to provide an exhaustive overview of every nuance of Pennsylvania workers' compensation law, but rather, to provide a resource for injured workers.

This booklet is NOT intended to provide specific legal advice. You should always consult with an attorney when you have questions about particular matters. The law of workers' compensation changes frequently and is subject to various interpretations. As a result, this booklet should not be used and is not intended to a substitute for legal advice from a licensed Pennsylvania attorney.

➤ **How This Booklet Is Organized**

This booklet is designed to provide an overview of Pennsylvania workers' compensation claims by answering common questions about these matters. I know how complex workers' compensation cases can be, and that many lawyers don't explain this information to their clients. Our office does, and we hope this guide helps.

➤ **Conventions Used in This Booklet**

Because your employer and the insurance company are considered the same entity/party in interest, this booklet refers to the “employer” rather than the “insurer” or “insurance company.”

➤ **What Is Workers’ Compensation – The “Act”**

In Pennsylvania, injured workers receive workers’ compensation (workers comp) benefits, which are paid based upon the Pennsylvania Workers’ Compensation Act. In exchange for receiving workers’ compensation benefits -- which provide for payment of reasonable medical expenses related to the on the job injury and wage loss benefits-- workers are not permitted to file a lawsuit against their employers (although they may be able to sue other responsible parties), even if the injuries were caused by their employers’ negligence. If a worker is killed on the job, the law pays death benefits to the deceased worker’s dependents. The Workers’ Compensation Act is very complex, and there are many decisions of the Commonwealth Court of Pennsylvania and the Supreme Court of Pennsylvania that interpret this law. As a result, the law is more complex than most people would

expect, and a relatively limited number of lawyers handle these cases. Most insurance companies pay benefits every other week, although a few pay wage loss benefits weekly. These benefits are not taxable.

➤ **General Principles**

“The Pennsylvania Workers’ Compensation Act” governs all injuries occurring in Pennsylvania, regardless where the contract of hiring was made, renewed, or extended, and to certain injuries occurring outside of Pennsylvania.

Wage losses and medical expenses are paid based upon schedules created under the Act. In general, wage losses are paid either weekly or bi-weekly, and medical expenses must be paid, or an appropriate challenge filed, within 30 days of a provider’s submission of all required information.

➤ **Benefits Generally**

Under Pennsylvania law, there is no such thing as being “totally disabled.” Rather, disability benefits are categorized as either “total temporary” or “partial permanent.”

➤ **Total Temporary Disability Benefits/Calculation of Average Weekly Wage**

An employee who cannot work is entitled to “total temporary” disability (TTD) benefits, which most people would call “total disability” benefits. TTD simply means that a claimant is not working at a lighter duty or modified job, and benefits have not been modified by a decision of a Workers’ Compensation Judge (WCJ) or by some other basis. Most claimants receive TTD benefits, while a smaller portion receive partial benefits.

Under the Act, most workers will receive roughly two-thirds of the gross wages they were paid before being injured. In some cases, benefits will be paid at a higher percentage; highly-compensated workers are subject to a cap. Although the wage payment rate schedule changes annually to account for increases in the cost of living, once an injured worker’s wage loss rate is determined, *it never increases*.

➤ **Partial Disability**

Under the Act, “disability” is linked to earning power. Even you are severely injured, if your employer has a “light duty”

job and it pays the same amount as you were making before the injury, there is no “disability.” Otherwise, partial disability means that you can work, are making less than when you were hurt, and receive a reduced benefit based on how much you are making at a light duty job.

➤ **Medical Benefits**

Injured workers are entitled to payment of the cost of reasonable and necessary medical expenses related to a work injury. An employer must pay medical benefits even if the employee has no earnings loss.

➤ **How Does an Attorney Get Paid?**

In most cases, claimants’ attorneys are paid by the claimant, with the fees deducted by the employer from the claimants’ weekly or bi-weekly benefits checks and paid directly to the lawyer. This fee is usually 20 percent and *must* be approved by a Workers’ Compensation Judge or the Appeal Board.

➤ **What Are an Employee’s Obligations?**

An employee must notify his employer of a work-injury within 21 days of the injury if the employee wants to receive benefits as of the date of the injury. The Act essentially

extends this “notice period” to 120 days for an injury to be compensable.

➤ **What Are an Employer’s Obligations?**

Once an employer knows an employee has been injured at work, it is required to notify its workers’ compensation insurer. The employer is also obligated to file a Report of Injury with the Bureau of Labor and Industry within 7 days after the date of disability begin; if there is no disability within 7 days, the employer does not have to file any forms with the Bureau.

➤ **Claims Processing & Other Information**

▪ **Employer’s Acceptance of Employee’s Injury**

The employer must investigate the injury and determine whether it is “work-related.” It generally has 21 days to either agree that an injury is work-related or to deny the claim. If the injury is “work-related” the employer must pay the employee’s expenses (*i.e.*, doctors’ visits, medical tests, and so on). If an employee is receiving medical treatment, and the treating doctor says he cannot work, the employer must pay wage

losses. If it doesn't, the employee should seek legal counsel.

- **Notice Of Compensation Payable**

A Notice of Compensation Payable ("NCP") is a form an employer uses to *unilaterally acknowledge* that an employee has suffered a work-related injury. The form lists the names, addresses, and other information relating to the claim, specifies the date of the injury, describes the specific injury or injuries that the employer agrees are work-related, the employee's weekly compensation rate, and specifies the employee's average weekly wage (AWW). There are various methods for calculating an employee's AWW.

- **Notice Of Temporary Compensation Payable**

A Notice of Temporary Compensation Payable (NTCP) is similar to a Notice of Compensation Payable but may not have the same effect until it has "converted" into an NCP. By issuing an NTCP, an employer may begin paying compensation payments for a **period not exceeding 90 days** without prejudice and **without admitting liability**.

- **Denial/Stopping Benefits Under An NTCP**

An employer that does not intend to admit liability under an NTCP must file a Notice Stopping Temporary Compensation (NSTC) within the 90-day period during which temporary compensation is paid or payable. If the employer fails to file this document or does not do so within the 90 days, the employer is deemed to have admitted liability and the Notice of Temporary Compensation Payable automatically converts to an NCP.

- **“Medical Only” NCP**

An employer may agree that an employee was injured but is not disabled and can continue to work. In that case, the employer would issue a “Medical Only” Notice of Compensation Payable. “If the employee believes that he or she is entitled to wage loss payments, the employee should hire an attorney and file a Claim Petition and to begin the administrative process to obtain benefits.

- **Notice of Workers’ Compensation Denial**

When an employer denies liability to pay compensation, it must issue a Notice of

Workers' Compensation Denial and send it to the employee, with a copy to the Bureau, noting the date and description of the injury, and the reason(s) for denying compensation. The Denial must be sent to the employee within 21 days after the employer has notice or knowledge of the employee's disability.

➤ **Medical Care Issues**

Injured workers are entitled to payment of the cost of reasonable and necessary medical expenses related to a work injury. An employer must pay medical benefits even if the employee has no earnings loss; there is no waiting period before an employee is entitled to receive medical benefits.

- **What Doctor Can I See? & Must I Treat With Company Doctor for 90 Days?**

Some of the most common questions from employees revolve around the doctors you can see. There is a common misconception that injured employees must treat with a "company doctor" for 90 days following their injury. In reality, this "rule" applies to virtually no one because very few employers comply with the requirements under the Act. Despite this, many injured workers are

told or believe incorrectly that they are required to treat with a “company doctor” for the first 90 days after an injury.

Because most employers do not elect to comply with the requirements listed above, most injured workers do not have to treat with the company doctor following a work injury.

- **The Doctor I Am Seeing Isn't Helping, Can I See Another One?**

The Act permits injured workers to seek care from whatever provider they desire. The Act requires that the claimant provide notice to the employer, which is generally done by the medical provider.

- **Travel Expenses**

Generally, an employer is not obligated to pay an employee's local travel expenses to obtain medical care. If necessary treatment is not available in the employee's area, *i.e.*, the employee lives in a location where residents routinely travel to obtain the specific care, then the employer is responsible for payment of travel expenses. Further, travel of more than 100 miles is considered long-distance travel, for which an employee is entitled to reimbursement.

➤ **Litigation**

Either the employee or employer can initiate litigation by filing a petition to correct/amend/stop/otherwise modify the benefits an employee receives. There are many different petitions that can be filed depending upon the particular issues in the case, including Modification Petitions, Suspension Petitions, Termination Petitions, and Review Petitions.

After a petition has been filed with the Bureau, the petition is assigned to a Workers' Compensation Judge, generally in the county where the claimant resides (based upon the address on the petition). The petitions, their functions, and the applicable burdens of proof are addressed in more depth below.

➤ **Can I Settle My Claim?**

Employers and injured workers regularly settle all or a portion of their workers' compensation claims - in Pennsylvania, workers' compensation lump sum settlements are called "Compromises and Releases" or "C&Rs." In many cases, a Compromise and Release/C&R is an excellent way to resolve disputed issues, or to provide an injured worker with the money

needed to move on from the work injuries. If the injuries are serious enough, a Compromise and Release/C&R can provide guaranteed income for life, or other means of protecting the future of the injured employee.

That does not mean you should always settle your case. At times, there are good reasons to settle, while at others, it may be better to wait. The important thing is to hire an attorney who knows how to settle cases, has a track record of obtaining excellent settlements, and explains the process to clients.

When you are considering settling your Pennsylvania workers' compensation claim, remember that Attorney Dan Siegel only represents injured workers, not insurance companies, and does everything possible to assure that every client receives the largest settlement possible.

In addition, you should generally not settle your case without having a lawyer represent you to make sure the settlement is fair and reasonable -- because once the settlement is approved by a Workers' Compensation Judge, your claim (or the portion you

settled) is over, and it is very, very difficult to reopen a settled case.

➤ **What Not to Do If You Get Hurt**

- ✓ Don't sign any papers if you are told you have to sign them in order to receive benefits. That is almost never true, and you should seek an attorney's advice if your employer or its insurance company says you have to sign a paper to receive benefits.
- ✓ Don't sign anything you don't understand.
- ✓ Don't discuss your claim with everyone. You should only discuss your claim with your doctor, your family, your lawyer and, when appropriate, with the workers' compensation carrier. When in doubt, consult a lawyer for more advice.
- ✓ If you go back to work, you must notify your employer and/or the workers' compensation carrier because your benefits will likely stop or be reduced. But don't just work and collect wage loss benefits without notifying the appropriate parties, because that may be illegal.

➤ **Who is Entitled to Receive
Workers' Compensation Benefits?**

Almost all employees are entitled to receive workers' compensation benefits for a work-related on the job injury. There are exceptions. Casual workers who perform services unrelated to an employer's business or persons employed in a limited function may not be entitled to workers' compensation benefits. Also, domestic service workers are generally excluded unless their employers have purchased workers' compensation insurance. Some corporate officers may choose not to receive benefits, and self-employed individuals may not be entitled to benefits.

In addition, some employers pay their workers without paying taxes to avoid paying their taxes. *Just because your employer paid you with a 1099 and didn't take out taxes does not mean that you are not entitled to workers' compensation benefits if you get hurt at work.*

When in doubt, consult an attorney and do not assume that you are not entitled to benefits -- even if the employer or insurance company says so.

➤ **No Matter Where You Live, If You Were Hurt in Pennsylvania, You're Entitled to Workers' Compensation Benefits**

You don't have to live in Pennsylvania to have a Pennsylvania workers' compensation claim. Our law firm has helped countless clients from Pennsylvania and throughout the United States receive the money and medical care they were entitled to.

Under the Pennsylvania Workers' Compensation Act, a worker is entitled to workers' comp benefits if they were injured while working in Pennsylvania, no matter where they live. So, if you were working in Pennsylvania – whether it's on a pipeline project or as a truck driver or in some other job – and your accident happened here, you can get benefits. And in most cases, Pennsylvania's benefits are better than those of other states, so you can get more money in your pocket. And we know how to get you the benefits.

➤ **What Types of Injuries Are Covered Under the Pennsylvania Workers' Compensation Act?**

The easy answer is that all injuries that happen in the course of a worker's employment -- whether from an accident, from lifting, from a slip and fall, or from some other cause -- are covered by the Pennsylvania Workers' Compensation Act, regardless of the worker's prior physical condition. In addition, the Pennsylvania Occupational Disease Act also provides virtually identical benefits to workers who contract a disease as the result of his or her employment. There are many types of work-related physical injuries, including:

- Neck Injuries
- Back Injuries
- Shoulder Injuries
- Arm, Leg and Knee Injuries, Including "Wear and Tear"
- Facial Injuries
- Burns, Lacerations and Other Facial Scarring
- Broken Bones/Fractures
- Carpal Tunnel Syndrome
- Pinched Nerves
- Herniated Disks
- Spinal Cord Injuries

- Brain Injuries and Closed Head Trauma
- Amputations
- Electricutions and Electric Shocks
- Crushed Bones, Including Limbs
- Heart Attacks

Occupational diseases are covered if they are caused by or aggravated by your employment. Your disability from the occupational disease must occur within 300 weeks of your last employment in the occupation where you were exposed to the hazard. For certain lung diseases, including occupations with silica, coal or asbestos hazards, there are additional requirements.

There are many types of occupational diseases, including:

- Asthma
- Hepatitis
- HIV/AIDS
- Lung Diseases
- Reactive Airways Dysfunction Syndrome (RADS)
- Dermatitis
- Hearing Loss
- Exposure to Dangerous Chemicals
- Lead Poisoning
- Asbestosis
- Silicosis

- Mesothelioma
- Chemical Hypersensitivity
- Latex Allergies
- Reactive Airways Disease and Other Breathing Problems

➤ **How Are Wage Loss Benefits Calculated Under the Pennsylvania Workers' Comp Act?**

Workers' compensation wage loss benefits are calculated based upon an injured worker's average weekly wage. In other words, most employees (provided they have worked one year for their employer) will receive approximately two thirds of the amount they had earned before getting hurt on the job. Of course, there are exceptions to this rule. Extremely well-paid workers don't receive as much because there is a cap on the amount they can receive. Workers earning less than the average worker (statewide) will receive either a fixed rate or 90 percent of their prior average earnings, depending upon a number of factors. To see the wage rates, [click here](#).

If you are out of work for seven days or less, you will not receive any workers' compensation wage loss benefits. If you are out of work for 8 to 14 days, there is a 7-day waiting period (in other words, if you miss

10 days of work, you will be paid for 3). But, if you are out of work for more than 14 days, you get paid from day one with no deductions.

Generally, the workers' compensation carrier will send a Notice of Compensation Payable when it agrees to pay your benefits. This is a very important paper, which you should save. You might also receive either an Agreement for Compensation or a Notice of Temporary Compensation Payable, and you should also save these papers.

Most insurance companies pay benefits every other week, although a few pay wage loss benefits weekly. These benefits are not taxable.

➤ **When Will I Receive My Benefits?**

An employer and its insurance company have 21 days to either agree that your injury is work-related or to deny your claim. That is why it is very important that you seek medical care to verify your injuries and to confirm whether you can return to work or if you there are any restrictions on the type of work you can do.

With regard to wage loss benefits, after they agree to pay you, most insurance companies mail checks every other week to injured

workers, although a few pay wage loss benefits weekly.

➤ **How Long Can I Receive Workers' Compensation Benefits?**

That's a great question, without a simple answer. At the Law Offices of Daniel J. Siegel, LLC, we do everything possible to assure that our clients receive all of the benefits to which they are entitled - and the largest possible settlements.

In Pennsylvania, under the Workers' Compensation Act, there is no such thing as permanent or total disability. One thing is certain -- your employer and its insurance carrier can almost never unilaterally stop paying your benefits once they begin. While there are limited exceptions to this rule, if your checks are cut off, you should immediately consult an attorney.

In terms of benefits, the law uses phrases such as "total temporary disability" or "partial permanent disability" benefits, and each claim is different. For example, most injured workers miss only a few days of work and return to work at full duty without any further problems. Others may miss weeks, months, or years before returning to work. The last group -- injured workers who can

never go back to the jobs they had before getting hurt -- have the most complex claims. Some will receive workers' compensation benefits for the rest of their lives, others will settle their claims and live off of the settlement for the remainder of their lives, or because of other vocational considerations. In each case, however, the injured worker will almost certainly benefit from the advice of an attorney who understands the Pennsylvania Workers' Compensation Act.

➤ **Can I Sue My Employer?**

Almost always, the answer is "No." In exchange for your employer paying workers' compensation benefits (wage losses and/or medical expenses), you give up your right to sue your employer, even if your injury may have been caused by your employer's or a co-worker's negligence.

If your employer does not have workers' compensation insurance, and is not self-insured, you can still sue for damages, but it is rare that an employer would not be insured or self-insured. If your work injury was caused by a third party, you may have the right to sue the third party.

➤ **Do I Need a Lawyer?**

In most cases, injured workers -- even if they don't need to hire a lawyer -- should speak with a lawyer who will -- at no charge -- explain their rights. The Workers' Compensation Act is very confusing and highly complex, and it is easy for unwary claimants to unwittingly do or say something that could innocently hurt their claims. As a result, injured workers almost always benefit from the advice and counsel of a lawyer familiar with the Pennsylvania Workers' Compensation Act.

If you would like to speak with Dan Siegel, call (877) 637-6116 or send an email to wobooklet@danieljsiegel.com, and Dan will respond promptly. All workers' compensation matters are handled on a contingent fee basis, which means that you never pay a fee unless Dan Siegel gets you benefits or successfully prevents your employer from stopping your benefits. Give Dan Siegel a call at (877) 637-6116 or send an email.

➤ **What Do You Do If You Have Been Denied Pennsylvania Workers' Compensation Benefits?**

If you have been denied workers' compensation benefits -- either by receiving a Notice of Compensation Denial, Notice Stopping Temporary Compensation or because you never heard from your employer's workers' compensation carrier, you need to consult with an attorney and find out what your legal rights are.

Just because an insurance company denies or ignores your claim and doesn't want to pay, that doesn't mean you can't -- or won't -- get benefits. Sometimes, the insurance company doesn't have all the information it needs, and other times there is no reason for denying benefits. Consequently, you need to meet with Dan Siegel, who has represented injured workers seeking workers' compensation benefits in Pennsylvania for more than 34 years.

Dan knows the ins and out of Pennsylvania law, and will analyze all aspects of your claim to make sure that you receive all of the benefits you are entitled to. Sometimes, that will mean filing a Workers' Compensation Claim Petition, and beginning the process of having your claim decided by a Workers'

Compensation Judge. Other times, Dan may need to make a few phone calls. Regardless of the situation, every case is different, and you need a workers' compensation attorney who will examine the facts and advise you how to proceed.

➤ **What If My Employer Tries to Stop My Workers' Compensation Benefits - By Filing A Petition Or Just Cutting Off My Checks?**

If your employer files a Petition for Termination of Benefits, a Petition to Suspend Benefits, a Notice Stopping Payment of Benefits Under a Notice of Temporary Compensation Payable or a Petition to Modify Benefits, you need to seek the advice of a lawyer to defend against the Petition. If you do not have a lawyer, you will be at a disadvantage against the experienced lawyers representing your employer and its insurance company. Also, if you receive a Notice of Suspension or any other you are unsure about, call a lawyer immediately.

Finally, it is generally against the law for an employer/insurance to unilaterally cut-off/stop paying you workers' compensation benefits. If that happens, call a lawyer as soon as possible.

➤ **About Impairment Exams: Pa. Supreme Court Declares Impairment Rating Provisions of the Workers' Comp Act Unconstitutional; Attorney Dan Siegel Authored Amicus Brief**

The Pennsylvania Supreme Court has declared as unconstitutional the impairment rating evaluation (IRE) provision of the Workers' Compensation Act. The decision in *Protz v. WCAB (Derry Area School District)* means that injured workers will no longer be subject to a cap on the length of wage loss benefits they received. Attorney Dan Siegel of the Law Offices of Daniel J. Siegel, LLC authored the friend of the court brief on behalf of the Pennsylvania Association for Justice.

In opinion, the Court concluded that the Pennsylvania legislature violated the state Constitution when it passed this provision because it (1) gave “unfettered discretion over Pennsylvania’s impairment-rating methodology” to the American Medical Association, and (2) “did not include in ... any of the procedural mechanisms that this Court has considered essential to protect against ‘administrative arbitrariness and caprice.’”

Law/Practical Guides

THE INJURED WORKER'S GUIDE TO PENNSYLVANIA WORKERS' COMPENSATION LAW

This booklet is designed to provide injured workers with an overview of Pennsylvania workers' compensation law by answering common questions about these matters. The booklet is written in an easy-to-use format, with answers to the most common questions Attorney Dan Siegel and his staff receive from their injured clients.



Attorney Dan Siegel's cases have changed the law in workers' compensation for countless workers in Pennsylvania, and he is regularly consulted not only by injured workers but also by other lawyers, who seek his guidance and often retain him to handle their complex workers' compensation cases and appeals.