



Workers' Compensation Overview

Workers' compensation provides benefits to workers who are injured on the job or who have an illness, disease, or disability caused or made worse by workplace conditions. Most employers are required to have workers' compensation insurance.

Workers' compensation laws vary from state to state and can be very complicated. This Fact Sheet is designed to help you familiarize yourself with your basic rights within the California workers' compensation system, so that you can be an advocate for yourself or know where to turn for help.

If I am injured on the job, can I choose between workers' compensation and suing my employer?

Workers' compensation is usually the sole remedy for injured workers; an employee covered by workers' compensation normally cannot sue the employer in court.

Is my injury covered even if it was my fault?

Workers' compensation is a no-fault system designed to balance employee and employer rights. Because the employee gives up the right to sue her employer, the employer has to provide workers' compensation benefits regardless of fault.

What happens if my employer treats me worse because I was injured on the job or because I filed a workers' compensation claim?

Your employer cannot discriminate or retaliate against you because of your job-related injury or for filing a workers' compensation claim. If your employer does discriminate or retaliate, including threatening to fire, harassing, or intimidating you, you should contact a California Workers' Compensation Information and Assistance officer, a workers' compensation attorney, or your union. You have one year from the date of the discrimination or retaliation to file a discrimination claim with the Workers' Compensation Appeals Board.

What benefits can I receive through workers' compensation?

- Medical Care – Reasonable medical expenses associated with the injury.
- Temporary Disability – Payments to compensate for lost wages while you are recovering.
- Permanent Disability – Payments to compensate for your inability to participate in the general workforce when you have not made a complete recovery.
- Vocational Rehabilitation – You may be entitled to a “voucher” for education-related retraining or skill enhancement, valid at accredited schools.
- Death Benefits – Payments to the family or dependents of a worker who dies due to a job-related injury.

Note: Workers' compensation benefits are generally not subject to state or federal income taxation.

Are my benefits different if I'm in a union?

Your union can negotiate additional medical and disability benefits. Talk to your union representative about what benefits are available under your collective bargaining agreement.

Can I receive other benefits outside of workers' compensation?

You may also be eligible for state and federal aid through such programs as California State Disability Insurance (SDI), Social Security Disability Insurance (SSDI), or Unemployment Insurance (UI). **For Information about SDI or UI** – Contact the California **Employment Development Department**: 800-480-3287 **For Information about SSDI** – Contact the U.S. Social Security Administration: 800-772-1213

Who is covered by workers' compensation?

You are probably covered under workers' compensation if you are an employee regardless of whether you have a written employment contract. Covered employees include:

- Part-time workers – Most part-time workers are eligible for workers' compensation.
- Undocumented immigrant workers
- Residential employees – You may be eligible if you earned more than \$100 and worked more than 52 hours in the 90-day period before your injury.
- Minors

People who are not covered under California workers' compensation include:

- Federal employees – Under FECA (Federal Employee Compensation Act), a separate system of workers' compensation applies to federal government workers (e.g., postal workers). This system is administered by the Office of Workers' Compensation Programs. www.dol.gov/owcp
- Independent Contractors – Independent contractors are not employees, but the line between the two categories is often unclear. Several factors are used to determine if a worker is an independent contractor or an employee. Generally, independent contractors get paid by the job, provide their own tools, and set their own hours. Sometimes employers will illegally misclassify employees as independent contractors in order to deny them benefits. If you are not sure if you are an independent contractor, see our Fact Sheet titled Independent Contractor or Employee? How You Should Be Classified.
- Volunteers (Note: Some volunteers, such as volunteer firefighters, are covered by workers' compensation.)

Is my injury covered under workers' compensation?

An injury or illness is usually covered if it occurs at work and is caused by working conditions. If an injury is caused by working conditions AND conditions outside of work, some of your workers' compensation benefits will be proportioned on the portion of the injury your treating doctor determines was caused by working conditions will be covered.

Covered injuries include:

- Specific/traumatic injuries – Injuries resulting from a single incident (e.g., falling off a ladder).
- Cumulative/continuous trauma – Injuries resulting from repetitive motion or strain (e.g., repetitive work on a cash register resulting in carpal tunnel syndrome). If the continuous trauma occurred through work at several employers, the company for which you worked during the last year of the injury is responsible for paying benefits.
- Sickness caused by harmful exposure – Illness or disability caused or made worse because of work conditions (e.g., continuous exposure to asbestos in a construction site).
- Emotional/stress injuries – Unless you suffered from a violent act or “sudden and extraordinary events,” to file a stress claim you must have worked for the employer for at least six months and be able to show that your employment contributed to at least 51% of your disability. Usually being fired or laid off is insufficient to prove a stress claim.

Injuries not covered include:

- Injuries caused by drugs/intoxication
- Purposefully self-inflicted injuries
- Injuries occurring on your personal time or after you were fired or laid off

What should I do if I am injured on the job?

1. Notify Your Employer

Notify your supervisor or employer immediately (and in no event later than 30 days after the injury) if you are injured on the job. If your injury developed over a period of time, notify her as soon as you feel symptoms or realize the injury is job-related. Your notice to your supervisor should include the date of injury, the parts of body injured, and how and where the injury occurred. Your employer is not required to provide workers' compensation benefits until it has been notified that the injury occurred. If your company has an injury form, make sure you fill out this form and check it for accuracy.

2. Apply for Benefits

Your employer is required to provide you with a workers' compensation claim form (DWC-1) within one working day of learning of your injury. You should fill out the top part of the form completely and hand deliver or mail it by certified mail to your employer. Submitting this form can serve as your written notice (see above) as well as your application for workers' compensation benefits. If your employer does not provide you with a workers' compensation claim form (DWC-1), request one from upper management or call the California Workers' Compensation Information and Assistance office. NOTE: You must notify your employer of your injury at least within 30 days of the injury. After that, you can file your "application for adjudication of benefits" within one year of your injury. It is a good idea to file the claim as soon as possible so that you can start receiving benefits.

3. Get Medical Treatment

Emergencies – Go to the nearest emergency room and inform the treating doctor that your injury/illness is work related. Your employer is required to pay for medical treatment up to \$10,000 until your claim is approved or denied. **Non-emergencies** – After you tell your supervisor about your injury, request medical treatment. Your employer must authorize and pay for medical treatment immediately, until it approves or denies your claim. For information about medical treatment, see our Fact Sheet titled [Workers' Compensation: Medical Care](#).

What happens if the insurance company denies my claim?

Your employer must authorize medical treatment (of up to \$10,000) until it informs you whether your claim was approved or denied. The insurance company has a "reasonable" time (usually has 90 days) to decide whether to accept or deny your claim. If you do not hear anything within 90 days the claim might be presumed to be accepted. If the insurance company denies the claim, you should take action immediately if you want to dispute the insurance company's decision. File an Application for Adjudication of Claim form with the Workers' Compensation Appeals Board (WCAB). An Information and Assistance Officer should be able to help you with this process. The WCAB is a state agency that oversees the workers' compensation system and exists to resolve disputes. Once you are prepared to go to a hearing, file a Declaration of Readiness to Proceed. Filing this form is actually a request for a hearing in front of the WCAB. A WCAB hearing is not a trial. You can represent yourself or you can hire an attorney for the hearing.

What happens if my employer was uninsured at the time of my injury?

All employers in California are required to have workers' compensation insurance. If your employer was illegally uninsured when you were injured, you can apply to receive workers' compensation benefits from the state's Uninsured Employers Benefits Trust Fund (UEBTF). The application process is explained step-by-step in an [Information & Assistance Guide](#) produced by the Division of Workers' Compensation. This guide contains most of the printable forms that will make up your application packet.

What happens to my claim if I decide to change jobs?

Your claim remains open, but if your condition worsens you will be encouraged to file a new claim with your new employer. In addition, any work at the new job must comply with your treating doctor's restrictions.

Do I have to tell my new employer about my claim?

No, but you may have to request accommodations so that your job duties comply with your treating doctor's work restrictions.

Settlement

After you have begun receiving Permanent Disability payments, your claims administrator may eventually ask you to settle your case. Settling your case means that you either release the insurance company from all future liability in exchange for a lump sum payment, or you continue to request medical care and benefits through the workers' compensation system. There are two ways of settling:

1. Stipulations with Request for Award ("Stips")

- **Payments** – Your permanent disability payment is paid in one lump sum or can be paid every 14 days until the total amount that was calculated in your Permanent Disability Rating has been paid.
- **Future Medical Expenses** – The insurance company pays for any reasonably necessary future medical care related to your injury.
- **Right to Reopen Your Case** – If your injury or illness gets worse, you have the right to reopen your case within five years of the date of your injury. (Likewise, the Claims Administrator may decide to reopen your case if the injury or illness improves.)

2. Compromise and Release (C&R)

- Payments – Your permanent disability payment is paid in one lump sum as opposed to every 14 days.
- No Future Medical Expenses – The insurance company releases itself of any responsibility to pay for any future medical care. You will have to pay for any care yourself, but will receive money to compensate for this care in the lump sum settlement amount.
- No Right to Reopen Your Case – With C&R, you do not have the right to reopen your case if your injury or illness gets worse. You will receive financial compensation for this loss in the lump sum settlement calculation.

NOTE: A settlement by Stips only includes the total amount calculated according to your Permanent Disability Rating. (For more information about this rating, see our Fact Sheet titled Workers' Compensation: Permanent Disability Benefits.) A C&R settlement includes the calculated permanent disability award plus compensation for the loss of your right to reopen and future medical treatment.

How should I settle my case?

Whether to settle by Stips or C&R depends on your individual circumstances. Some factors to keep in mind include:

- Is your condition likely to change over time?
- Will you likely need expensive medical care in the future?
- Do you have independent medical insurance to cover any future medical costs?
- Do you need the entire settlement to be paid at once?

NOTE: You are allowed to choose the Stips option now, and switch to C&R in the future.

What should I do if I have a dispute or concern?

- Talk to your union, supervisor, and/or human resources representative.
- Contact your claims administrator with question and concerns.
- Contact the Information and Assistance (I&A) office (see below).
- Consult a workers' compensation attorney (see below).

NOTE: *It is always a good idea to document each conversation about your claim in writing.
*Don't forget to use your treating doctor as a resource.

What is the Information and Assistance office?

Information and Assistance (I&A) is a free government service set up to help injured workers with their claims. I&A officers can give you forms or guides, call your claims administrator for you, and review settlement documents. I&A officers are usually very busy, so you may have to be persistent and patient when trying to reach them. **NOTE:** I&A officers are not attorneys – they cannot represent you or speak on your behalf. **To hear recorded messages or request materials, call: Workers' Compensation Information and Assistance Unit: 800-736-7401**

Do I need a workers' compensation attorney?

You do not need to have a workers' compensation attorney to file a claim; however, it may be helpful to talk to and/or retain an attorney. Attorneys can help you navigate the workers' compensation system, keep track of deadlines, handle disputes, represent you, recommend additional resources, and generally act as your advocate. It may be especially helpful for you to talk to an attorney if you are unsure how to proceed with your claim, you feel you are being treated unfairly by the insurance company or by your employer, or you have a permanent disability.

How are attorneys paid?

Most workers' compensation attorneys provide one free consultation session. During this session the attorney will ask you about your case. You should also ask questions of the attorney. You are not required to hire the attorney if you go to the initial consultation session. Workers' compensation attorneys are paid on a contingency basis out of your settlement. This means that you do not pay anything to the attorney up front. The attorney's fee is taken out of your settlement and is usually between 9–15% of the total sum after approval by a workers' compensation judge. **NOTE:** Since workers' compensation attorneys work on a comparatively low contingency fee, their caseload is usually very high. They may not always be able to return phone calls and answer questions immediately. However, you should expect that your attorney or a paralegal get back to you within a reasonable time frame. Sometimes it helps to put your question(s) in a simple letter to your attorney rather than a phone call.

How do I find an attorney?

Limit your search to attorneys who specialize in workers' compensation. (Some of those are even certified as workers' compensation specialists by the State Bar of California.) See the section below titled "Attorney Referral" for available referrals. **NOTE:** You can also find attorneys through personal referrals, a county legal aid society, your treating physician, or your union.

ADDITIONAL RESOURCES

GENERAL INFORMATION AND FORMS

Division of Workers' Compensation: This agency monitors the administration of claims. The website describes the workers' compensation system, offers guides for injured workers (such as "How to File a Claim Form"), and a link to the Information and Assistance website. You can also find relevant forms (such as a disability rating schedule) and a copy of the California Labor Code. **Information and Assistance:** This website presents the contact information for district offices, directions for injured worker workshops, and offers downloadable forms. General Information: 800-736-7401 **Commission on Health and Safety and Workers'**

Compensation: This agency oversees the workers' compensation as well as the health and safety systems. On this website you will find current news releases, Title 8 information, and a link to a Guidebook for Injured Workers. **Workers' Compensation Appeals Board:** Regulates the adjudication process and reviews petitions made by workers' compensation judges. Find information about the Appeals Board or look up significant panel decisions. **California**

Employment Development Department: Find information about State Disability Insurance, including claim filing information. 800-480-3287 **U.S. Social Security Administration:** Find information about SSDI, including offers forms. 800-772-1213 **Division of Workers'**

Compensation Medical Unit: Oversees QMEs and sets guidelines for the evaluation of injured workers. You'll find treatment and evaluation guidelines on this website.

800-~~Workers~~ **Compensation Insurance Rating Bureau** Find out who your employer's workers' compensation insurance company was at your time of injury.

WORKPLACE SAFETY AND EMPLOYMENT RIGHTS

California Division of Occupational Safety and Health (Cal/OSHA): This agency inspects workplace safety and health standards, and enforces related laws. **Labor Occupational**

Health Program (LOHP): This is a University of California at Berkeley community outreach program that offers publications and training around workplace safety issues.

510-~~610-907~~ **U.S. Equal Employment Opportunity Commission (EEOC):** This federal agency handles claims of disability discrimination. 800-669-4000 **California Civil Rights**

Department: This state agency handles claims of disability discrimination. 800-884-1684

ATTORNEY REFERRAL

California Applicants' Attorneys Association (CAAA): An organization of workers' compensation lawyers who usually work exclusively for applicants (injured workers).

916-444-~~1155~~ **Legal Referral Service (State Bar)**

MEDICAL REFERRAL

Association of Occupational and Environmental Clinics: Locate Occupation Health Clinics and find doctors who specialize in work-related injuries and illnesses.

202-807-4976. There are also many helpful printed materials. One such resource is **California Workers' Comp: How to Take Charge When You're Injured on the Job**, published by Nolo Press.

WORKERS' COMPENSATION TERMS

Temporary Total Disability (TTD) – Payments to compensate for lost wages while you are recovering from your injury or illness. TTD payments are made if you cannot work at all during your recovery. **Permanent Disability (PD)** – A limited amount of money designed to compensate for any future limitations in your ability to participate fully in the job market. This stage in your workers' compensation claim begins with your doctor's permanent and stationary report. **Permanent and Stationary (P&S)** – Your doctor will write a Permanent and Stationary (P&S) report if you have not fully recovered after receiving temporary disability benefits. This report describes your medical condition, work restrictions, and future care recommendations. **Vocational Rehabilitation Maintenance Allowance (VRMA)** – Payments that help you with living expenses while going through vocational rehabilitation program. **Qualified Medical Examiner (QME)** – This is a doctor certified by the Division of Workers' Compensation Medical Unit. The QME will perform a "second opinion" medical-legal evaluation if you or your insurance company has a dispute about your claim or your treating doctor's report. **Agreed Medical Examiner (AME)** – This doctor fulfills the same role as the QME, except that she is only available if you are represented by a lawyer. Your claims administrator and your lawyer agree upon which AME will provide your medical-legal evaluation. **Workers' Compensation Appeals Board (WCAB)** – State agency that oversees the workers' compensation system and exists to resolve disputes. **Workers' Compensation Judge** – Workers' Compensation Judges who preside over the Workers' Compensation Appeals Board. **Information and Assistance (I&A)** – I&A is a free service set up to help injured workers with their claims. **Stipulations with Request for Award (Stips)** – A settlement option that includes payment for permanent disability every 14 days up to the maximum amount, future medical expenses, and the right to reopen your case within five years of the date of injury. **Compromise and Release (C&R)** – A settlement option that offers your settlement amount in one lump sum, but includes no future medical expenses and no right to reopen your case.

Disclaimer

THIS FACT SHEET IS INTENDED TO PROVIDE ACCURATE, GENERAL INFORMATION REGARDING LEGAL RIGHTS RELATING TO EMPLOYMENT IN CALIFORNIA. YET BECAUSE LAWS AND LEGAL PROCEDURES ARE SUBJECT TO FREQUENT CHANGE AND DIFFERING INTERPRETATIONS, LEGAL AID AT WORK CANNOT ENSURE THE INFORMATION IN THIS FACT SHEET IS CURRENT NOR BE RESPONSIBLE FOR ANY USE TO WHICH IT IS PUT. DO NOT RELY ON THIS INFORMATION WITHOUT CONSULTING AN ATTORNEY OR THE APPROPRIATE AGENCY ABOUT YOUR RIGHTS IN YOUR PARTICULAR SITUATION.

Last updated: October 2024

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