

GUIDE TO PENNSYLVANIA WORKERS' COMPENSATION

PREPARED BY

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GUIDE TO

PENNSYLVANIA WORKERS' COMPENSATION

1. What is workers' compensation?

The Pennsylvania Workers' Compensation Act provides wage loss and medical benefits to compensation employees suffering from work related injuries or diseases. The Act also provides for death benefits to the dependants of workers who die as a result of a work related injury or disease.



Workers' compensation benefits are paid by private insurance companies which have insurance policies with your employer. While the Bureau of Workers' Compensation administers the system, it does not make the initial determination as to whether you are entitled to receive workers' compensation benefits. If you disagree with the insurance company's determination, you may file a petition to have a workers' compensation judge decide your case.

2. What is a compensable injury?

Under Pennsylvania law, the following conditions are considered compensable injuries:

1. Specific incidents that cause an injury.
2. Repetitive activity resulting in an injury. This includes conditions like carpal tunnel syndrome caused by repetitive movement.
3. A pre-existing condition that has been aggravated by work activities. This includes conditions like arthritis, heart disease. The pre-existing condition does not have to be work-

related for the aggravation to be covered under workers' compensation.

3. *What diseases are covered by the Workers' Compensation Act?*

The Act provides a list of specific diseases which are recognized as occupational diseases. These include (but are not limited to) the following:

a. tuberculosis and hepatitis for nurses, blood processors, and related professions which involve exposure to these diseases;

b. diseases of the heart and lungs for firemen who have four (4) or more years of service;

c. pneumoconiosis and silicosis for any occupation that involves direct contact with or exposure to coal dust;

d. specific types of chemical poisoning (such as lead, mercury, phosphorus and arsenic) for occupations involving direct contact or exposure to these chemicals, or to their preparations or compounds.

The Act provides for compensation for other occupational diseases not specifically recognized, as long as three (3) criteria are met:

a. the employee is exposed to the disease by reason of employment;

b. the disease is causally related to the employee's main industry or occupation; and

c. the occurrence of the disease is substantially greater in the industry or occupation than it is in the general population.

Even if you suffer from a disease which is neither specifically recognized nor meets the criteria listed above, you may be entitled to compensation benefits. If you develop the disease as a result of an exposure which occurs at work, compensation benefits are the same as those paid for injuries. Pre-existing occupational diseases aggravated by employment are treated in the same manner as injuries. The criteria listed in the previous paragraph do not have to be satisfied for this type of claim to be compensable.

4. Must the injury occur on the employer's premises to be compensable?

No. As long as your injury occurs while you are in the course of employment, the injury is compensable. For example, if you are injured in an automobile accident while running an errand for your employer, the injury is normally compensable.

On the other hand, injuries occurring while you are on your way to or from work may not be compensable. If you are injured on your employer's premises on your way in or out of work, your injury may be compensable. In addition, commuting may be covered if you are a traveling employee.

5. What should I do if I suffer a work injury?

When you suffer an injury as a result of an accident or repetitive injury, you should give notice to your supervisor or any other person designated by your employer immediately. You should report the injury even if you do not anticipate missing time from work. Notice can be given either verbally or in writing. If required, complete an incident report.



If you require medical treatment, you should request the list of designated health care providers approved to treat work injuries. You are required to treat with these physicians for up to 90 days after the date of your first visit to the doctor. If your employer does not have a list of approved doctors, seek medical treatment from any physician.

Within 21 days of your injury, your employer or its insurance company must notify you whether they agree that you sustained a work injury. The company is required to issue a form entitled Notice of Compensation Payable, which agrees that you have a work-related injury, or a Notice of Compensation Denial, which denies that you have a work injury.

If your claim is accepted, review the Notice of Compensation Payable to determine whether your injury is described accurately and whether your wages are accurate.

If your claim is denied, seek medical care with your own physician and obtain legal advice.

If you believe you have suffered a work injury, contact **Willig, Williams & Davidson** to review your rights and responsibilities at 1-866-413-COMP.

6. How should a work related injury or disease be reported?

It is your responsibility to report an injury or disease to your employer as soon as possible. The report should include an explanation of the time, place and type of injury. The notice must contain an explanation as to how the injury occurred and **how it was work related**. Although oral notice is legally sufficient, it is best if the notice is in writing. You should retain a photocopy of the notice.

You should give as much information as possible to your employer regarding the circumstances surrounding the injury. The report may be given to the employer by you or by someone acting on your behalf.

There are two (2) time limits which are strictly enforced:

1. Notice given more than one hundred twenty (120) days from the date of injury, unless the employer already knows of the injury, will probably result in the loss of workers' compensation benefits; and

2. You must give notice within twenty-one (21) days from the date of injury in order to receive benefits from the first day of injury, unless the employer already has knowledge of the injury.

3. Thus, if you do not give notice until the twenty-second day after the injury occurred, you will only receive workers' compensation benefits from that date on. If notice is given within twenty-one (21) days, however, you will receive benefits from the first day of injury.

7. How should an occupational disease be reported?

The time period for giving notice of an occupational disease begins to run when you know or should know that your occupational disease is related to employment. The important thing to remember is that if you learn that you have contracted an occupational disease, you should provide immediate notice to your employer, or a previous employer even if you have not worked for the employer recently. It is sufficient for someone acting on your behalf, including your doctor, to provide such notice. The notice, however, must contain a statement that the disease is work related.

8. When must my employer prepare an injury report?

Under Pennsylvania law, employers are obligated to keep records of all injuries which occur on the job. Whenever such an injury results in the loss of a day, shift, or turn, the



employer must complete Form LIBC-344, Employer's Report of Occupational Injury or Disease.

The employer must file such a report only if it is aware of your work related injury or disease. The employer must complete this form even if it disputes your contention that an injury or disease is related to employment, or that it occurred at all. You are entitled to receive a copy of the Employer's Report of Occupational Injury or Disease.

9. What does my employer and its insurance company have to do once I report a work injury?

The employer should report your injury to its workers' compensation insurance carrier. Under the law, the employer or its carrier has an obligation to investigate your injury report and pay compensation if due. If you miss time from work, the employer or its carrier has an obligation to issue a Notice of Compensation Payable, agreeing you had a work injury, or a Notice of Compensation Denial, denying that you had a work injury, within 21 days of the first day you missed from work.

10. What should I do if my employer insists that I use my sick time?

Because it ordinarily takes several weeks for a worker's compensation claim to be processed, there is no reason for you not to use accumulated sick leave. If you use sick time,

make sure that you report that you are using sick time for a work-related injury.

The Act ordinarily does not give insurance companies the right to take a credit for sick pay you receive. If you are a member of a union, check your union contract carefully to determine what benefits are available.

If your employer forces you to use sick time for a work injury, you are probably not being covered under Workers' Compensation. You should contact **Willig, Williams & Davidson** to determine your status under workers' compensation.

11. How should I deal with an insurance adjuster?

When a workers' compensation claim is filed, employers are obligated to provide you with the name, address and telephone number of the workers' compensation insurance company which will handle your claim. The company will assign the handling of your claim to an adjuster. Supervisors place enormous pressure on adjusters to keep claim costs to an absolute minimum. Accordingly, adjusters will make payment of claims only if it appears that it is in the best financial interest of the insurance company to do so.

Anything you can do to make the adjuster's job easier will maximize the chances that your claim will be paid without the need to hire a lawyer. The adjuster is obligated by law to complete an investigation of a claim within twenty-one (21) days of the date that notice is presented to the employer. You can assist the claim investigation by gathering all relevant medical records and forwarding them to the insurance adjuster in an organized fashion. You should communicate to the adjuster your desire to return to employment as soon as you are phys-

ically capable of doing so. Under no circumstance should you become abusive to an insurance adjuster, even if the adjuster treats you in a disrespectful manner. In such situations, it is best to “turn the other cheek” and to be polite but firm with the adjuster.

12. Do I have to sign medical record releases?

After you file a workers’ compensation claim, the insurance company may request that you sign medical record release authorizations to obtain copies of your medical records. You are not obligated to sign such releases under the Pennsylvania Workers’ Compensation Act.

You should keep in mind, however, that an insurance company has twenty-one (21) days from the date the injury is reported to complete an investigation, notify you of its decision and make the first compensation payment. If the insurance company does not have sufficient medical documentation to make the correct decision, your claim may be denied. In most circumstances, it is probably in your best interest to sign a medical records release authorization or to gather appropriate medical records and forward them to the insurance carrier.

13. May I choose my physician?

Unless your employer has posted a list of medical providers with whom you must treat in connection with a work injury, you have the right to choose your own physician. If, however, your employer has posted a list of at least six (6) designated health care providers, no fewer than three (3) of whom are physicians, you must treat with one or more of these medical providers for a period of ninety (90) days from the date of the first visit to the provider. If the list is not posted, and you are not told of your rights, you are under no obli-

gation to treat with any medical provider recommended by your employer.

If the employer has posted a list of medical providers, you have a right to choose any of the providers on the list. The Act does not give your employer the right to force you to treat with a specific provider on the list.

If you do not comply with this particular provision, the employer and its workers' compensation insurance company are not required to pay for health care services provided during this period. Your refusal to treat with an employer's panel physician does not relieve the employer of its obligation to pay wage loss benefits to you during your period of disability. You may, however, have to pay for your work related medical treatment, because your health insurance company may not be responsible for medical bills incurred during this period of time.

In the event that a dispute arises concerning the insurance company's obligation to pay for medical bills incurred during this period of time, your employer or its worker's compensation insurance carrier must produce a document signed by you in which you acknowledge that you understood your rights and duties under this section of the Act.

14. Must I treat with an employer-designated physician if my claim has been denied?

The Act is silent about whether you have an obligation to treat with an employer-designated physician in the event your claim is denied. If you treat with an employer-designated physician after your claim has been denied, however, you could end up being responsible for large medical bills, particularly if you have health insurance through a health maintenance organization (HMO).

Insurance Department regulations impose upon your health insurer the obligation to pay medical bills for your work injury in the event of a denial. Accordingly, if your employer denies your claim, you are free to seek medical treatment by the physician of your choice. You should provide your physician with a copy of the insurance company denial letter. Your physician will then photocopy the denial letter and submit your medical bills and a copy of the denial to your health insurance company.



It is particularly important that you cease treating with an employer-designated physician if your claim has been denied and you have coverage through a health maintenance organization. HMO's ordinarily require that you treat with a primary physician. Referrals to specialists must be made by the primary physician, and the referrals ordinarily must be made to a participating specialist.

If your claim is denied and you continue to treat with an employer-designated physician, and you lose your workers' compensation case, you may be held personally responsible for medical bills incurred in the event the workers' compensation insurance company refuses to pay the bills of the employer-designated physician. Of course, if you have ordinary health insurance, your bills should be covered.

You should not assume that the workers' compensation insurance company will pay your medical bills merely because you are treating with a "posted" physician. Insurance companies can and do refuse payment to such physicians, and if you have not been referred to the posted physician in accordance with the terms and conditions of your HMO coverage, the HMO will almost certainly decline to make payment, as well.

15. What wage loss benefits am I entitled to if I am injured on the job?

If you lose wages, or are out of work for more than seven (7) days, including weekends, as a result of a work related injury or disease, you are entitled to begin receiving wage loss benefits. If the disability lasts for fourteen (14) days or more, you are entitled to receive wage loss benefits for the first seven (7) days of disability. To qualify for benefits, the lost work days need not be consecutive.

During your period of work related disability, you are entitled to receive wage loss benefits equal to two-thirds (2/3) of your pre-injury average wages up to a statutory maximum. Low wage or part-time workers may receive more than two-thirds (2/3) of their pre-injury wages. When calculating wages, your employer or its insurance carrier must take into account wages from all sources of employment. Thus, for example, if you have a part-time job in addition to your regular full time job, your employer is obligated to include the part-time wages when calculating your weekly disability benefits.

Employers are permitted to make payment of wage loss benefits for up to ninety (90) days without formally accepting responsibility for your work injury. In those instances, a Notice of Temporary Compensation Payable must be sent to you. If your employer continues to pay wage loss benefits beyond this period, your employer is legally responsible for your injury. In this case your employer must continue paying benefits until you either return to work at no loss of wages or sign an agreement permitting the employer to stop payment.

16. What wage loss benefits am I entitled to if I am still working but am not making the same as I did before my work injury?

If you are partially disabled and return to work at reduced hours or wages, you are entitled to receive two-thirds (2/3) of the difference between your pre-injury and post-injury wages. Partial disability benefits are payable for a maximum of five hundred (500) weeks.

17. How are my wage loss benefits calculated?

If you were injured prior to June 24, 1996, your compensation rate will be calculated by analyzing your wages during the four (4) three-month periods preceding the date of the work injury. The compensation rate will be based on your highest quarterly earnings. For injuries occurring on and after June 24, 1996, your benefits will depend upon your average earnings during the four highest thirteen-week periods preceding the date of injury. The average weekly wage is calculated by averaging your earnings during the three (3) highest thirteen-week periods. If you are a seasonal employee or have worked less than thirteen (13) weeks, a different calculation method will be used.

There is a statewide maximum rate of compensation. In recent years, the maximum benefit was:

2008-\$807.00 per week

2007-\$779.00 per week

2006-\$745.00 per week

18. Do wage loss benefits reflect wage increases that I otherwise would receive if I were working?

No. Compensation benefits are fixed as of the date of injury. The benefits will not increase as time goes by.

19. Will my wage loss benefits be reduced if I receive benefits from other sources?

Unemployment - If you receive unemployment for a period of time which is later deemed to be covered under workers' compensation, your employer will only be responsible for paying workers' compensation benefits minus the amount you received in unemployment. Nevertheless, you may apply for unemployment while your workers' compensation claim is pending as long as you are able to work in some capacity.

Social Security Retirement - If you begin receiving Social Security retirement benefits after you sustain a work injury, your employer can reduce your workers' compensation by 50% of the amount you are receiving in Social Security. This does not apply where you are receiving Social Security retirement benefits before a work injury.

Severance - Employers may be entitled to reduce your workers' compensation benefits if you receive severance benefits while entitled to workers' compensation.

Pension - Employers are entitled to reduce your workers' compensation benefits by the amount of pension benefits payable by the same employer, to the extent that the pension plan is funded by the employer paying workers' compensation benefits.

If you are receiving benefits or have applied for benefits and intend to retire or collect social security benefits, please

contact **Willig, Williams & Davidson** to discuss the effect on your workers' compensation benefits.

20. Am I entitled to partial benefits if I am working but not able to work overtime or my second job?

If you worked overtime for the year before your work injury and are now working light duty or modified duty, you may be entitled to partial benefits to compensate you for loss of overtime. If you worked a second job at the time of your work injury, and you are not able to work that second job because of your work injury. You may be entitled to partial benefits to compensate you for your lost income.

21. What benefits are available if I suffer an amputation or a permanent loss of use of a body part?



If you suffer the amputation or permanent loss of use of a body part, you are entitled to receive weekly cash benefits for a specific number of weeks at two-thirds (2/3) of your pre-injury average wages. You are entitled to receive specific loss benefits even after you return to work. You may be entitled to additional benefits for a healing period associated with treatment of the amputation or loss of use, provided that you are not working during the healing period.

If you suffer partial or total hearing loss as a result of your employment, you are entitled to receive hearing loss benefits which will vary, depending upon the extent of your loss.

Examples of benefits available for loss of use:

Hand	335 weeks	Thumb	100 weeks
Arm	410 weeks	Half of Thumb	50 weeks
Foot	250 weeks	Big Toe	40 weeks
Leg	410 weeks	Index Finger	50 weeks
Eye	275 weeks		

22. Am I entitled to any benefits if I suffer a disfigurement as a result of a work injury or disease?

If you suffer permanent disfigurement of the head, face, or neck, you are also entitled to weekly benefits up to a maximum of two hundred seventy-five (275) weeks. If a disfigurement claim cannot be resolved between the parties, a workers' compensation judge can be asked to review the disfigurement claim and make a decision concerning the number of weeks of compensation that you should receive.

23. What death benefits are available?

The dependents of an injured worker are eligible to receive death benefits when a worker dies from: (1) a work related injury within three hundred (300) weeks of the time of injury or (2) an occupational disease within three hundred (300) weeks of the time the worker was last employed in the industry which caused the disease.

The level of benefits depends on the number of dependents who survived the injured worker and the relationship between the dependents and the worker.

Survivors also receive reasonable burial expenses up to a maximum of \$3,000.

Dependents do not automatically receive workers' compensation death benefits merely because the worker received compensation benefits while living. Disability and death benefits are separate and any claim for death benefits must be pursued by the dependents of the deceased worker.

24. What medical benefits are available?

If you suffer from an occupational injury or disease, you are entitled to receive reimbursement for reasonable and necessary medical expenses related to the injury or disease, though the Act limits the amount that a medical provider will be paid. You are entitled to these benefits regardless of whether any time is lost from work. Payment of medical bills alone does not necessarily mean that your wage loss claim has been accepted.

25. What happens if my claim is accepted?

If your claim is accepted, the employer or its insurer must complete and submit to the Bureau of Workers' Compensation a Notice of Compensation Payable and Statement of Wages. The Notice of Compensation Payable is an acknowledgment by your employer that your injury is work related. The document obligates the company to pay wage loss and medical benefits to you.

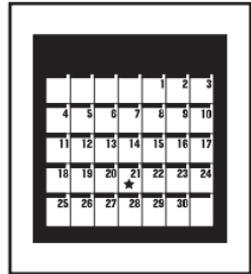
The Notice of Compensation Payable contains a description of the injury and the applicable compensation rate. The compensation rate is calculated in accordance with a formula set forth in the Statement of Wages.

Your employer can provisionally agree that you have a work injury and are entitled to workers' compensation by issuing a Notice of Temporary Compensation. Your employer can rescind this document for any reason within 90 days. If your

employer does not rescind the Notice of Temporary Compensation, it will convert into a Notice of Compensation Payable. You may want to file a claim petition to protect your rights even though your employer has filed a Notice of Temporary Compensation.

26. What should I do if my claim is denied?

The Pennsylvania Workers' Compensation Act requires an employer to either accept or deny a claim within twenty-one (21) days of the date that notice of the work injury is provided by the injured employee to the employer. Insurance companies routinely deny claims by issuing a Notice of Workers' Compensation



Denial. Often a denial will be issued because the insurance adjuster has not had sufficient time to investigate the claim. If you receive a Notice of Workers' Compensation Denial, you should check to make sure that the insurance company has received written confirmation from your treating physician that your condition is work related and that you are, at a minimum, partially disabled as a result of your work injury or are incurring medical bills in connection with the injury. If the adjuster has all necessary information but persists in the denial, you should contact **Willig, Williams & Davidson** immediately. You should do so even if the adjuster says that this is only a "conditional denial" and the company will re-evaluate its position once you have undergone an "independent" medical evaluation.

27. How long do I have to file a claim petition?

If your claim is denied, you are entitled to file a Claim Petition for Compensation. A claim petition must be filed with-

in three (3) years of the date of injury. In the case of an occupational disease, three (3) years from the date of wage loss or from the date when the worker knew that the injury was work related, whichever is later, provided it is within 300 weeks.

28. Should I hire an attorney?

Under most circumstances, you should hire an attorney to handle petitions before a workers' compensation judge. The insurance company will always utilize an experienced attorney who will do a professional job of protecting the insurance company's rights. While most judges will grant considerable leeway to you if you are not represented by an attorney, you must be familiar with workers' compensation law and procedure and must be prepared to present all evidence necessary to meet your burden of proof.

Forms for filing a claim petition for compensation may be obtained by calling **Willig, Williams & Davidson at 1-866-413-COMP (2667) or 1-215-656-3600**. Regardless of the length of your claim, you may obtain a free consultation by calling this number and asking to speak with a workers' compensation attorney.

29. How can I pay for an attorney?

Most attorneys, including **Willig, Williams & Davidson**, will charge you a fee only if they are successful in obtaining or protecting your benefits. The Act limits attorney's fees to no more than 20% of your compensation except under special circumstances.

30. How are claim petitions processed by the Bureau of Workers' Compensation?

After a petition is filed, it is assigned to a judge located in the county where you live. At the same time that the petition is assigned to a judge, a copy is served upon the employer and its workers' compensation insurance carrier. Your employer or its carrier has twenty (20) days from the date of service to file an answer to your petition.

After your employer or its insurance carrier files a response to the petition, the judge will schedule a hearing.

At the first hearing, you will probably testify. In attendance at the hearing will be you, your attorney, an attorney representing your employer, a court reporter, and the judge. At the conclusion of the first hearing, the record is left open for medical or expert testimony.

If the claim is for fifty-two (52) weeks or less of disability, the judge has the discretion to accept doctors' reports in support of the claim. For claims longer than fifty-two (52) weeks, it is necessary to present testimony from your physician. This testimony will be taken by deposition at your doctor's office. Present at the deposition will be your attorney, a court reporter, an attorney for your employer, and the physician. The physician answers questions on direct testimony concerning your diagnosis, prognosis, level of disability, and cause of your condition. The doctor must then answer questions on cross-examination from opposing counsel. The court reporter transcribes the testimony in a transcript which is submitted to the judge at a later hearing.

A second hearing will normally be scheduled ninety (90) days from the date of the first hearing. At the second hearing, the attorney for your employer may present testimony from fact witnesses. The deposition of your physician will be

submitted, and at the conclusion of the second hearing, the record will be left open for testimony from your employer's medical expert.

At the third hearing, all remaining evidence is presented to the judge. Of course, it is possible that additional hearings may be necessary because of scheduling conflicts, postponements, or the presentation of additional evidence in complex cases.

31. Are the issues in a workers' compensation case decided in a single hearing?

No. After a petition is filed with the Bureau, the case will be assigned to a workers' compensation judge. In most circumstances, the case will be assigned to the judge who is closest to your home. Workers' compensation cases are decided after a series of hearings. It may take several months to well over a year for a final decision to be made.

32. Are other benefits available pending the outcome of a claim petition?

Some employers provide sickness and accident benefits insurance for employees. Even where such benefits are not provided, you may seek social security disability, unemployment compensation, welfare, veterans' benefits, or pension benefits.

33. May I sue my employer for negligence?

Pennsylvania workers' compensation benefits are provided to employees regardless of fault. Therefore, you need not prove that your employer was negligent or violated some safety standard in order to be eligible for benefits.

On the other hand, if you are injured as a result of the negligence of your employer or of another employee employed by your employer, you may not pursue a personal injury action against the employer. Your rights are limited to those provided under the Pennsylvania Workers' Compensation Act.

34. What if someone other than my employer caused my injury?

In a great number of situations, the worker's injury was not caused by a fellow employee or the employer, but rather by a "third party," such as the manufacturer of defective machinery. In each of those circumstances, the worker may be entitled to receive workers' compensation benefits and also bring a suit for "pain and suffering" against the negligent third party.

Perhaps the most frequent occasion where the Workers' Compensation Act does not prevent a third party suit arises when an employee is injured in a car accident during work. If the other driver is negligent and is not employed by the same employer, suit may be brought.

In a factory setting, it is not unusual for injuries to arise as a result of defectively designed machines. Often industrial machinery is lacking appropriate safety guards or similar devices. Usually the manufacturer of the machinery is a company other than the employer and, therefore, can be held legally responsible.

In construction, an employee of one sub-contractor may be injured as a result of the negligence of the employee of another sub-contractor. In those instances, a personal injury suit is not barred. One whose work takes him off the premises of his employer and onto the premises of others is always exposed to the possibility of defective conditions at those premises, defects that might serve as a basis for a

negligence claim.

These are just a few examples of situations where the Workers' Compensation Act does not prevent you from pursuing an action for pain and suffering. The point is that you should not simply assume that suit is prohibited.

If you have questions and would like to discuss a personal injury claim arising from a work injury, please feel free to call **Willig, Williams & Davidson at 1-866-413-COMP (2667) or 1-215-656-3600.**

35. What medical information should I submit to my employer or its insurance carrier so that my medical bills are paid?

Employers or their workers' compensation insurance carriers need only pay medical bills which are related to a work injury. Accordingly, they are entitled to require reports and other records to properly determine whether a bill is for treatment of a work related injury or disease. Injured workers should make sure that their physicians are submitting regular medical reports to the insurance carrier or the employer so that these medical bills are paid.

If the employer has provided a list of medical providers, you may see a new doctor after you have treated with a company doctor for 90 days. If you change doctors, you must notify your employer within five (5) days. The new physician must file a report within twenty-one (21) days of your first visit and file a report once a month thereafter for the duration of treatment.

36. How can I avoid delay or denial of payment of my medical bills?

One of the most common problems faced by injured workers is their inability to obtain payments of medical bills. In order to ensure that medical bills are paid, you should submit bills in an organized and timely fashion. The bills should contain complete and adequate information, including correct names, dates of treatments, services provided and cost of treatment. You should make sure that your treating physicians are submitting the required monthly reports. Submitting bills with medical reports will be extremely helpful. If it is not possible for your physician to submit your bills with medical reports, your physician should include an explanation of why the bill was incurred. Copies of all documents that you submit to the insurance carrier should be kept for your own records.

37. May I recover any penalties against my employer or the insurance company if there is an excessive delay in payment of my benefits?

Penalties under the Act may be assessed against an employer or its insurance company at the rate of fifty (50%) percent for any unreasonable or excessive delay in the payment of compensation. Attorney's fees may be recovered, as well.

38. What is a Utilization Review Request?

A Utilization Review Request is designed to determine the reasonableness and/or necessity of your medical treatment. Ordinarily, such petitions are filed by the insurance carrier, although injured workers are free to file such a petition.



Once such a request is filed, it is assigned to a Utilization Review Organization (U.R.O.). The U.R.O. ordinarily contacts your medical providers with a request that the medical providers send copies of your records to the Organization. Under the law, your medical providers are entitled to bill \$.07 per page for copying of these documents.

Please note that it is imperative that all of your medical providers send your medical records to the U.R.O. If these medical records are not sent, the U.R.O. will base its decision on whatever documents are sent to it by the insurance company. In this situation, the U.R.O. will ordinarily rule against your doctors. The failure of the doctors and other medical providers to send records is one of the most common reasons why treatment is found to be unreasonable or unnecessary.

It is extremely helpful, although not strictly necessary, for your physician or medical provider to write a brief note explaining why your treatment is reasonable, necessary and causally related to your work injury.

It is also extremely helpful if you submit a short statement explaining what benefits you receive from the treatment, including pain relief and increased ability to function.

If the U.R.O. finds that your treatment is either unreasonable or unnecessary, you have the right to appeal.

39. Must I submit to medical examinations?

Employers or their insurance carriers may require you to submit to an independent medical examination before a claim is accepted. Ordinarily, you must submit to this type of examination.

Employers or insurance carriers may also request that you undergo medical examinations after you are receiving

compensation no more than once every six months.

Employers are responsible for examination costs, reasonable travel expenses and your wage loss resulting from the examination.

If you are requested to undergo a medical examination, you should call **Willig Williams & Davidson at 1-866-413-COMP (2667) or 215-656-3600 for a free consultation.**

40. Must I report employment and self-employment information to the insurance company?

You have an obligation to report employment and self-employment information to the insurer when you are seeking or receiving compensation. You have a duty to cooperate with the insurer in an investigation of employment, self-employment, wages and physical condition. If you are receiving wage loss benefits, the insurer may require you to complete a verification form pursuant to the statute. You must complete the verification form and return it to the insurer within thirty (30) days of receipt. If it is not returned within thirty (30) days, the insurer can suspend compensation until the verification form is returned. The employer does not have to pay you for wage loss benefits suspended due to your failure to return the form.

41. What happens if my disability status changes after a claim has been accepted?

If you recover to the point that you remain partially disabled but you can return to work, you and your employer must execute a Supplemental Agreement to reflect the change in your disability status. If you continue to sustain wage losses after you return to employment, the Supplemental Agreement should require the employer or its insurance carrier to contin-

ue paying two-thirds (2/3) of the difference between your post-injury and pre-injury wages.

If, after returning to work (either regular duty or light duty), you become disabled once again due to your work related condition, you should obtain a new Supplemental Agreement reflecting that you are entitled to total disability benefits.

42. May an insurance company stop paying benefits to me when I return to work?

An insurance carrier is entitled to suspend payment of wage loss benefits to an injured worker if the employee has returned to work at wages equal to or greater than his pre-injury wages. In order to do so, the insurer must send a Notification of Suspension or Modification to the employee. The employee then has the right to **challenge** the employer's Notification by completing the form and filing with the Bureau of Workers' Compensation within twenty (20) days. If no challenge is received, the Notification will become legally binding. Whenever you receive a Notification of Suspension or Modification, you should file a challenge. Filing a challenge will make sure your rights are protected, even if you have returned to work. Once a challenge is filed, the Employer has to prove that they are legally permitted to stop your benefits.

If you receive a Notification of Suspension or Modification, you should call **Willig Williams & Davidson at 1-866-413-COMP (2667) or 215-656-3600 for a free consultation.**

43. What is the employer's obligation if I have only a partial recovery from my work injury or disease?

If you return to work, either to a modified position or full duty, and are earning less than you did before your work

injury, your employer may be obligated to pay you partial disability benefits. If you are earning less as a result of your work injury, you are entitled to partial benefits representing 2/3 of the difference between your pre-injury average weekly wage and your present earnings.

If you are released to light duty or modified work and your employer does not offer you a position within your restrictions, you will continue to receive total disability benefits. Your employer can also hire a vocational counselor to find work for you at another employer. If you are referred to alternate employment, you have an obligation under the law to follow through on referrals.

If you were injured after 1996, your employer may be able to reduce your benefits by showing that you have an earning capacity and that there are jobs in the economy available to you.

If you are receiving benefits and are offered employment by your employer or you are contacted by a vocational placement firm, contact **Willig, Williams & Davidson at 1-866-413-COMP (2667) or 1-215-656-3600.**

44. What is a vocational interview and must I submit to one?

If you have been cleared to return to some type of work, the insurance company will try to reduce or stop your benefits by showing that there are jobs for you. The insurance company begins this process by hiring a vocational counselor to interview you about your background and abilities. There have been recent changes in the law which affect whether you are required to attend a vocational interview. If you are scheduled for a vocational interview, please call **Willig Williams & Davidson at 1-866-413-COMP (2667) or 215-656-3600 for a free consultation**

45. If I was injured after June 23, 1996, what must my employer prove to show that I am not totally disabled?

If you were injured on or after June 24, 1996 and the insurance company receives medical evidence indicating that you are able to return to work in some capacity, you may be sent a Notice of Ability to Return to Work which indicates that you have an obligation to look for available employment; that proof of available employment may jeopardize your right to receive ongoing benefits; and that you have the right to consult with an attorney in order to obtain evidence to challenge the insurer's contentions. In order to demonstrate that you are no longer totally disabled, the insurance company must show that your physical condition has changed and that your earning power has increased.

The Act states that earning power must be determined by a certified vocational counselor by analyzing work that you are capable of performing, considering job listings with agencies of the Department of Labor, private job placements, agencies and advertisements. Your employer may be able to reduce your compensation benefits by showing that you are able to perform previous work or, considering your education, age, and work experience, you can engage in other substantial gainful employment which exists in your geographic area. If the employer responsible for payment of compensation has an available job which is within your physical and vocational abilities, it must be offered to you.

46. What is a Final Receipt?

The Final Receipt is a pink form which, when signed by you, acts as an acknowledgment that you are able to return to the same kind of work you performed before the injury occurred and have no medical restrictions as a result of the

injury. Normally, this results in the termination of wage loss benefits, but the employer remains obligated to pay reasonable and necessary medical benefits related to your work injury. If disability recurs, you may reopen your claim within three (3) years of the last date that you received weekly disability benefits.

47. Is it legal for an employer to require me to sign a Final Receipt before I receive wage loss benefits?

No. An employer may not require you to admit that you have recovered as a condition for the payment of benefits.

48. What is the difference between a Final Receipt and a Supplemental Agreement?

A Final Receipt is a written acknowledgment that the employee has recovered in full from a work injury. A Supplemental Agreement acts as an acknowledgment by the employer that an employee's disability continues, although in partial form.



49. Under what circumstances can my employer attempt to suspend or terminate my compensation benefits?

If you and your employer do not agree concerning your right to continued receipt of compensation benefits, your employer or its insurance company may file a petition requesting that a judge terminate, suspend, or modify your benefits.

Frequently, this occurs when there is a disagreement among physicians concerning whether you have recovered

from a work injury. Often, a physician who has performed an independent medical examination at the request of an employer prepares a report in which the physician concludes that you have fully recovered from your work injury.

If your physician feels that you have not fully recovered, your employer may file a Petition To Terminate Compensation Benefits. In a Petition for Termination, the employer alleges that you have fully recovered from the work injury and can return to work without medical restrictions.

If the physician hired by the insurance company claims that you have partially recovered from your work injury and can return to modified work, your employer may offer modified employment to you. If you do not return to modified work or return briefly, the employer may file a Petition to Suspend your compensation benefits. In such cases, your employer probably will allege that though you remain partially disabled from a work injury, you have failed to make a good faith effort to return to modified work consistent with your medical restrictions.

If you are referred modified employment which pays less than your pre-injury wages and do not respond to the referral, your employer may file a Petition to Modify your compensation benefits. Such a petition is similar to a suspension petition, but instead of a request for a full suspension of wage loss benefits, the employer seeks only a reduction in those benefits.

50. What happens if my employer files a Petition to Terminate my compensation benefits?

If your employer files a Petition to Terminate your benefits, your case will be assigned to a judge who will decide whether you have fully recovered from your work injury. First, the judge will make a preliminary determination as to whether your benefits will continue while the petition is being litigated.

This preliminary determination is based on the employer's request for supersedeas. The employer will submit documentation that you have fully recovered from your injury. In response, you will need to submit an affidavit documenting that you believe you continue to be disabled, as well as a report from your doctor confirming that you continue to be disabled and require medical treatment. The judge will then evaluate the documents submitted and can provisionally stop your benefits if your medical evidence is not sufficient to establish that you have not fully recovered and are not likely to win the case.

Regardless of whether a judge grants supersedeas and provisionally stops your benefits, the case is not over. Additional hearings will be scheduled, at which time both you and your employer will have the opportunity to develop a full record. Depositions of both your and your employer's medical experts will be taken, and the transcripts of those depositions will be submitted into the record.

If, at the conclusion of the case, the judge finds that you continue to be disabled, the employer's petition will be denied and dismissed. If a supersedeas order was previously entered, the judge will order that back compensation be paid to you covering the period in which the supersedeas order was in effect.

51. If I am disabled from performing my pre-injury job and I am receiving total disability benefits, are there any limits on the time during which I may receive such benefits?

If you suffered your work related injury or disease prior to June 24, 1996, you are entitled to continue to receive total disability benefits as long as you are not receiving any wages as a result of your work related injury. If you voluntarily

remove yourself from the job market for reasons which are wholly unrelated to your work injury, the employer is entitled to a suspension of your benefits.

If you were injured on or after June 24, 1996 and have received total disability benefits for a period of one hundred and four (104) weeks or two (2) years, the insurance company may require you to submit to an Impairment Rating Evaluation to determine the extent to which you are permanently disabled as a result of your work injury. This request must be made within 60 days of you being on total disability benefits for 104 weeks. If you are contacted about attending an IRE, please call **Willig Williams & Davidson at 1-866-413-COMP (2667) or 215-656-3600 for a free consultation.**

If the examining physician determines that you have an “impairment” rating that is equal to or greater than fifty (50%) percent, you will be entitled to continue to receive total disability benefits and will be presumed to be totally disabled. If the examining physician claims that you have an impairment rating of less than fifty (50%) percent, you will be deemed to be partially disabled, which will be limited to receiving wage loss benefits for no more than an additional five hundred (500) weeks. As a practical matter, only individuals with profound disabilities will have an impairment rating greater than fifty (50%) percent.

52. What should I do if my employer is taking steps to reduce or terminate my benefits?

If you receive an offer of employment by your employer and your physician does not believe you should accept this offer, you should contact an attorney immediately. If you are receiving benefits and the insurance company requests that you undergo an “independent medical examination” or hires a vocational expert to conduct a vocational interview, you should contact an

attorney. Finally, if you receive a Petition to Terminate, Suspend or Modify your compensation benefits, you will need an attorney. In any of these circumstances, call **Willig, Williams & Davidson at 1-866-413-COMP (2667) or 1-215-656-3600.**

53. May the parties to a workers' compensation case settle a workers' compensation claim?

Employees and insurers are permitted to reach a compromise and release of all liability under the Act. For example, the parties may dispute whether an injury occurred in the course and scope of the employee's job. In order to avoid the risk of an unfavorable ruling by the judge, the parties may agree to limit the claim for a particular period of time, specifically describing the sum of money which the insurance company is willing to pay and specifically describing the medical bills for which the company will be responsible. The Act describes the information which any compromise and release must contain, and a workers' compensation judge must approve the compromise and release if it is established on the record that the employee understands and agrees to the terms of the compromise.

54. May the parties to a workers' compensation case use the services of a workers' compensation judge to help settle a case?

By joint agreement, the parties to a workers' compensation case may request an informal conference with a workers' compensation judge. All statements or communications made at the informal conference are confidential and are not part of the record in the workers' compensation case. If the parties' dispute



cannot be resolved, the case will be assigned to a different workers' compensation judge. If the parties can resolve their differences, the judge will reduce the agreement to writing.

55. What happens if the record in my case is closed?

After all the evidence has been submitted, the judge will order that briefs be prepared and submitted. Briefs are formal written summaries of the evidence presented in the case accompanied by arguments concerning any legal issues presented by the case. Briefs are normally submitted with proposed findings of fact and conclusions of law. The judge will consider the entire record of the case, review the briefs, proposed findings of fact, and conclusions of law, and issue a formal written decision. When the decision is issued, the losing party has twenty (20) days to file an appeal of the decision to the Workers' Compensation Appeal Board.

56. What are Sickness and Accident benefits?

Sickness and Accident benefits are benefits for total disability not caused by work. Your employer may provide such benefits, but most employers do not. Workers' compensation benefits are far better because Sickness and Accident benefits are payable in small amounts and for a limited period. Furthermore, such benefits, unlike workers' compensation benefits, are taxable. Finally, a workers' compensation insurance carrier is obligated to pay all medical expenses with no limitations and no deductible.

When filling out a Sickness and Accident Benefits application, you may be asked to state whether the disability was caused by work. If the answer is yes, benefits may be denied. If the answer is no, such benefits may be granted, but the

workers' compensation insurance carrier may try to challenge your credibility in the workers' compensation case. The best answer is to write "the workers' compensation insurance carrier has denied my claim."

Some Sickness and Accident insurance carriers will provide benefits for occupational injuries or diseases if you promise, in writing, that you will reimburse them if workers' compensation benefits are granted.

57. What Social Security Disability Benefits are available?

The Social Security Administration administers two (2) disability programs: Disability Insurance benefits and Supplemental Security Income.

Social Security Disability is an early retirement program for seriously disabled workers who have been contributing to the Social Security Fund. It is not necessary for the disability to be related to employment for you to be eligible for benefits. If you are eligible, you will receive monthly benefits after a five-month waiting period. After two (2) years of receiving such benefits, Medicare coverage is available.

You are entitled to Social Security Disability benefits if you are suffering from a physical or mental condition that prevents performance of any substantial gainful work and the condition is expected to last or has lasted for at least twelve (12) months, or is expected to result in death.

Supplemental Security Income is available to persons who have not made sufficient contribution to the Social Security system to qualify for Social Security Disability Benefits. The same disability test is applicable, but in addition, you must demonstrate that you have only minimal liquid assets.

58. What unemployment insurance benefits are available?

You are eligible for unemployment insurance benefits if you leave work “involuntarily,” have sufficient wage credit, and are “able and available for work.” Employers sometimes argue that you cannot claim to be “disabled” for workers’ compensation and “available for work” for unemployment compensation. This is not correct.

Under the Unemployment Compensation Act, you are considered to be able and available for work if you can engage in a wide range of work activity. If you can perform sedentary work, you will be considered to be “able and available.” Once you have been authorized by your physician to return to restricted work, you should contact your employer and offer to return to any position within the restrictions set forth by the physician. If the company is unable or unwilling to provide employment within these restrictions, you may be entitled to receive unemployment compensation if certain requirements are met.

Employers are entitled to a credit against your workers’ compensation benefits for unemployment compensation benefits paid during periods of disability.

Any unionized employee who seeks to obtain unemployment compensation benefits should check with a union representative to determine whether to do so. Many contracts provide that an employee receiving workers’ compensation benefits will be entitled to continue to accrue seniority, pension rights, medical benefits, vacation pay and other benefits. Such benefits may not be available if the worker is deemed to be “unemployed.” Accordingly, before an employee seeks unemployment compensation benefits, he or she should check with his or her union representative.

59. Are there additional benefits available to certain state employees?

Yes. There are two (2) statutes which provide additional benefits to police officers and fire fighters and to certain state employees: The Heart and Lung Act and Act 534.

1. Heart and Lung Act. The Heart and Lung Act applies to all State police officers, enforcement officers or investigators employed by the Pennsylvania Liquor Control Board, parole agents, enforcement officers and investigators of the Pennsylvania Liquor Control Board, or the Pennsylvania Board of Parole, any member of the Delaware River Port Authority Police or any policeman, fireman, or park guard of any county, city, borough, town or township who is injured in the performance of his or her duties.

If you qualify, these benefits are available for any temporary incapacity which results from a work injury. These benefits are also provided to fire fighters who, after four (4) consecutive years of service or longer, suffer a disease of the heart or tuberculosis of the respiratory system, contracted or incurred and caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of covered employment. The act provides that the employee is entitled to his or her full rate of salary until the disability arising from employment has ceased. The Act does not provide for compensation for permanent incapacity.

2. Act 534. Act 534 covers any employee of a state penal institution or correctional institution under the Department of Corrections and any employee of a state mental hospital or youth development center under the Department of Public Welfare. The Act covers injuries which occur during the course of employment by an act of any inmate or any person confined in such an institution or by any person who has been

committed to an institution by any court of the Commonwealth or by any provision of the Mental Health Act. With respect to any employee of any County Board of Assistance, the injuries are covered if they were incurred by the act of an applicant or recipient of public assistance.

Furthermore, any employee of the Department of Public Welfare who has been assigned to or has volunteered to join the fire fighting force of any institution of the Department of Public Welfare and who is injured while engaging in fire fighting duties is entitled to compensation.

Under Act 534, the injured employee is paid his or her full salary until he or she is no longer prevented from returning as an employee of the department, board or institution at a salary equal to that earned at the time of the injury.

Please note that benefits are also available for the widow and widower and minor dependents of any employee who dies within one year as a result of such injuries.

Death benefits are only available at the rate of 50% of the employee's wages, but there is no maximum statewide average weekly wage standard applied to these benefits.

60. Under what circumstances can a worker seek Temporary Assistance to Needy Families, formerly known as Aid to Families with Dependent Children?

If you are disabled and have children under 18, very limited family income and few liquid assets, you may be eligible for Temporary Assistance to Needy Families, formerly known as Aid to Families with Dependent Children. Application must be made with the Department of Public Welfare.

Adults without children must rely on general assistance benefits which are very low. Applications can be made with

the Department of Public Welfare or County Board of Assistance.

Food stamps are available to supplement money available for buying groceries and some household goods for low income families or individuals. Even if you are receiving compensation, your income may entitle your family to receive such benefits. Once again, applications are to be made with the Department of Public Welfare.

You may also be eligible for Medicaid and Medicare benefits to cover medical expenses unrelated to your work injury. Medicaid is administered by the Department of Public Welfare. There are, however, maximum limits on the amount of assets and income which your family may have and be eligible for such benefits. Medicare, however, is administered by the Social Security Administration and is available only to retired workers or persons receiving Social Security Disability benefits for two (2) years or more.

61. What Veterans' benefits are available?

The United States Veterans Administration provides pensions to veterans with non-service connected disabilities which are total and permanent. These pensions, however, are reduced by workers' compensation, social security, and other benefits.

The State also has a limited Veterans' Assistance Program which is administered by the County Board of Assistance. If you are a veteran and have been honorably discharged, you should contact the County Board of Assistance to determine what benefits are available.

62. What pension benefits are available?

Any injured worker should check to see if pension benefits are available. Typical pension plans provide for ordinary

service connected disability and non-service connected disability pensions.

If you have reached normal retirement age, you may be entitled to receive an ordinary pension and workers' compensation benefits. Usually pension plans provide that the company is entitled to a credit against a disability pension for all workers' compensation benefits paid.

You should check with your personnel office to determine what pension benefits may be available.

63. May an employer terminate my employment after I have suffered a work injury?

As long as your employer has not violated the terms of a union contract, discriminated against you on the basis of your disability, or violated the Family and Medical Leave Act, it has the right to terminate your employment after you suffer a work injury.

Unionized employees, however, normally have contract provisions which require "just cause" for terminations and arbitrators often order reinstatement. You should check your collective bargaining agreement carefully, however, because many agreements provide a limit on the amount of time that an employee may stay out of work in connection with an injury and be entitled to reinstatement of employment. For example, many contracts provide that if an employee is not able to return to employment within one year of the date of injury, he or she will be separated from employment with the employer. You may also be required to file for and receive a medical leave of absence. Check with your union.

The Family and Medical Leave Act imposes upon most employers the duty to grant twelve (12) weeks of unpaid leave time per year to employees suffering from a serious medical

condition, provided the employee has worked a sufficient number of hours in the one year preceding the first day of leave time. If you qualify and are not eligible for more generous leave pursuant to a provision in a union contract, you should request leave pursuant to the Family and Medical Leave Act.

The Americans with Disabilities Act broadly prohibits employers from discriminating against qualified individuals with permanent disabilities in virtually all aspects of employment. The Act requires that persons with disabilities be afforded an opportunity to obtain equal levels of performance through the making of “reasonable accommodations” to their known physical or mental impairments, provided the person can perform the essential functions of the job. The reasonable accommodation requirement does not, however, distinguish between work related injuries and non-work related impairments.

Companies that have federal government contracts over \$2,500.00 and hire sub-contractors are subject to Section 503 of the Federal Rehabilitation Act of 1973 which provides that such firms may not discriminate against disabled workers, must maintain affirmative action programs and must make reasonable accommodations to retain and hire workers with a wide range of handicaps, including back, lung, heart and other similar conditions. The failure to comply with these provisions may result in the cancellation of all federal contracts.

In some instances, the discharge of a disabled worker may be a disguised attempt to dismiss an older employee. If you are between the ages of 40 and 70, you are protected by State and Federal statutes prohibiting age discrimination. Complaints must be filed within one hundred and eighty (180) days with the Equal Employment Opportunity Commission.

64. Must an employer re-hire me if I have recovered in part or in full from my work related injury?

Unfortunately, the Workers' Compensation Act does not require an employer to rehire you if you have recovered from a work injury. However, if you were injured after June 23, 1996, have not recovered, and are not working, your employer must offer any available light duty work to you before it can claim that your benefits should be reduced to reflect wages that you could earn if you found a job with another employer.

65. Conclusion

We hope this brochure has been of some assistance to you in understanding the Pennsylvania Workers' Compensation Act. The essential thing to remember is that you are not alone if you suffer a disabling work injury. If you feel you have a valid claim against your employer for workers' compensation benefits, a **Willig, Williams & Davidson** attorney will speak with you at no charge by calling **1-866-413-COMP (2667) or 1-215-656-3600**. Similarly, if you are receiving benefits and have questions about the Workers' Compensation Act, an attorney will provide you with a free consultation.