

This pamphlet provides an overview of the workers' compensation system in the State of New Hampshire, including what is covered by workers' compensation, what benefits are available, and what you should do if you have a work-related injury.

This pamphlet is based on NH law in effect at the time of publication. It is issued as a public service for general information only. It is not a substitute for specific legal advice.

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## **What Is Workers' Compensation?**

Workers' compensation is a system created by a statute (RSA chapter 281-A) that requires employers to provide certain benefits for workers who are injured during the course of their employment. Each state has its own workers' compensation laws. Federal employees, railroad workers, and maritime, longshoremen, and harbor workers are covered by federal workers' compensation laws which are not discussed in this pamphlet.

Usually, an employer buys workers' compensation coverage from an insurance company. Some employers may choose to be "self-insured" but must seek approval from the New Hampshire Department of Labor to do so. Self-insured employers generally hire an insurance company or a similar company to administer claims. With few exceptions, any employer who hires one or more employees must make workers' compensation available. An employer who fails to provide workers' compensation for employees may be subject to fines and criminal penalties.

## **Who is Covered By Workers' Compensation?**

Workers' compensation coverage is available once you begin your employment. Almost all employees are covered by workers' compensation laws. Some categories of workers, such as independent contractors, are not considered employees. However, you may still be entitled to workers' compensation benefits from an employer even though you are called an independent contractor. The Department of Labor will examine the substance of the relationship between you and your employer. If you are paid by the hour for a regular work day, you are more likely to be treated as an employee eligible for workers' compensation benefits. On the other hand, if you perform a single job for many persons and supply your own tools and equipment to perform it on your own schedule, you are more likely to be viewed as an independent contractor. Nothing, however, prevents independent contractors from purchasing their own workers' compensation insurance.

## **What Is Covered By Workers' Compensation?**

Workers' compensation covers physical injuries which arise out of, and in the course of your employment and, in some circumstances, mental health and stress disorders. For example, you are entitled to compensation for traumatic injuries such as burns, lacerations, sprains, or fractures which result from an event at work, or nerve and joint problems which may result from repetitive motion. You also are entitled to compensation for occupational diseases, for example, from long term exposure to certain hazardous conditions, such as hearing losses caused by noise exposure

or lung disorders caused by long-term exposure to chemicals. The workers' compensation law allows compensation for mental health and stress disorders so long as the disorder is caused by the worker's employment, is not due to good faith evaluation, discipline, termination or similar actions by the employer and results in physical symptoms.

Workers' compensation does not cover disabilities which solely are the result of the natural aging process or which are due to non-work related causes. Workers' compensation benefits do cover pre-existing conditions to the extent the condition is aggravated by your employment. You may not recover for injuries that result from your own willful misconduct or from intoxication, or in some instances, from participation in athletic/recreation activities.

If you have any doubt as to whether you have a work related injury, you should notify your employer and contact the New Hampshire Department of Labor, Workers' Compensation Division, (603) 271-3176. You may also wish to speak with a lawyer who accepts workers' compensation cases.

### **What Are My Workers' Compensation Benefits?**

A primary workers' compensation benefit is payment for all reasonable medical services required by the work injury. This might include payment for hospital and surgical services, doctor visits, physical therapy, chiropractic treatment, prescription medications, glasses, artificial limbs and all other medical expenses which are necessary because of your injury. Unless a claim is denied, there is no time limit or dollar limit.

Workers' compensation disability payments are based on your average weekly wage before the injury. Your average weekly wage is calculated from your gross earnings during the 26 to 52 week period prior to the injury (whatever period shows the highest average). If you have not yet worked a full 26 weeks, your average weekly wage may be based upon your actual wages, the wages payable under your employment agreement, or by the earnings of employees in similar positions. Weekly disability benefits stop once you return to your pre-injury earning capacity.

If you are totally disabled because of a work related injury, the law provides that you are entitled to a weekly tax-free payment equal to sixty percent of your average weekly wage, up to a maximum set by law. There is also a minimum benefit amount set by law. If you are totally disabled and remain so, there is no time limit to your benefits.

If you are partially disabled--that is, you are capable of performing some work, but not able to earn as much as you used to--your benefits will ordinarily be sixty percent of the difference between your prior average weekly wage and what you are able to earn after your injury. If you are partially disabled, you may not collect more than 262 weeks of workers' compensation disability benefits. The 262 week limit includes any prior weeks of total disability payments.

If an injury has caused a permanent loss of function to a body part listed in the law, you may also be eligible for a permanent impairment award. The amount of such an award depends upon the part of your body affected, your percentage of loss of function, and the amount of your average

weekly wage. Your loss of function must be determined by a physician in accordance with guidelines prepared by the American Medical Association.

If you are unable to return to your prior employment, or the job skills you may have are not transferable to other employment, you are also entitled to vocational rehabilitation assistance. Ordinarily, the employer or employer's insurance carrier will assign a vocational rehabilitation counselor to assist you with locating and applying for suitable jobs. If you cannot find employment within your qualifications and medical restrictions, you may be entitled to retraining. The objective is to approximate your pre-injury wage; however there is no obligation to locate a job that replaces employee benefits. Benefits can be suspended for failure to cooperate with vocational rehabilitation efforts.

In the event of a work-related death, workers' compensation coverage provides \$10,000 in burial expenses, and weekly benefits for your spouse and dependents. Such benefits are ordinarily payable until your spouse remarries, or in the case of dependent children, up to twenty-five years of age as long as the dependent child is enrolled as a full-time student in an accredited educational institution.

### **What Should I Do If I Have A Work Related Injury?**

Your two most important responsibilities are to obtain appropriate medical care and to report the injury promptly to your employer. Your employer should have forms available which you should complete to describe the injury and how it occurred. Even without a form, tell your employer, preferably in writing, as soon as you know you have been hurt at work. If you fail to notify your employer within two years of the time when the injury occurs (or when you become aware of the medical condition caused by the injury), your claim will be barred. There is also a three-year time limit to begin claiming benefits. To recover workers' compensation benefits, you do not have to prove that your employer was at fault, but you do have to show that the injury was caused by your employment.

Once your employer knows of a work-related injury, your employer must file a report of the injury with the New Hampshire Department of Labor and the employer's workers' compensation insurance carrier. Failure to complete such a report will subject the employer to a fine by the Department of Labor.

Once notified of the injury, your employer's insurance carrier or employer has twenty-one days to either begin paying you benefits or to deny your claim. If your claim is denied, or if there is a dispute about any benefit in an accepted claim, you have the right to request a hearing before the New Hampshire Department of Labor to determine the matter. There is an 18-month deadline from the date of a denial in which to request a hearing. Hearings are usually scheduled within six weeks of the request. All medical evidence and submissions you wish to have considered must be exchanged with the opposing party no later than five working days before the hearing; and non-medical evidence and submissions must be exchanged no later than two working days before the hearing. Whoever loses the hearing decision has the right to an appeal before a three member Compensation Appeals Board panel. You must request an appeal within thirty days of the unfavorable hearing decision.

## **What Are Some of My Rights and Obligations?**

You are entitled to choose your own physician or medical care provider. If your employer or its workers' compensation insurance carrier has obtained approval for a managed care network from the Department of Labor, then you must choose from an approved list, and you are entitled to a copy of the approved list within 24 hours of your request.

You are entitled to retain legal counsel. Your lawyer is required to file a letter with the Department of Labor indicating that you are represented by the lawyer. Attorneys' fees are generally limited by the Department to no more than 20 percent of any benefits which you recover through the aid of the lawyer's services. If you need help finding a lawyer, the Lawyer Referral Service of the New Hampshire Bar Association can assist you. Call (603) 229-0002 for more information.

Your workers' compensation benefits may not be claimed by creditors, except for payment of child support, medical expenses for your work injury and the attorney you may retain to pursue your workers' compensation claim. In addition, workers' compensation benefits are not subject to either income tax or social security withholding.

Your employer or the employer's insurance carrier may require you to attend an independent medical examination by a board certified physician of the employer's choice. Generally, such exams may be conducted only twice per year and within fifty miles of your home. If you refuse or fail to submit to such an examination, your right to benefits may be suspended until the examination takes place.

You must provide medical authorizations to allow your employer or your employer's insurance carrier to obtain your medical records for the injury involved in your claim. By statute, your release is strictly limited to medical evidence that is relevant to the occupational injury or illness that underlies your claim, including any past history of complaints or treatment of a similar condition.

You have the right to a hearing anytime your benefits are denied if the request is filed within the 18-month deadline. The employer and the employer's insurance carrier likewise have the right to request a hearing to reduce or terminate your benefits. If a medical provider states that you are able to work but you have not returned to work, your employer or the employer's insurance carrier has a right to request a hearing for review of your continuing eligibility to receive payments.

## **Can I Go Back to My Job?**

As long as your employer had five or more employees and you were not a temporary worker, you may have the right to return to work in a temporary alternative duty position, a right to reinstatement or both. *Temporary alternative duty* is both *temporary* (your employer generally does not have to provide you with a permanent alternative duty position), and *transitional* (your employer does not have to offer you an alternative duty position if you will not recover your

ability to return to your regular duty position at some time). Under certain circumstances, a failure to accept a temporary alternative duty position may result in the termination or reduction of your weekly benefits. There also is a *right to reinstatement* to your old position, or to a replacement position with your employer if your old position has been filled. There are a number of important requirements. Most significantly: (A) the request for reinstatement must be made within eighteen months from your date of injury, (B) your physician must release you to your regular duty position (possibly with "reasonable accommodations"), and (C) you must not have taken a job elsewhere since your date of injury. Because there are many technical considerations regarding both temporary alternative duty work and the right to reinstatement, it is advisable to contact the Department of Labor or consult with an attorney if you have concerns.

### **What Does Workers' Compensation Not Provide?**

The workers' compensation law does not provide any specific recovery for your pain and suffering, humiliation, embarrassment, loss of opportunities in your life, or the impact of your injury on other people in your life.

Employee benefits are not protected under the workers' compensation statute, and employers have no obligation to maintain or replace employee benefits. However, there may be protections under other state laws or federal laws such as the Family Medical Leave Act.

The workers' compensation law is based on a policy of "trade off"--in exchange for quick payment of limited benefits without having to prove fault, neither you nor your spouse is allowed to sue your employer or a co-employee about a work related injury. However, if your injury is due to the fault of someone besides your employer or a co-employee, you may also, in addition to collecting workers' compensation benefits, bring a legal claim against the person who caused your injury. For instance, if you were driving from your place of employment to a construction site and were hit by another driver, you would be entitled to claim both workers' compensation benefits from your own employer and also sue the driver at fault. If you do recover money from another person for your injuries, you will be required to pay back the amount you received in workers' compensation benefits necessary to prevent a "double recovery."

You may also have the right to collect Social Security Disability benefits or private disability insurance benefits in addition to workers' compensation benefits. However, whether it is in your interests to pursue a claim will depend, among other things, upon your earning history and potential adverse income tax consequences. If you are entitled to Social Security Disability benefits, you may also qualify for Medicare coverage for treatment of conditions that are not related to your workers' compensation claim.