

## **Introduction**

The Iowa Workers' Compensation Act provides the **only** legal remedy against their employer for workers who are injured on the job.

Workers' Compensation law can be very technical. The law is administered by the Workers' Compensation Commissioner. As a result, you should seek assistance from your union representatives or legal counsel in pursuing a claim.

Some employers try to treat their injured employees fairly. But, unfortunately, many seek to avoid liability for Workers' Compensation benefits. Accordingly, you should not simply rely on the word of the company nurse or other employer representatives, including the company's insurance carrier or physicians, in regard to your rights under the law. Your best advice will come from your union representatives, who can either assist you in pursuing your claim or help you in obtaining expert help.

## **What Injuries Are Covered?**

Under the law, injuries which arise out of and in the course of a worker's employment trigger the employer's liability for providing Workers' Compensation benefits. As a general matter, this includes all injuries which an employee suffers while performing work for the employer and which are caused by the employee's work activities.

Injuries caused by a traumatic event, such as an object falling on a worker, are covered. So too, injuries caused by repetitive work activity (cumulative trauma) are covered. Work activities which cause an aggravation of an earlier (pre-existing) injury are also covered.

Special statutes and rules apply to industrial diseases and hearing losses. This booklet deals primarily with the laws covering bodily injuries. If you are experiencing an illness or hearing loss which you believe is related to your work, you should contact your union representatives about what you must do to pursue a claim for benefits under these special laws.

## **What is My First Step If I am Injured?**

If you sustain a work-related injury or if you believe a physical condition you have is caused by your work, **you must report the injury** to your employer. Under the law, you **must** report the injury **no later than 90 days** after it occurs. You **should** report the injury **as soon as you are aware of it**.

As a general rule, it is best to make sure you comply with the employer's rules and procedures for reporting work injuries. The employer **cannot** refuse to accept an injury report, even if you do not report it within the time or in the manner required by the employer's policies.

If you do not provide notice of the injury within the 90-day period under the law, the employer can claim that it is not obligated to provide Workers' Compensation benefits for the injury. In turn, it is best if you obtain a copy of the injury report or have a witness to the report in case a dispute about whether you gave notice or when you gave it arises later.

## **What Happens After I Report the Injury?**

After you report an injury, the employer must decide whether it will “accept” the injury as work-related and thus “compensable.” If the employer accepts the injury as a “compensable injury,” it is then obligated to commence providing benefits as required by the law.

If the employer determines it will not accept the injury as a compensable injury, the employee has a “contested” or “disputed” claim for benefits. The employee will need to pursue a formal claim through the administrative procedures of the Iowa Workers’ Compensation Commissioner’s office.

### **What Benefits Are Available for Medical Care?**

The rules concerning medical care for a work-related injury differ depending on whether or not the employer accepts the injury as work-related.

#### ***Accepted Claims***

Generally, the employer is required to provide the injured worker with reasonable medical care suitable for treating the employee’s injury at its expense. The employer’s obligation to furnish the medical care for the injury exists for the lifetime of the employee.

In addition, the employer must pay for the employee’s transportation expenses associated with the medical treatment. Transportation expenses include mileage at the Internal Revenue Service standard business mileage rate as of July 1 of the current year.

Because the employer has accepted the claim as compensable under the Workers’ Compensation law, it has the **right to choose** the physicians and other medical providers who will furnish the injured worker’s medical care. The employer, however, is not allowed to “micromanage” the medical care it provides or to interfere with the medical judgments or recommendations of the physicians it has chosen to treat the worker. The worker is obligated to cooperate with the medical providers in regard to recommended treatment.

If the employee has reasonable grounds for being dissatisfied with the medical care being offered by the employer-chosen medical providers, the employee can make a written request to the employer or the employer’s Workers’ Compensation insurer to provide alternative care. Reasons which justify alternate care can include the distance between the employee’s residence and the site of the treatment, the failure of the medical treatment to improve the employee’s condition or the provider’s lack of expertise in regard to treating the employee’s injuries.

If the employer refuses to grant the request for different medical care, the employee should file an application for alternative medical care with the Iowa Workers’ Compensation Commissioner’s office. By law, the Commissioner’s office is required to decide within 10 to 14 days whether the employer must provide the alternative medical care.

Finally, if an injured employee has been off work due to the injury for more than three days and returns to work, the employer may continue to provide medical care. If the care is provided during the employee’s working hours, the employer must pay the employee regular wages for the time spent by the employee receiving the care during the employee’s working hours.

#### ***Denied Claims***

If the employer decides to deny that the injury is work-related or is otherwise not compensable under the law, the employee may seek medical care from providers of the employee's own choice. The employee may also submit the medical expenses to the worker's own health insurance plan, which usually is the employer's group medical insurance plan. In applying for the group benefits, the employee should state that the bills are for a work-related injury, but that the employer has denied the Workers' Compensation claim. Under the law, the group insurer **cannot** refuse to pay benefits for the medical expenses on the grounds the expenses are for a work-related injury.

### ***No Collections***

If any dispute exists concerning who should pay for medical expenses or the amount of payable expenses resulting from treatment for a work-related injury, it is illegal for the medical providers to take collection actions of any kind against the injured worker while a claim for Workers' Compensation benefits is pending. The medical provider, however, can send a current statement to the worker periodically.

### **What Benefits Are Available When I Am Recovering From My Injury?**

Basically, there are two types of benefits available. Which type you receive depends on whether the injury results in your sustaining any permanent disability. If the injury does not cause any permanent disability or impairment, then you are entitled to *temporary total disability* payments. If the injury does cause permanent disability or impairment, then you are entitled to *healing period payments*.

Generally, both payments are aimed at providing you with 80% of your average after-tax regular weekly earnings during the 13 weeks preceding the date of the injury for which payments are due. Some special rules exist regarding how your weekly earnings are computed if you are not paid on a weekly basis. Likewise, special rules exist about how weekly earnings are computed during weeks in which you are not working or not being paid for some days of the week.

For hourly-paid employees, overtime hours and shift pay are included in computing the injured worker's regular weekly earnings. But the overtime hours are computed at straight time pay rates, not premium or overtime pay rates. You are entitled to a copy of your employer's records of your wages for the one year period prior to your injury. You should obtain a copy of the record to use in verifying the benefit rate to which you are entitled.

There are both a minimum weekly rate and a maximum weekly rate, which are determined annually by the Workers' Compensation Commissioner under a statutory formula. The rates, as well as simple instructions for determining the appropriate rate, can be found at the Workers' Compensation Commissioner's website:

<http://www.iowaworkforce.org/wc>.

### ***Temporary Total Disability Payments***

Temporary Total Disability (TTD) payments begin on the fourth day after the date the worker is injured. If the injured worker remains off work due to the injury more than fourteen days after the date of the injury, the worker receives payment for the first three days, which were not paid. TTD payments end when the employee is able to return to the worker's regular job or is able to return to work which is substantially the same as the work the employee was engaged in at the time of the injury.

### ***Healing Period Payments***

Healing period payments begin on the date of the injury. Healing period payments end whenever the first of one of the following occurs: (1) the employee returns to the worker's regular job; (2) the employee is able to return to work which is substantially the same as the work the employee was engaged in at the time of the injury; or (3) the medical providers have concluded there will be no further improvement in the employee's medical condition. In each of these situations, the medical providers probably will also have determined that the worker has sustained some permanent impairment due to the injury.

Prior to terminating healing period payments to an employee who has not returned to work, the employer must provide the injured employee a notice stating that it will be ending payments thirty days from the date of the notice and setting out the reason for the termination of the payments. This is known as an "Auxier Notice."

### **Can I Be Required to Perform Light or Restricted Duty?**

Unless your contract has a provision which prohibits the employer from requiring an employee with a work-related injury to perform "light or restricted duty," the answer is yes. If your employer offers you a job within your medical restrictions, you cannot refuse to try to perform the job. If you refuse to attempt to perform the job, the employer may cut off TTD or healing period payments for the entire period you refuse the job.

The employer, however, cannot use the offer of a "light" or "restricted" duty position to reduce the pay available to an injured worker. Rather, the employer is obliged to make *temporary partial disability* (TPD) payments. TPD payments are equal to two-thirds of the difference between the injured worker's gross weekly wages before the date of the injury and the weekly wages from the light or restricted duty job.

### **What Am I Entitled To If My Injuries Cause Permanent Disability?**

There are two basic types of benefits. The first is *permanent partial disability benefits*. The second is *permanent total disability benefits*. These benefits are in addition to any healing period payments due an injured worker.

In order to be eligible for these benefits, it is normally necessary that a medical provider has "rated" the injured employee. That is, the physician has determined that the work-related injury has caused some permanent physical or functional impairment or condition affecting a specific member or area of the worker's body or affecting the worker's "body as a whole." The rating is normally expressed as a numerical percentage impairment to a part or area of the body (e.g. 10% impairment to the arm; 20% impairment of the spine; 35% impairment to the whole body or whole person.)

Disputes in claims accepted by the employer often arise over the physicians' ratings. Usually, the medical provider chosen by the employer will issue a rating at the time the injured worker returns to work or is released from medical care. Some employers forget or fail to obtain a rating from the physicians. Accordingly, if you are not informed about a rating within two or three weeks after you return to work or after you are released from care, you should contact your employer about obtaining a rating from the doctor.

If the employee disagrees with the rating, the employee is entitled to have an **independent examination**, which is paid for by the employer, by a physician of the

employee's choice. The examination is only for the purpose of obtaining another rating. If the employer balks at paying for a requested examination, the employee may file an application with the Iowa Workers' Compensation Commissioner's office seeking to require the employer to provide the examination.

If the employer has denied that the injury is compensable, the injured worker's physician will often provide the initial rating. In turn, the employer has a similar right to obtain an examination and a rating by a doctor of its choice.

The impairment ratings determined by the various medical providers are important because they are used in determining the extent of the permanent disability caused by a worker's injury. In turn, the extent of the permanent disability is the basis for establishing the amount of benefits available to the injured worker.

***Permanent Partial Disability Payments***

There are two different methods for determining the amount of permanent partial disability payments owing to an injured worker. The difference is based on what part of the body is injured. One method of calculating payments exists for what are referred to as "scheduled member" injuries. The other method is used for what are referred to as injuries to the "body as a whole."

***Scheduled Member Injuries***

The Iowa Workers' Compensation statutes establish a schedule which states the maximum number of weeks of weekly payments which must be paid for a total or 100% loss or loss of use (impairment) of specific body parts. The current schedule includes the following:

<u>MEMBER BENEFITS</u>	<u>MAXIMUM NUMBER OF WEEKS</u>
Thumb	60
First Finger	35
Second Finger	30
Third Finger	25
Fourth Finger	20
Great Toe	40
Other Toes	15
Hand	190
Arm	250
Foot	150
Leg	220
One Eye	140
Second Eye	200
Disfigurement	Up to 150

Thus, if the injured employee's right arm was completely severed from the worker's body in a work-related accident, the employee would be entitled to receive a total of 250 weekly payments. The weekly payments would be in the same amount as the weekly healing period payments.

If the injured employee's right arm was broken and physicians determined that as a result of the fracture the employee had sustained a 10% impairment to the arm, the employee would be entitled to receive only 10% of 250 weeks, or 25 weekly payments.

(Special rules for injuries to two scheduled members incurred at the same time also exist.)

The impairment ratings provided by the medical providers constitute the primary basis for determining the number of weeks of benefits available to the injured worker. The calculation does not take into account the effects of the physical impairment to the injured body part on the employee's ability to work.

There are differences in medical terminology used among medical providers. One doctor may rate a hand injury as an injury to a finger or fingers. Similarly, there are legal definitions of where arms and legs become part of the body for purposes of Workers' Compensation laws. Accordingly, it is important to make sure medical providers are rating the correct body part under the Workers' Compensation laws.

### ***Injuries to the Body as a Whole***

An injury to any part of the body not expressly listed in the statutory schedule is known as an injury to the "body as a whole." In determining the extent of the disability resulting from an injury to the body as a whole, the effects of a physical or functional impairment to a part of the body on the employee's employability and ability to work **are taken into account**. The effects of a physical or functional impairment are referred to as the "industrial disability" caused by the work-related injury.

Factors in determining the extent of an employee's industrial disability in addition to physical or functional impairment of the body include such things as the worker's age, education, work history, loss of earning capacity due to the injury and ability to retrain for other work. Because the determination of an employee's industrial disability involves consideration of many factors and judgment calls, disputes often arise regarding the issue.

It is important to remember that an employer's offer to pay permanent partial disability payments based on the physician's functional impairment percentage rating is **almost always less than what is owed**. An injured worker should **never agree** to accept as full payment of a claim for an injury to the body as a whole an amount based on a functional impairment rating alone **without consulting** a union representative who is knowledgeable about Workers' Compensation matters.

The calculation of the benefits is based on a maximum of 500 weeks of weekly payments. The amount of industrial disability is expressed in a percent. Again, the payments are at the same rate as those for healing period payments.

Thus, an employee with a 50% industrial disability is entitled to 250 weeks of weekly payments (50% of 500 weeks). An employee with a 10% industrial disability is entitled to 50 weeks of weekly payments (10% of 500 weeks).

(Note: There are some situations where an injured worker may receive industrial disability payments for injuries to a scheduled member of the body. They include the following:

- (1) Where the employee sustains an injury to one scheduled member body part and later sustains a work-related injury to another scheduled member body part, the employee may be entitled to payment of industrial disability benefits from the Second Injury Fund. It is necessary to file a formal claim under the Workers' Compensation Commissioner's procedures in order to pursue a claim for these benefits.
- (2) If the injury to the scheduled member is found to extend into the body as a whole, the employee may be entitled to industrial disability benefits.

- (3) Where an injury to a scheduled member results in mental or emotional injury, industrial benefits may be available.)

### ***Permanent Total Disability Payments***

If an employee suffers an injury to the body as a whole, which results in the worker's permanent and total inability to work in any recognized job market, the employer is obligated to pay weekly payments at the healing period payment rate for the life of the injured worker or until the medical condition causing the disability ends.

### **Are There Any Benefits To Help Me Retrain For Other Work?**

An injured worker, who has a permanent disability and cannot return to gainful employment due to a work-related injury, may be entitled to \$100 per week for a maximum of 26 weeks if the worker is participating in a vocational rehabilitation program approved by the state of Iowa. The benefits are in addition to any other benefits owed.

### **What If I Die As a Result of a Work-Related Accident or Injury?**

The injured worker is entitled to payment of medical expenses for care incurred between the time of the injury and death. Also, the employer is obligated to pay TTD weekly payments during the same period.

Upon the death of the injured worker, the employer is obligated to pay weekly payments to the worker's spouse and dependents, if any. Payments to the spouse continue for life or until remarriage. Payments to dependents continue until age 18, or age 25, if a minor is actually dependent after age 18. Enrollment in an accredited educational institution normally makes an individual a dependent. Payments to dependents who are disabled continue during the period of the disability.

Finally, there is a burial expense benefit equal to the reasonable cost of burial not to exceed twelve times the average state weekly wage as determined annually by the Iowa Department of Workforce Development.

### **What If My Employer Doesn't Pay My Benefits on Time?**

The law requires an employer to pay weekly benefits each week they are due—no sooner and no later. Benefits are due beginning on the eleventh day after the date of the injury and each following week until the benefits have been paid in full. If the employer does not pay benefits when they are due, you are entitled to interest on the unpaid benefits at the rate of 10% per annum. As a general rule, employers do not voluntarily pay interest. You should insist on timely payment of weekly benefits or payment of interest on late payments.

### **What Can I Do If My Employer Refuses to Pay Workers' Compensation Benefits?**

In such a situation, you have a "contested" or "disputed" claim. The office of the Iowa Workers' Compensation Commissioner is the governmental agency with the authority to resolve the dispute. The Commissioner's office has established procedures, similar to court proceedings, for deciding the dispute. And, the Commissioner's office has rules governing how to process a claim under the procedures.

If you have a contested or disputed claim, you **need help**. You should contact your union representatives, who can assist you in filing and processing a formal claim for benefits through the Commissioner's office or help you obtain legal representation to pursue a claim.

### **How Quickly Must I File a Formal Claim for Benefits in a Contested or Disputed Case?**

If the employer refuses to "accept" your claim that you have sustained a work-related injury and has not paid any weekly payments for it, you **must file** a formal claim for benefits with the Commissioner's office **within two years from the date of the injury**. If you fail to make the claim within two years, you lose the right to make a claim.

If the employer has "accepted" your claim and paid you some weekly payments for it, you **must file** a claim with the Commissioner's office **within three years from the date of the last payment of weekly benefits**. Again, if you fail to make the claim within the three-year period, you lost the right to make a claim.

If the employer has "accepted" your claim, but has provided you only medical care benefits, you **must file** your formal claim with the Commissioner **within two years from the date of the injury**.

### **Summary**

As noted in the Introduction, Workers' Compensation benefits, in most cases, are the **sole remedy** against your employer for a work-related injury. Generally, they are also the only remedy you have against a co-worker, whose actions may have contributed to you sustaining an injury.

Under some limited circumstances, you may have a right to pursue legal action for damages against someone other than your employer or a co-worker who caused your work-related injury. If you believe you have such a claim, you need to discuss it with competent legal counsel.

Finally, your collective bargaining agreement may contain benefits, which are available in addition to the benefits provided for under the Workers' Compensation statutes. You should always check with your union representatives to determine whether there are additional contract benefits to which you are entitled as a result of a workplace injury.

If you have additional questions, contact the Iowa Federation of Labor, AFL-CIO, 2000 Walker Street, Suite A, Des Moines, IA 50317, Tel. 515/262-9571 or 800/372-4817, or by e-mail at <http://www.iowaafICIO.org/>. Or contact Iowa Workers' Compensation Commissioner, 1000 East Grand Avenue, Des Moines, IA 50319, Tel. 515/281/5387 or 800/562-4692, or by e-mail at <http://www.iowaworkforce.org/wc/>.