

KNOW YOUR RIGHTS!



Leaves Of Absence For Military Service Of Public Employees

IOWA CODE, SECTION 29A.28

Section 29A.28 of the Code of Iowa provides rights similar to USERRA, but applies only to state and local government employers. However, it covers more types of military and quasi-military service than USERRA.

WHAT DOES THE LAW REQUIRE EMPLOYERS TO DO?

Public employers are required to grant a leave of absence to any worker who is called to active duty in the armed forces of the United States, or of the state of Iowa or in the "nurse corps" or in the civil air patrol or in the national disaster medical team of the United States.

Section 29A.28 does not restrict the length of the leave granted. The first 30 days of the leave are without loss of pay.

A public employer may temporarily replace an absent worker, but upon return from active duty, the worker is entitled to reinstatement.

A public employer must reemploy the returning service member in the position, classification and in the same geographic location held by the service member at the time he/she entered active duty.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

State and local government.

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

Temporary public workers employed for six months or less.
Private sector workers.

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

None are specified in the law, but presumably a veteran would be entitled to reinstatement and/or back pay.

HOW IS THE LAW ENFORCED?

The enforcement mechanism not specified in the law. Presumably it is enforced by private legal action in state court.

Iowa Worker's Compensation And Your Rights

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 NEXT?

Depending on the status of your claim, you will have many different options.

You may also be entitled to benefits. Depending on your collective bargaining agreement, you might be required to perform "light" or "restricted" duty. This has to be within your limitations and cannot be at a reduced rate of pay.

If your injury is permanent, you could receive partial or total disability benefits. This requires a lot of medical documentation and examinations. The time you are allowed off, it based on the severity of the injury.

An injury that prohibits you from returning to gainful employment, could be entitled to payments.

If a worker dies as a result of a work-related accident or injury, they are entitled to payments for medical attention, and the spouse is eligible for payments. There is also compensation for burial expenses.

Should an employer not make payments, the injured worker is entitled to interest on the unpaid benefits.

If your employer refuses to pay workers compensation benefits, you need to contact the Iowa Workers' Compensation Commissioner's office. If you have a contested or disputed claim, you should contact your union representative or possibly a lawyer.

A formal claim must be filed 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.iowaafclcio.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/>.

WEINGARTEN RIGHTS: Employee's Rights To Union Representation

The rights of unionized employees to have present a union representative during investigatory interviews were announced by the U.S. Supreme Court in a 1975 case (NLRB vs. Weingarten, Inc. 420U.S. 251,88 LRRM2689.

These rights have become known as the Weingarten rights.

Employees have Weingarten rights only during investigatory interview. An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or ask an employee to defend his or her conduct.

If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation.

Management is not required to inform the employee of his/her Weingarten rights; it is the employee's responsibility to know and request. When the employee makes the request for a union representative to be present, management has three options:

1. It can stop questioning until the representative arrives.
2. It can call off the interview, or
3. It can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative (An option the employee should always refuse.)

Once you have asked for union representation, any attempt by management to continue asking questions before a union representative gets there is illegal.

If supervisors pressure you by telling you that "you're only making things worse for yourself" by asking for union representation, that's against the law too.

Employers will often assert that the only role a union representative in an investigatory interview is to observe the discussion. The Supreme Court, however, clearly acknowledges a representative's right to assist and counsel workers during the interview.

The Supreme Court has also ruled that during the investigatory interview, management must inform the union representative of the subject of the interrogation. The representative must also be allowed to speak privately with the employee before the interview.

During the questioning, the representative can interrupt to clarify a questions or to object to confusing or intimidating tactics.

While the interview is in progress, the representative cannot tell the employee what to say, but may advise them how to answer a question. At the end of the interview, the union representative can add information to support the employee's case.

What to Say if Management Asks Questions that could lead to Discipline:

"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I request that my union representative, officer or steward be present at the meeting. Without representation, I choose not to answer any questions."

Know Your Rights Weingarten Rights

**Don't be bullied by
management, learn about
your Federal protection!**



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