

Workers Compensation (FAQ)

1. Who is responsible for providing the benefits under the Workers' Compensation Act (Act)?

A. The employer is, by law, 100% responsible for providing benefits under the Act. The employer, in certain situations, provides benefits directly (self-insured) or indirectly through a Workers' Compensation insurance company. A worker cannot be charged for benefits provided by the Act or any portion of their employer's Workers' Compensation insurance premium.

2. What workers are covered by the Act?

A. Every worker injured in Illinois, hired in Illinois but injured while working in another state or injured while working in another state for an employer whose principle place of business in Illinois, is covered by the Act.

3. What injuries are covered by the Act?

A. Any worker who has sustained an injury "**arising out of and in the course of their employment**" has a potential claim under the Act.

4. Is a worker entitled to benefits under the Act for injuries that result from performing repetitive motions in the course of their job?

A. Yes. A worker who has sustained an injury, commonly referred to as "**repetitive trauma**," is entitled to benefits under the Act. These types of injuries generally result from a worker's repeated, consistent, physical movement of a particular part of their body in the performance of their normal work activity. Unfortunately, due to the fact that symptoms with these types of injuries manifest themselves over a period of time, the worker might not associate the eventual diagnosis of the injury as being work-related.

5. Does a worker have a viable Workers' Compensation claim if they re-injure a previously injured part of their body or aggravates a pre-existing physical condition?

A. If a worker sustains a work-related injury to a previously injured part of their body, regardless of whether the previous injury was work-related, they are not barred from recovery under the Act. Similarly, if they sustain an accident which aggravates or accelerates a pre-existing physical condition, (arthritis, congenital back condition, etc.) they are still entitled to all the rights and benefits provided by the Act.

6. Is a worker who sustains an on-the-job injury entitled to compensation if the injury causes disfigurement?

A. A worker who suffers a serious and permanent disfigurement (scar, burn, etc.) to the head, face, neck, arms or legs as a result of a work-related injury, is entitled to benefits under the Act.

7. What medical benefits does the Act provide to a worker after they have sustained an on-the-job injury?

A. An injured worker is entitled to receive 100% of "**all necessary and reasonable medical expenses incurred as a result of a job-related accident.**" These include first aid, emergency room services, hospital care (inpatient/outpatient), doctor's fees, prescriptions, etc.

The Act further provides that an injured worker is entitled to treatment by **two (2) doctors** of their own choosing (excluding emergency room care) at the insurance company's expense. The insurance company is also responsible to pay for fees and charges of any doctors or hospitals which the injured worker is referred to by either of their first two (2) choices (commonly known as the **chain of referral**). If the injured worker wants to see or be treated by a third doctor, they will be responsible for any medical expenses incurred, unless approved by the Workers' Compensation insurance company.

8. What benefits is an injured worker entitled to while off work?

A. The Act provides that a worker receive **Temporary Total Disability benefits or T.T.D. benefits** for the entire time the worker's treating doctor requires them to remain off work to receive treatment and recuperate from their injuries.

T.T.D. benefits are required to be paid within **fourteen (14) calendar days** from the date the employer or one of his agents receives notice of the accident from the injured worker, unless the Workers' Compensation insurance company indicates, in writing, the reason for its refusal to pay T.T.D. benefits to the injured worker.

T.T.D. benefits are calculated as two-thirds (2/3) of a worker's average, gross, weekly wage for the year preceding the accident (excluding overtime and bonuses). In addition to numerous variations and complications in calculating the worker's average, gross, weekly wage, the T.T.D. rate is subject to various minimums and maximums prescribed by the Act.

9. Is it important for a worker to give an accurate and extensive description of the accident to their own medical providers?

A. Yes. If a dispute arises as to how, when or if a worker sustained an injury as a result of a work-related accident, a detailed and accurate description of the accident given by the worker to his medical providers could substantiate the worker's claim.

10. What benefits are provided by the Act if the injury sustained by the worker is permanent in nature?

A. Even though an injured worker may return to their usual profession or trade after sustaining an on-the-job injury, they could be entitled to compensation for any complete or partial permanent loss of use of any part of their body. This compensation is called **Partial Permanent Disability benefits or P.P.D.**

The amount of Partial Permanent Disability benefits to which a worker is entitled is based on his or her P.P.D. rate and the nature and extent, or the permanency of the injury. A worker's P.P.D. rate is calculated as sixty percent (60%) of the worker's average, gross, weekly wage for the year preceding the accident (subject to specific statutory minimums or maximums). There is no predetermined or fixed amount (level of permanent disability) that is applicable to a worker's injury. There are numerous factors which must be taken into consideration to determine the approximate monetary value of an injured worker's entitlement to P.P.D. benefits under the Act. It is essential to understand that every injury sustained by a worker is unique, therefore, requiring the knowledge of an experienced Workers' Compensation attorney to assist the injured worker in recovering the maximum amount of P.P.D. benefits to which they are entitled under the Act.

11. What if an injured worker is unable to return to their usual trade or profession after their treating doctor has exhausted all forms of treatment?

A. If an injured worker can no longer perform their usual trade or profession and must, therefore, accept a lower paying position, the worker could be entitled to benefits equal to **two-thirds (2/3)** of the difference between the average, gross, weekly, wage earned before the accident and the wage they are earning after the accident.

12. What if the injured employee, after their recovery, is unable to return to any type of work?

A. Under the Act, if the injured worker is unable to return to "**any type gainful employment**" they would be considered totally and permanently disabled and, therefore, would be entitled to weekly benefits at the worker's T.T.D. rate for life or until such time as they are capable of returning to some type of gainful employment.

13. Is an injured employee entitled to vocational rehabilitation?

A. The Act provides that if a worker sustains an injury of such severity that they are unable to return to the type of work they were doing at the time of the accident (established by medical evidence), the Workers' Compensation insurance company could be responsible to pay for vocational rehabilitation to retrain the worker for a new job, trade or profession consistent with their physical limitations. The employer's Workers' Compensation insurance company may also be required to continue paying the worker's weekly T.T.D. benefits for the entire rehabilitation period. Whether an individual is eligible for vocational rehabilitation depends on numerous factors specific to each worker.

14. What benefits are payable to survivors of a worker whose death is caused by a work-related accident?

A. **The maximum death benefit provided by the Act is twenty-five (25) years of the deceased worker's T.T.D. rate or \$500,000 whichever is greater.** Death benefits are payable to the widow(er) and or the worker's dependent children under eighteen (18) years of age. Under certain circumstances, monies could be paid to other dependent relatives of the deceased worker if there is no surviving widow(er) or dependent children.

15. Must an injured worker notify their employer of a work-related injury?

A. Yes. The Act provides that an injured worker must report any accident to their employer or any employee of the employer who is in a supervisory capacity (foreman, superintendent, company nurse, etc.). Notification, oral or written, must be within **forty-five (45) days from the date of the accident.**

There are **four important factors** an injured worker should remember about the "notice" provisions of the Act:

1. Informing a co-worker of an accident is not considered proper notice under the Act.
2. Notice of the accident should be given to the employer as soon as possible after the accident regardless of the fact that the Act allows forty-five (45) days.
3. Notice of a worker's accident should, if possible, be in writing even though it is not required by the Act. A worker should never sign a blank accident report form. The worker should also retain a copy of the completed accident report.

4. **Failure to give notice of the accident to the employer within forty-five (45) days could result in the loss of all benefits and rights under the Act.**

16. Does an injured worker have to file their Workers' Compensation claim within a specific period of time?

A. Yes. A worker who is injured as a result of a work-related accident must file a claim with the Illinois Workers' Compensation Commission within **three (3) years of the date of the accident or within two (2) years of the latest payment of compensation, whichever of these dates is later.**

This provision of the Act is legally referred to as the Statute of Limitations. With regard to the Statute of Limitations, it is important that every worker remember the following:

(a) Completion of an accident report form (or any other type of form relative to an accident), for the employer or its Workers' Compensation insurance company, is not considered "filing" of a claim under the Act.

Either the worker or his or her attorney must file a specific form entitled "Application for Adjustment of Claim" with the Illinois Workers' Compensation Commission.

(b) If an Application for Adjustment of Claim form is not filed with the Illinois Workers' Compensation Commission within the Statute of Limitations, the worker would lose their rights and benefits provided by the Act.

17. Should an injured worker allow their employer or its Workers' Compensation insurance company to record a statement of the accident?

A. No. In order for an injured worker to be entitled to benefits under the Act, the employer or its Workers' Compensation insurance company must simply receive proper notice of the accident, and the name and address of the doctor(s) from which the worker is receiving treatment. **There is no requirement in the Act that this or any other information be transmitted to the employer by a recorded statement. Furthermore, a recorded statement is never taken to the benefit of the injured worker.**

It is important the worker **not submit to a recorded statement considering that the statement could be used as evidence against the worker** at a subsequent hearing before the Illinois Workers' Compensation Commission. **A recorded statement may also negatively affect the worker's rights relative to a potential Third Party case resulting from the accident.**

18. Should an injured worker sign any documents for their employer or the Workers' Compensation insurance company?

A. No. The only document an injured worker should sign is an accurately completed accident report. Any other documents signed by the worker, no matter how harmless or insignificant they may appear, could adversely affect the worker's rights and benefits under the Act and/or a potential third party case.

19. Is an injured worker required to submit to an examination from a doctor selected by the Workers' Compensation insurance company?

A. Yes. If an injured worker claims they are entitled to receive or are receiving benefits under the Act, the Workers' Compensation insurance company is entitled to have the worker examined by a doctor of its

own choosing at a reasonable time and place. The Workers' Compensation insurance company must pay for the exam.

Failure to attend the examination could result in an interruption of benefits to the injured worker.

20. Is an injured worker required to cooperate with a rehabilitation nurse retained by the Workers' Compensation insurance company?

A. Yes. The Act provides that any injured worker who fails to cooperate with the rehabilitation process can have their benefits terminated by the Workers' Compensation insurance carrier?

CAUTION: Seemingly innocent statements made by a worker to a rehabilitation nurse are forwarded to the insurance adjustor handling the claim. Such statements could have a negative effect on an injured worker' claim, as well as, a potential recovery in a Third Party case.

21. What redress does an injured worker have if they are not receiving the benefits they are entitled to under the Act?

A. If an injured worker, under active medical treatment and off work pursuant to their doctor's instructions, is not receiving their benefits, they have the right to a hearing before an Arbitrator of the Illinois Workers' Compensation Commission. At this hearing, the worker would have the opportunity to present medical evidence and witnesses in support of their claim for Workers' Compensation benefits.

Considering the complexity of such a hearing and the fact that an experienced attorney will be defending the claim on behalf of the insurance company, it is advisable that the injured worker retain an experienced and competent Workers' Compensation attorney.

22. Should an injured worker apply for unemployment benefits?

A. No. In applying for unemployment benefits during the period a worker is off work due to an on-the-job injury, **the worker must state in writing that they are willing and able to work.** Even though the injured worker will rarely, if ever, be called for work, the Workers' Compensation insurance company could argue that the injured worker's statement to the Illinois Department of Employment Security is contrary to their claim that they are unable to work.

However, recent court decisions have recognized the financial difficulties facing an injured worker who is not receiving T.T.D. benefits under the Act and have ruled that a worker who has applied for unemployment benefits, in certain circumstances, is not barred from claiming they are entitled to T.T.D. benefits. **Nevertheless, it is advisable that the worker discuss the circumstances of their accident with an experienced Workers' Compensation attorney before applying for unemployment benefits.**

23. Can a worker receive Social Security Disability benefits as a result of a work-related injury?

A. Yes. If an injured worker is **disabled from working and it is anticipated that their disability will continue for one year or more,** the worker could be eligible for Social Security Disability benefits. If the above circumstance exists, **it is advisable that the injured worker file an application for Social Security Disability benefits with their local Social Security office.**

If the worker's initial claim and subsequent reconsideration are denied by the Social Security Administration, the next step in the appeal process would be to request a hearing before a Social Security administrative law judge. It should also be noted that a Social Security claimant **is responsible for**

attorney's fees in only those situations where they receive an award by the Social Security administration.

24. Should an injured worker apply for group health insurance benefits instead of Workers' Compensation benefits?

A. No. Often an employer will encourage their injured workers to apply for group health insurance benefits instead of Workers' Compensation benefits. However, it is advisable not to apply for group insurance benefits for the following reasons:

1. Most group health insurance policies do not provide for lost time or Temporary Total Disability benefits (T.T.D.).
2. Most group health insurance policies usually require that the injured worker pay a portion of the medical expenses, whereas, **Workers' Compensation pays 100%** of any injured worker's reasonable and necessary medical expenses.
3. The extensive rights and benefits an injured worker is entitled under the Act (T.T.D., P.P.D., rehabilitation, etc.) **are not provided by group health insurance plans.**
4. **Finally, and most importantly, group health insurance policies frequently exclude the payment of any benefits for work-related injuries and therefore, might require the injured worker to indicate, in writing, that the benefits being provided are not a result of a work-related injury. Such an admission could jeopardize their Workers' Compensation claim.**

25. Can an injured worker be harassed or fired for filing a claim for Workers' Compensation benefits?

A. No. The Act provides that it is unlawful for any employer or its Workers' Compensation insurance company to interfere with, coerce, or discriminate against any injured worker, in any manner, whatsoever, for exercising their rights to obtain any or all of the benefits provided for by the Act.

Additionally, if it can be proven that an employer fires or forced to resign any injured worker in retaliation for filing a Workers' Compensation claim, the worker could file a civil lawsuit against his employer seeking damages in the Circuit Court. This type of lawsuit is referred to as a "**Retaliatory Discharge**" lawsuit which could result in substantial damages against the employer.

26. When is a Workers' Compensation claim considered settled and permanently closed?

A. A Workers' Compensation claim is considered settled only after "**Lump Sum**" **settlement contracts** are prepared and signed by the appropriate parties and approved by the Illinois Workers' Compensation Commission. After the above process is concluded, the worker's claim is closed and they are no longer entitled to Workers' Compensation benefits for their injuries. In the event of a subsequent accident, the worker would need to file a new claim for Workers' Compensation benefits.

NOTE: If an injured worker has received various Workers' Compensation benefits from his employer but **never signed Lump Sum Settlement contracts, he may still have a viable Workers' Compensation claim if the Statute of Limitations has not expired.**

27. Can a worker file a lawsuit against his employer for the injuries he sustained for a work-related accident?

A. No. In Illinois, the only remedy a worker has against their employer is a Workers' Compensation claim filed with the Illinois Workers' Compensation Commission.

28. Is an injured worker entitled to monies for the payment of union dues, health insurance, or other similar benefits?

A. No. Unfortunately, the Act does not provide monies to the worker for any of the above mentioned benefits.

29. If an injured worker decides, for whatever reason, to discharge his present attorney, will he have to pay more than a 20% attorney's fee or be concerned about an interruption of his Workers' Compensation benefits?

A. No. An injured worker dissatisfied with their present attorney has the right to discharge their attorney and retain a new attorney. Retaining a new attorney will not result in the injured worker being charged more than a 20% attorney fee or result in the interruption of their Workers' Compensation benefits. **It is the responsibility of the newly retained attorney to pay the previous attorney for any out-of-pocket expenses they might have incurred, or for any time the attorney might have expended during the handling of the injured worker's claim.**

30. What is a Third Party case?

A. An injured worker could have the right to receive substantial additional monetary damages in the form of a "Third Party" lawsuit if the facts and circumstances of the accident establish that a Third Party other than their employer or a co-worker is responsible for the accident.