

2018 Edition

Workers' Compensation in Georgia

EMPLOYEE GUIDE

FIFTH EDITION By
Hank Barnett
Attorney at Law



THE BARNETT FIRM
JOB INJURY LAWYERS

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About the Author

Hank Barnett has practiced law in Georgia over thirty years. He is dedicated to representing injured employees in workers' compensation claims. Mr. Barnett is a member of the State Bar of Georgia and Georgia Trial Lawyers' Association (GTLA). He is on the Board of Directors of the Workers' Compensation Section of the GTLA. He is a member and past chair of the Atlanta Bar Association, Workers' Compensation Section. He is also a member of the Workers Injury Law & Advocacy Group (WILG) and Georgia Injured Workers' Advocates (GIWA). He is a frequent speaker at seminars on workers' compensation laws.

Hank Barnett works with various organizations which lobby on behalf of injured workers in the Georgia General Assembly. He is a strong advocate for common sense laws which ensure fairer, more evenhanded treatment of injured employees.

The information contained in this book is based
in part upon Georgia Statutes, Board Rules and Appellate
Court Decisions in effect as of July 1, 2018.

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Introduction

Work injuries happen. It does not matter whether you work at a computer, pull orders in a warehouse or drive a truck; every job has its particular risks. Most injuries will be minor and nothing more than a memory within a day or two. But those suffering a more serious injury will be thrust into the very complex and frustrating workers' compensation system and face important decisions affecting their health and livelihood.

Workers' compensation laws and regulations cover every aspect of work injuries, including when and who you notify of the injury, the doctors you can see for treatment and the benefits you receive if you suffer a wage loss. Insurance companies make their money by understanding these laws and using them to their advantage. They do not make money by telling injured employees their rights under these laws.

This book is a guide to your rights and obligations under Georgia law. It answers the questions necessary to make sense of workers' compensation. If you or someone you know suffers an injury at work, reading this booklet will provide the information necessary to navigate the workers' compensation system in Georgia.

This book is arranged to provide easy access to information needed by the reader. It provides brief summaries of those parts of the workers' compensation system of greatest concern to injured workers, such as medical care and disability benefits. After each summary, answers are provided to the questions most commonly asked by those who have been injured. The questions are real.

They have been asked again and again by thousands of injured workers throughout the author's career.

Information contained in this booklet is meant to be used as a guide. It is not a substitute for legal advice from an attorney experienced in workers' compensation laws. If a dispute arises in relation to a work injury or should you have additional questions, it is always best to contact an experienced workers' comp attorney.

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The Workers' Comp System

Workers' compensation is a set of laws created by the Georgia General Assembly to govern and control a person's rights, remedies and obligations when injured on the job. It is an administrative system separate from the state and federal court systems.

The workers' compensation system is designed to assist injured employees to recover and return to work as soon as possible following an accident and to provide a weekly monetary benefit until they are able to return to work.

Simply stated, workers' compensation laws require employers to cover their employees with workers' compensation insurance (or qualify as "self-insured") for which the employer pays an insurance premium. In return, the employer is immune from lawsuits for work injuries, even if the injuries are the employer's fault. Workers' comp insurance pays for medical care related to the injury without co-pays or deductibles. In addition, the insurer will pay directly to the injured worker the following money benefits:

- a. A weekly disability benefit check if he or she suffers partial or total wage loss as a result of the injury; and
- b. Additional weekly benefits based on the employee's permanent impairment rating from his or her doctor, whether or not there is a wage loss.

In some instances, workers' compensation

will provide vocational rehabilitation if the employee's injury is extremely serious and prevents a return to his or her job.

The workers' compensation system is unfair to employees in large part due to the limited benefits provided. The system provides much greater protection to the Employer/Insurer than to the Employee. On the other hand, when the system works, you can get your benefits more quickly than through litigation. Unfortunately, the system does not always work in your favor. For this reason, it is extremely important that injured employees understand the rights and benefits to which they are entitled and retain the services of a qualified attorney to assist them.

The Players

State Board of Workers' Compensation (The "State Board") – The State Board is an administrative body created by the General Assembly to regulate and administer the workers' compensation laws in the State of Georgia. It is composed of a three judge panel: the Chairperson of the State Board and two additional Directors appointed by the Governor. The State Board also employs numerous individuals to regulate and administer the laws. Insurers and self-insured employers are required to file periodic reports and other documents with the State Board, including reports of job injuries and notices of payment or suspension of weekly benefits.

Administrative Law Judges ("ALJ's") – ALJ's are employed by the State Board. Their job is to resolve disputes between injured workers, their employers, and insurance companies. They are the only judges with the authority to decide disputes concerning disability

benefits, medical care, or other benefits under workers' comp laws. If the parties cannot resolve their dispute, either party may file a motion or request a hearing which an ALJ will decide.

Workers' Compensation Carriers – These are insurance companies registered with the State which provide employers with coverage for disability benefits, medical care and other benefits under workers' compensation laws. If the workers' comp laws apply, an employer is required by law to pay a premium to the insurer and maintain this coverage.

Adjusters – These are the individuals who work for the insurance companies and are responsible for issuing disability checks, authorizing and paying for medical care and otherwise administering the workers' compensation claim for the insurance company.

Case Managers – Sometimes referred to as rehabilitation suppliers or case nurses, these are individuals who are hired by the insurance companies to assist the adjuster by coordinating medical care and, in some cases, vocational rehabilitation or training for the injured employees. They may also get involved in expediting the injured employee's return to work. Case managers may attend physicians' appointments or may limit their involvement to coordinating medical care over the phone.

Questions

Q1.

How do I contact the State Board of Workers' Compensation?

Its address and phone number is:

State Board of Workers' Compensation
270 Peachtree Street, NW
Atlanta, Georgia 30303-1299
404-656-3818
Website: www.sbwc.georgia.gov

The State Board has branches throughout the State. You can obtain the address and phone number for the branch closest to you by contacting the State Board in Atlanta or accessing their web site.

Q2.

My injury is fairly minor and I don't feel comfortable with a case manager getting involved in my medical care. Do I have to agree to case management?

Most case managers work as independent contractors for the insurance company or employer. If that is true in your claim, case management is voluntary and you are free to reject it. If they are employees of the insurance company or your employer, you may have to work with case management.

For the most severe injuries which are known as "catastrophic" injuries, case management is mandatory, but the case manager must be specially trained and licensed to manage such injuries.

Q3.

Should I ever allow voluntary case management?

Sometimes injured workers need the assistance of a case manager who will work on behalf of the injured individual to speed up the delivery of medical care and help explain medical issues. There are many good case managers. Their main concern is to save money for the insurance company, but they may help you receive quality care.

If you agree to a case manager, never allow the case manager to meet alone with your doctor. Some of them may try to influence the doctor's opinions, contrary to your best interests.

Q4.

Can case managers speak with my doctors directly without my permission?

Effective January 1, 2016 the State Board passed a rule authorizing case managers, even in minor injury cases, to speak directly with your doctors with or without your permission. Pursuant to the rule case managers are required to provide advanced written notice of their intent to meet with your doctor.

Q5.

If I have any questions about my rights under workers' comp laws, can I call the State Board for information?

The State Board is not permitted to give you legal advice. They will answer non-legal questions, but if you have any questions about your rights or obligations, contact a qualified workers' comp attorney.

Q6.

Should I provide a recorded statement to an adjuster?

Adjusters sometimes ask injured employees for a recorded statement to investigate the claim. What you say in a recorded statement may be taken out of context or otherwise used to deny your claim. You should consult with an experienced workers' comp attorney before you give a recorded statement, or you may say something you later regret.

Q7.

Other than asking my employer, how do I find out if my employer has workers' compensation coverage?

You can obtain coverage information by going to the State Board website as sbwc.ga.gov, and click on the workers' compensation coverage link. Or you can call the State Board at 404-656-3818 and ask to speak to the "coverage" department. They will ask you the name of your employer and the date of your accident.

Q8.

I checked with the State Board and they do not have any information on my employer or their workers' compensation insurance. Does that mean my employer does not have coverage?

Not Necessarily. Many employers have coverage, but do not know they need to provide this information to the state board.

Workers' Comp – Your Sole Remedy

Shocking, but true. If you are injured on the job, even if it is the employer's fault, your only claim or remedy against your employer is under the workers' compensation system. Employers are immune from other lawsuits or claims in return for providing workers' compensation coverage to their employees. This is known as the "exclusive remedy bar." The exclusive remedy bar, however, applies only to your rights under Georgia law. There are certain federal laws, such as the Americans' with Disabilities Act or the Family Medical Leave Act, which may provide addition remedies.

Questions

Q1.

Why can't I sue my employer if my injuries are the employer's fault?

Workers' compensation is a "no-fault" system. It does not matter if the injuries were your fault, your employer's fault or no one's fault. If your injuries arose out of your employment while you were engaged in your employment, you are covered. Although the employer is protected from fault (even for willfulness or gross negligence in causing the accident), the injured employee is also entitled to receive workers' compensation even if the injuries were the fault of the employee.

The Georgia workers' comp system provides very limited benefits to an employee while providing total protection to employers. It is therefore important that you understand the worker's compensation system to ensure you receive all benefits the law allows.

Q2.

Can I recover from a co-worker who injured me on the job?

No. The exclusive remedy bar is designed to protect not only your employer, but your fellow employees as well. If you are injured by a fellow employee while working on the job, your sole remedy is a worker's compensation claim against the employer.

Q3.

What if I decide to waive my right to workers' compensation? Can I sue my employer instead?

No. Workers' Compensation is the "exclusive remedy" an injured worker has against the employer and its workers' comp insurer. Choosing not to pursue your benefits under workers' compensation laws does not give you the right to pursue other actions against your employer.

Q4.

What if my injury was caused by someone other than my employer or co-employee, such as someone hitting me in a car accident or if I am injured by a defective piece of machinery?

The workers' compensation "exclusive remedy bar" only protects your employer and co-employees. It does not protect third parties. If someone other than a co-employee, supervisor, or other agent of your employer is responsible in whole or in part for your injuries, you can pursue a lawsuit against them for your injuries which may include negligence claims and "products liability" claims against manufacturers of defective products. Be sure to discuss these claims with your attorney.

Q5.

What if my employer does not have workers' compensation insurance coverage when I have my accident?

Being uninsured when the law requires that the employer have workers' compensation insurance is not a defense to a claim for workers' compensation benefits. The employer is subject to fines, penalties and criminal prosecution for not maintaining workers' compensation coverage. If uninsured, the employer is responsible for paying the benefits to which you are entitled. However, the employer is still protected from claims other than workers' compensation.

An employer may be self-insured and not have to carry workers' compensation insurance. Whether the employer is uninsured, self-insured, or has workers' compensation insurance has no effect on the injured employee's rights and obligations under the law.

Q6.

I am an employee of a temporary agency and was injured while working at the warehouse of a company that uses our services. The temporary agency pays my wages and has workers' compensation coverage for me. Can I pursue a negligence lawsuit against the company where I was working?

If you are an employee of a temporary help contracting firm or an employee leasing company and injured while working at one of the client companies of the temporary firm, the client company is immune from lawsuits and your sole remedy is a workers' compensation claim with your temporary agency. Therefore, in your case you cannot pursue a negligence lawsuit.

Employers and Employees Subject to Workers' Comp Laws

Every employee working for an employer doing business in the State of Georgia who has at least three employees is covered by Georgia's workers' compensation laws, including employees of the State of Georgia, city and county governments, boards of education, corporate employers, unincorporated partnerships, sole proprietorships, non-profit companies and out of state employers whose employees are injured in Georgia. Employers who do not have three employees may agree to the protections and obligations of workers' compensation laws by purchasing workers' compensation coverage.

Federal employees and railroad employees are not subject to the Georgia workers' compensation laws. Federal employees, such as those working for the Postal Service, are covered by a separate workers' compensation system. Railroad employees have another claims system. You should consult with a qualified attorney if you are a federal employee or a railroad employee about your rights or obligations.

Certain industries, for political or other reasons, are expressly exempt from Georgia's workers' compensation laws. These include farms and those employing domestic labor, such as housekeepers.

Questions

Q1.

I was injured on the first day of my new job. Am I covered by workers' compensation?

Yes. Coverage begins immediately upon starting a job.

Q2.

My employer has at least three employees, but tells me they are not subject to workers' compensation laws? What should I do?

If you are injured on the job, never accept what your employer tells you with regard to their obligation to have workers' compensation coverage. Your employer may not know they are required to cover their employees or they may want to stop you from filing a claim. Always assume you are covered and contact a qualified attorney. The lawyer will ask the necessary questions to determine whether you are or should be covered for workers' compensation benefits.

Q3.

I am self-employed and was working on a project for a client at his factory when I was injured. Am I covered by workers' compensation?

Businesses which hire independent contractors are not required to maintain workers' compensations coverage for the contractors, even though they have coverage for their own employees. If you are involved in an accident while working for a business as an independent contractor and the injuries were caused by the business or one of its employees, you may have a personal injury claim for negligence which is not barred by workers' compensation laws.

Q4.

I was injured on my job and my employer told me I am not covered by workers' compensation insurance because I was an independent contractor, not an employee. What should I do?

Whether you are an employee or an independent contractor depends on many factors. The more control the employer has over your work, the greater the chances you are an employee and not an independent contractor. What your employer calls you does not really matter. Whether your employer deducts payroll taxes is only one factor and does not determine whether you are an employee. If you believe you are an employee and not an independent contractor, seek the advice of a qualified attorney.

Q5.

My employer is a subcontractor on a construction job. When I was injured my employer told me they do not have workers' compensation coverage. Am I out of luck or can I still pursue benefits?

This is a common situation. If your immediate employer does not have coverage but you were injured while working on a job site, you may be covered under the workers' compensation insurance of the company that hired your employer as a subcontractor, or even the general contractor. If your employer will not contract the general contractor, you should do so yourself or seek the advice of a qualified attorney or your union, if applicable.

Covered Injuries

Under workers' compensation laws in Georgia, an injury to any part of your body which arises out of your employment and while you are engaged in such employment entitles you to workers' compensation coverage, subject to certain defenses which the employer may have (See "Drug Use / Horseplay and Other Defenses to Workers Comp Claims" at page 74). These injuries include both sudden traumatic injuries, such as broken bones or back strains, and repetitive stress injuries such as carpal tunnel syndrome. The injuries need not occur suddenly, but may arise gradually.

Injuries caused only in part by an employee's work accident or work activities are also covered by workers' comp. For instance, an injury to an employee with diabetes may result in a more serious injury. If a diabetic employee stubs their toe at work and because of the diabetes the entire foot must be amputated, the employee would still have coverage for the entire foot injury, even though stubbing the toe played a small part in the amputation.

Aggravations of pre-existing injuries or conditions are covered as well. However, if the employer asks you whether you have any prior injuries or conditions, either verbally or in the employment application and you fail to disclose the condition, or if you take a pre-employment physical and fail to disclose the prior condition under direct questioning from a doctor, you may be barred from recovery of workers' comp benefits for the new injury.

Even heart attacks and strokes may be covered if it can be shown that the heart attack or stroke was due in whole or in part to your work.

Certain diseases, such as asbestosis or black lung disease, are also covered by workers' compensation. However, the laws and rules applicable to these occupational diseases are very complex and different than those applied to accidents.

Psychological injuries, such as "post traumatic stress" or severe depression are covered by workers' compensation as long as the psychological injury arose, at least in part, from a physical injury.

If you are killed in an accident, or if your work injury or occupational disease causes your death, the employer/insurer will have to pay certain benefits depending on whether you have dependents. (See "Death Benefits" at page 63).

Questions

Q1.

I had a prior injury to my lower back, but denied it in my pre-employment physical because I thought I would not be hired. Over the first few months that I was working my back was bothering me and I told my employer that I did have a prior injury. Later I suffered a severe aggravation of my lower back while working. Am I covered?

Yes. Even though you did not disclose your back condition when you were hired, since your employer knew about your condition before you aggravated the back your claim is not barred.

Q2.

What if the pre-existing condition I did not disclose was to my lower back and I later injured my upper back at work. Does the failure to disclose my pre-existing lower back injury bar my right to coverage for my upper back work injury?

No. In order to be barred from recover for failure to disclose a pre-existing condition, the pre-existing condition must have played a part in the new injury. If the new injury is in a totally different part of the back you will be covered.

Q3.

After working a very repetitive job for about a year, my arms began to bother me. I did not know this condition was work related so my personal doctor treated the arm pain. After several visits the doctor let me know my condition was probably work related. Am I covered?

Yes. Very often people suffer injuries which arise gradually rather than suddenly. If this happens, once you learn your condition may be work related you need to let your employer know.

Q4.

I work at a convenience store and the store was robbed. The robber held a gun to my head at one point. As a result, I have nightmares all the time and have found it difficult to work. Am I covered?

As it now stands, a purely psychological injury without any physical injury is not covered under workers' compensation. If, in the course of the robbery, you had been physically injured, such as being struck or shot, both the physical injury and any psychological injuries you suffer would be covered.

Q5.

I sustained a severe back injury and have suffered from this now for more than six months. As a result of the pain and not being able to do things like I used to do, I have become very depressed. Is my depression covered by workers' comp?

Yes. If your psychological condition arises at least in part from your work injury, you are entitled to workers' compensation coverage for your psychological care and disability.

Q6.

I suffered an injury to my leg and as a result have walked with a bad limp for the last year. My back has begun to bother me and the doctor says that my back has been aggravated by the severe limp. Am I covered for this back condition?

Yes. This is called a "super added injury." If you have a work injury and it contributes at least in part to another injury, you are entitled to coverage for this "super added injury".

Q7.

My doctor says my carpal tunnel syndrome is work related. When I reported my condition to the employer and asked for coverage, they denied my claim saying it was not work related. Can they do this?

Employers and their insurers will very often deny your condition is related to work, even though you and your doctor know otherwise. Ultimately, if you can demonstrate to the State Board of Workers' Compensation that your condition is related, you will receive coverage. If you choose to pursue a claim that has been denied you should definitely contact an experienced attorney for advice. you will receive coverage.

Q8.

I was injured in my cafeteria at work while at lunch. Another employee was injured while taking a break. Are these injuries covered?

If your lunch or other break is not regularly scheduled, or you are otherwise restricted in what you are permitted to do during your break, any injury which occurs should be covered.

As a general rule, if the lunch break or rest break was regularly scheduled and you are free to do as you wish during the break, any injuries that occur during the break are not covered by workers' comp, even if they occur on your employer's premises. In such circumstances, if the employer or someone else caused the injuries, you may have a personal injury claim not barred by workers' comp laws.

Q9.

I had clocked out of work for the day and was walking down a staircase to the building's exit when I fell and broke my leg. Am I covered under workers' comp for this?

Yes. Georgia law gives an employee a reasonable period of time to enter and leave their workplace. If you are injured, even if you are not longer on the clock, your injuries will be covered under workers' comp.

Q10.

I was on an out of state sales call for my employer when I was injured. Is this injury covered under workers' comp?

Yes. Out of state accidents are covered in Georgia if the employee is based in Georgia. Therefore, sales people, technical support workers, over the road truck drivers and others whose job requires they leave the state as part of their employment will generally be covered for any accidents that occur out of state, even after normal working hours.

Q11.

My job requires that I drive between several different job sites during the day. After finishing at one job site I was on the way to another job site when I was in a car accident and injured. Is this injury covered?

Yes. You do not have to be at the workplace when accidents occur. If you are traveling during the day due to your job requirements and are injured, you will be covered by workers' comp.

Q12.

What if I was injured going to work or going home?

Injuries which occur going to work or traveling home after you are done for the day are generally not covered by workers' comp. However, while technically not "on the clock," if you are injured while doing something for your employer's benefit, the injury should be covered. For instance, if you are injured while driving to the post office to drop off mail for your employer on the way home, your injury should be covered.

Q13.

I was injured while at a company picnic. Is my injury covered?

In order for an injury which occurs during an employment related social or recreation activity to be covered:

- a. it must occur at the workplace during a lunch or recreation period as a regular part of your employment, or
- b. your attendance at the social activity is required by your employer, either expressly or by implication, or
- c. your employer must derive a substantial benefit from the social activity beyond the improvement in employees' health and morale that is common to all kinds of recreational or social activities.

In your case, unless one of these three conditions is met, your injury will not be covered under workers' compensation. You may instead have a personal injury

claim.

If you believe you were engaged in an activity to benefit your employer when you were injured but not "on the clock," you should consult an attorney. Coverage in these cases often depends on the specific facts and how those facts are presented.

Money Benefits

If you are totally or partially disabled from working due to a job injury, or if you have a permanent impairment, you will be entitled to receive workers' compensation weekly benefits. There are three kinds of money benefits:

"Temporary Total Disability" or TTD - If you are unable to work due to your injury, you will receive a weekly benefit check equal to two-thirds of your average weekly wage. You can receive this payment up to 400 weeks from your date of accident. For accidents occurring on or after July 1, 2016, the maximum weekly TTD benefit rate is \$575.00. For accidents occurring before July 1, 2016, the chart in the Appendix lists the maximum TTD rate in effect as of the accident date.

"Temporary Partial Disability" or TPD - If your work abilities are restricted due to a work injury and you are working within your restrictions in a lighter duty job for your employer or someone else and as a result have a loss of income, you will receive a weekly benefit equal to 2/3's of the difference between your average weekly wage before the accident and your weekly wage on the lighter duty job. You can receive this payment up to 350 weeks from the date of your accident. For accidents occurring on or after July 1, 2016 the maximum weekly TPD benefit rate is \$383.00. For accident occurring before July 1, 2016, the chart in the Appendix lists the maximum TPD rate in effect as of the accident date.

"Permanent Partial Disability" or PPD - If you are injured, you may receive an "impairment rating" or percentage of the disability from your doctor in accordance with American Medical Association guidelines. If you receive such a rating and are not otherwise receiving TTD or TPD, you are entitled to receive PPD benefits. PPD weekly benefits are paid at the same rate as your TTD benefit rate. However, the number of weeks you can receive PPD benefits depends on your impairment rating and the body part affected. For example, if you have a permanent total

loss of use of your right arm but continue to work at your full wage, under workers' compensation rules you could receive 225 weeks of PPD benefits at the total disability rate. If your physician states you have only a 10% impairment to your arm rather than a total loss of use, you would be entitled to 22.5 weeks of PPD benefits.

Just as total loss of use of an arm would entitle the injured employee to 225 weeks of PPD benefits, the chart below shows the maximum weeks of PPD benefits an injured employee would be entitled to for loss of use of the scheduled body part.

Bodily Loss	Maximum Weeks
(1) Arm.....	225
(2) Leg.....	225
(3) Hand.....	160
(4) Foot.....	135
(5) Thumb.....	60
(6) Index Finger.....	40
(7) Middle Finger.....	35
(8) Ring Finger.....	30
(9) Little Finger.....	25
(10) Great Toe.....	30
(11) Any Toe other than the Great Toe.....	20
(12) Loss of Hearing, Traumatic	
One Ear.....	75
Both Ears.....	150
(13) Loss of Vision in One Eye.....	150
(14) Disability to the body as a whole.....	300

Questions

Q1.

Once my weekly benefit starts, how often will I receive a disability check?

Generally, disability benefits must be paid once a week. If the payments are being issued from within Georgia, so long as the check is postmarked by the last day of the 7 day period, it is considered timely. If issued from out of state, the check must be postmarked not later than three days before the end of the 7 day pay period.

Q2.

Am I entitled to a late fee if the employer/insurer does not pay my weekly disability check in a timely manner?

Yes. If the check is not mailed on time, the employer/insurer must pay you a 15% late penalty.

Your disability checks may not arrive the same day each week. The check must be mailed within the weekly time period, but it may be mailed on any of several different days.

Q3.

Can I recover compensation for my pain and suffering or the mental distress I have suffered?

An injured employee is not entitled to compensation for their pain and suffering, mental distress, or other items for which people injured in non-work related accidents may receive. This was a key reason for workers' compensation laws: to protect a covered employer from these claims.

Q4.

What if my injuries prevent me from ever being able to return to work? Will my benefits stop after 400 weeks?

The disability benefits will usually stop at 400 weeks whether you can return to your employment or not. However, some people have injuries that are so severe they are considered "catastrophic." Catastrophic injuries include spinal cord injuries resulting in partial or total paralysis, amputations of an arm, hand, foot or leg involving loss of the appendage, severe brain injuries, second or third degree burns over 25 percent of the body or third degree burns over five percent or more of the face or hands, and total blindness. Catastrophic injuries may include other injuries which are so severe that the injured worker could qualify for social security disability benefits. If your injuries are designated catastrophic there is no limit on the number of weeks you can receive weekly benefits.

Q5.

As a result of my being injured, my spouse has taken time from work to take care of me. Can I receive additional compensation?

You as an injured worker will not receive any additional money benefits. If the treating physician states you need home health care, your spouse may be entitled to payment for caring for you as a "home attendant." Under current State Board rules, a family member or other "non-credentialed" care giver who helps you with your activities of daily living is entitled to \$10.50 per hour up to 12 hours per day.

Q6.

Is my spouse or children entitled to receive anything for my work related injuries under workers' compensation?

Except in death cases, family members are not entitled to receive anything for "loss of consortium" or similar claims when a spouse or parent suffers a loss due to a work injury. The weekly benefits described in this section are the only funds the law requires your employer and its insurance company to pay directly to the injured worker.

The exclusive remedy bar also applies to family members. They are not permitted to sue the employer or insurer.

Q7.

How is my average weekly wage calculated?

Your "average weekly wage" ("AWW") is calculated by taking the total of all wages, salary, bonuses, sick pay, vacation pay and certain benefits (such as meal allowances) you were paid by the employer for the week period just before your date of accident and dividing this amount by thirteen. This amount is based on your gross wage and not your net or take home pay.

Q8.

What if I was on the job less than thirteen weeks when the accident occurred?

In some instances the insurer may use the average weekly wage of a co-employee who was performing a similar job with the same employer. If there are no similar co-employees, then the insurer should use the employee's agreed full time wage. For example, if the employee is hired to work forty hours per week at \$11.00 per hour, the average weekly wage is \$440.00.

Q9.

What if I had taken time off from work without pay during the thirteen week period?

Georgia law states that to use the thirteen week method, the injured worker must have worked "substantially the whole" of the thirteen weeks. If you only worked nine weeks during the thirteen week period, for example, the insurer should use the average weekly wage of a similar co-employee or your full time wage if there are no similar co-employees.

Q10.

I was injured after the holidays when we were very busy and I worked a lot of paid overtime and also received a Christmas bonus. Is the overtime and bonus included?

Yes. AWW includes any compensation you received from your employer, including wages, overtime, commissions and bonuses.

Q11.

What if I worked more than one job during the thirteen week period?

If you worked for more than one employer doing similar jobs during the thirteen weeks before the accident, the wages and other compensation you received from each job should be included in your average weekly wage. This is called "concurrent similar employment." (See "Second Jobs and Side Businesses" at page 71).

Q12.

Am I entitled to review the calculation of my average weekly wage?

Yes. If you are paid less than the maximum benefit

rate, the insurer is required to send you a “Wage Statement” with a weekly breakdown of your wages for the thirteen week period.

Q13.

Are any of the money benefits from workers' compensation taxable?

No. The weekly disability benefits of TTD, TPD and PPD are not subject to state or federal taxation. Your employer or the insurer should not deduct tax payments and you do not have to declare the income from your workers' comp claim. Consult with your tax preparer for more information.

Q14.

I receive a base salary plus commissions. Because of my injury I have not been able to meet with potential customers so even though my base salary is the same I have had a drop in commissions. Can I be compensated?

If you can show that your wage loss was due to your work injury or its restrictions, you are entitled to receive TPD benefits for the loss in income due to lower commissions.

Q15.

Does my weekly benefit check ever increase?

No. Unless there is an error in its computation, the amount of your TTD weekly check is fixed as of the date of your accident and does not increase, even for inflation. If your weekly benefit is capped at the maximum rate in effect on the date of your accident and the cap goes up, your benefit check will not increase.

Q16.

Does my weekly benefit check ever decrease?

Possibly. If your doctor releases you to limited duty, but your employer does not have work for you, your employer or their insurer has the right to send you a written notice that in one year your benefit will be lowered from your total disability rate to the temporary partial disability rate cap in effect on your accident date. Your benefit amount will decrease even though you are not working.

Q17.

My employer has a wage continuation plan which pays me if I am sick or injured and unable to work. The plan will continue my salary for up to twelve weeks. How will this affect my benefits if I am off work due to my work injury?

If your employer pays your full salary pursuant to a wage continuation plan, they do not have to pay workers' comp disability benefits at the same time.

Q18.

I have received workers' compensation benefits for over a year and things have gotten difficult for me financially. I need extra funds to pay bills and stop the creditors from threatening to repossess my automobile. Can I receive extra money to help in this situation?

If you have received weekly benefits for at least 26 weeks, you may petition the State Board for an advance payment in a specific sum. If the State Board determines that it is in your best interest to prevent extreme hardship or is essential to your rehabilitation, the Board will order the insurer or self-insured employer to pay the amount requested or some other amount.

Sometimes, it is possible to negotiate an advance

payment with the insurance company without having to file a formal petition with the State Board.

If an advance payment is made, the insurer is entitled to be repaid the advance plus five (5%) percent interest per year from future disability benefits, usually PPD benefits.

This is not a settlement of the case and should not otherwise affect your entitlement to medical care or disability benefits.

Q19.

What is a case settlement?

Sometimes it is appropriate to settle your workers' compensation case which usually means your claim will be closed in return for a lump sum payment. Closing the claim means terminating any further right to receive disability benefits, medical care, or other benefits to which you are or may be entitled.

Determining what your claim is "worth" for settlement involves an analysis of your future needs and the exposure faced by the employer/insurer. This is not a simple task. If the adjuster offers you a settlement, you should check with a qualified attorney.

Qualifying for Disability Benefits

To receive “Temporary Total Disability Benefits” or TTD benefits you must be disabled from working. Your treating physician must state you are “off-work” or totally disabled, or your physician must place restrictions on your work abilities (such as no lifting or bending) and your employer cannot or will not work you within these restrictions.

You must be out of work at least seven days before you are entitled to receive disability benefits. You will not receive benefits for this first week unless you are out at least 21 days. The employer/insurer has 21 days to make the first payment of TTD benefits.

Upon starting your disability payments, the employer/insurer is required to file a “Form WC-1, First Report of Injury” or a “Form WC-2, Notice of Payment or Suspension of Benefits” with the State Board of Workers’ Compensation to notify them of the amount of the weekly disability payment and the starting date, with a copy to you.

Be sure to obtain a form from the physician stating whether you are out of work or subject to work restrictions. Deliver a copy of the form to your employer and if on restriction, give the employer an opportunity to provide work within your restrictions. If there is no work within your restrictions, the employer is required to notify the insurance company and benefits will be paid to you.

If your employer does have work for you within your restrictions, but you receive less than your average weekly wage, you will be entitled to receive “Temporary Partial Disability” benefits (“TPD”) for your wage loss.

In this situation ensure that your employer notifies the insurance adjuster of your gross weekly wage.

If your TTD or TPD benefits are suspended because your physician says you are capable of working without restriction, or because you have returned to restricted work at your pre-injury wage rate, or even because you have been paid the maximum number of weeks of benefits allowed, within thirty (30) days of the suspension the employer/insurer must send a written request to your physician to issue an "impairment rating." An impairment rating is a percentage of disability from the injury to either your whole body or a portion of your body calculated according to American Medical Association guidelines. This rating is different from a work restriction and you may have an impairment rating even if you are not subject to work restrictions. Once issued, the employer/insurer has 21 days to make either a weekly payment or a lump sum payment to you, at their option. These benefits are the permanent partial disability or PPD benefits. The number of weeks of benefits you receive depends upon the body part affected and the percentage of impairment.

Questions

Q1.

Is my employer required to provide a job to me within my work restriction?

No. Under workers' comp laws, the employer/insurer is required to either provide work to you within your restrictions or to pay your weekly disability benefits. The employer/insurer has the choice of paying you benefits or providing you with a light duty job.

Aside from workers' comp laws you may have additional rights if your employer has a collective bargaining agreement with a union or if you have a written employment contract that provides additional protection. Contact your union rep or review your employment contract.

The Americans with Disabilities Act (ADA) may give you additional rights. Check with a qualified attorney or contact the United States Equal Employment Opportunity Commission (EEOC).

Q2.

I was injured on my job and working light duty when my employer's factory closed. I have looked for work within my restrictions without success. Am I entitled to disability benefits until I can find another job?

If you are subject to work restrictions and you lose your job for reasons unrelated to your injury, you may be able to qualify for disability benefits. You have to make a good faith search for other employment. If you cannot obtain a job within your restrictions, the administrative law judge that hears your case may infer from your efforts that the reason you are not working is because of your injuries and award disability benefits.

Q3.

If I need to perform a good faith job search to establish I am disabled, can I limit my search to jobs within my existing profession?

Generally speaking, you should look for jobs within your restrictions that you feel qualified to perform, whether those jobs are within your existing profession or not. For instance, if you worked as construction laborer when you were injured, you are unlikely to find light work in the construction industry. In such a case, you would need to look for jobs outside the construction industry that are light enough for you to perform.

Q4.

I was working within my restrictions when my employer terminated my employment because I could not perform my regular job. Do I have to look for a job before I receive disability benefits?

It is always a good idea to try to find other work if you are terminated or laid off. But if your job injury or restrictions played any part in your termination, you will be entitled to workers' compensation benefits without having to make a good faith search for other employment.

Q5.

Is my employer permitted to fire me because I filed a workers' comp claim?

Yes. Under Georgia law you are an "at-will" employee unless your employer has a collective bargaining agreement with a union or you have a written employment contract. An employer may fire you for any reason or no reason, but your employer may not terminate your employment for a reason that violates federal or state laws such as discrimination because of your race, sex, age, disability, or religion. There is no Georgia law which prevents an employer from terminating your employment because you filed a workers' comp claim. If you are subject to work restrictions when you are fired, you may be entitled to disability benefits under workers' comp. If your job is covered by a collective bargaining agreement, you may be able to file a

grievance. Contact your union steward or officer for more information.

Q6.

If I am receiving workers' compensation benefits when my employer fires me, will my benefits be affected?

No. If your employer terminates your job while you are receiving either weekly benefits or medical care for your work injury, this should not affect your entitlement to benefits.

Q7.

What if I am out of work receiving workers' compensation benefits and I choose to retire so that I can receive my retirement pension? Will my right to continued benefits under workers' compensation be affected by retirement benefits?

If you are totally disabled, or if your employer is not offering you light duty within your restrictions, your decision to retire should not affect your workers' compensation benefits.

Q8.

I was injured on my job just before being fired for reasons unrelated to the injury. I did not think the injury was that serious, but now it is getting worse. Am I permitted to pursue a claim for benefits?

If you were injured on your job and the injury was reported either before or after you were fired, but within the required time period, you can still pursue your claim for medical care and benefits. However, claims asserted for the first time after losing one's job are usually looked upon as suspect by employer/insurers.

Q9.

If the Social Security Administration determines I am disabled will I be able to qualify for disability benefits under workers' compensation?

A finding of disability by the Social Security Administration is a strong indication you are disabled. However, Social Security is a separate federal system. Each system has its own rules and regulations. Therefore, the Social Security Administration's (or the Veterans' Administration's) finding of disability will not automatically qualify you for disability benefits under workers' compensation. If you are disabled under workers' compensation, however, qualifying for Social Security disability is relevant to whether your work injury is "catastrophic." (See "Money Benefits," Question 4 at page 32).

Q10.

The HR department sent me a form to sign that says I am using my FMLA while I am off work and receiving TTD benefits. What is FMLA and do I have to use it while on workers' comp benefits?

The Family Medical Leave Act ("FMLA") is a federal law that applies to all public agencies, public and private elementary and secondary schools, and all employers having 50 or more employees. These employers have to provide 12 weeks of unpaid leave per year for birth and care of a newborn or the serious health condition of the employee or an immediate family member. Serious health conditions include work related injuries, so your employer may ask you to sign a form stating that you acknowledge you are using FMLA leave while off work.

Suspension of Benefits/Offers of Employment

Subject to the weekly maximum, if you are receiving Temporary Total Disability (TTD) or Temporary Partial Disability (TPD) benefits you will continue to receive the benefits until the treating physician gives you a full duty release without work restrictions, or you return to work making at least the average weekly wage you were making before your work accident. The return to work can be with your employer or a different employer.

If you are receiving total disability benefits because you are under restrictions from your physician and not working, your employer has the right to offer you work they contend is within your restrictions and you have the obligation to attempt the job. The employer must first submit a written job description to the physician, including the physical requirements of the job and the physician must then approve the job. For the approval to be valid, the physician must have examined you within the past 60 days. The employer must then make a formal written offer of employment on a form required by the State Board of Workers' Compensation. You will have ten days to report for work.

Assuming the employer takes the necessary steps and offers you a light duty job, your weekly benefit check will be suspended on the date you are to report to the job. You must attempt the job for at least eight cumulative hours, or one work-day, whichever is greater. Thereafter, if you are unable to continue because of your injuries and stop work within the first 15 scheduled workdays, your weekly benefit check should be reinstated.

If the Employer/Insurer contend you are capable of performing the job and choosing not to, they must request a hearing before an administrative law judge to seek a suspension of your benefit check.

On the other hand, if in attempting the job you are unable to continue for the greater of eight hours or one work day, your benefits will not be reinstated. More importantly, if you work at the job for more than 15 scheduled work days and must thereafter stop due to your injuries, unless your treating doctor says you are totally disabled, the Employer/Insurer will not voluntarily reinstate your weekly benefit check. You will have the burden of requesting a hearing before an administrative law judge to seek reinstatement of your benefit check.

Questions

Q1.

My doctor released me to regular duty without restriction but I am still in severe pain and not able to work. What can I do?

If you are released to full duty without restrictions by the primary workers' comp physician the insurer can suspend your weekly benefits with ten days' written notice. Ultimately, if you disagree with your physician and feel you cannot work, you must prove to the State Board of Workers' Compensation that you cannot do your regular job and obtain a reinstatement of your benefits.

Talk with your physician to make sure he or she understands the physical requirements of your job and to determine whether the doctor believes you are capable of performing these requirements. You may consider using your right to an independent medical evaluation with a different physician for another opinion concerning your work abilities. (See "Medical Care under Workers' Comp" at page 50). It is important to consult with a qualified attorney because the independent medical exam should be part of an overall strategy.

Q2.

My physician said I am totally disabled and I am receiving total disability benefits. Now, the physician says I can return to work on restriction. Will my disability benefits be suspended?

No. As long as you remain on restriction your benefits will continue. The employer does have the right to make an offer of suitable employment to you as stated above. Until this happens, however, you will continue to receive your benefits.

Q3.

What if the physician puts me on restriction but my employer does not offer me work? Am I allowed to try and find work with other employers?

Yes. There is nothing wrong with looking for work you believe you can perform. However, if you accept a job from a different employer, you need to let your present employer or their workers' comp insurer know.

If you earn with your new employer as much as you earned before your accident, your disability benefits will be suspended. If you earn less than the amount you earned before your accident, you will receive temporary partial disability benefits (See "Money Benefits" at page 29)

You should be aware that accepting employment elsewhere may affect your employment status with your original employer.

Q4.

If I am able to find new employment and my condition worsens with the new employer to the point I need additional medical care or disability benefits, which employer is responsible?

If you suffer a work injury and thereafter go to work for a new employer, the cause of your renewed request for medical care or disability benefits determines whether your original employer or new employer is responsible. If you suffer an accident with the new employer which aggravates the pre-existing injury, your new employer will be responsible for needed medical care or disability benefits.

If your new employment is more physically demanding than your original employment which leads to a gradual worsening of your condition without a new accident, your new employer will most likely be responsible for your injury.

If instead, the new job is no more difficult or physically demanding than your original job and your condition gradually worsens without a new accident, the original

employer will most likely be responsible for your new request for benefits.

Q5.

If I am on restriction, but remain out of work because my employer does not have any work for me within my restrictions, will the amount of my weekly disability check ever change?

Possibly. First, assuming your total disability benefit is calculated correctly, it will never increase as long as you remain disabled from the injury, even if the cap on weekly benefits increases.

Second, if your physician releases you to limited duty, but your employer does not have work for you, your employer or their insurer has the right to send you a written notice that in one year your benefit will be lowered from your total disability rate to the temporary partial disability rate cap in effect on your accident date. Your benefit amount will decrease even though you are not working.

An important exception is if you become totally disabled again. If you receive notice that your benefits are to be lowered, you should immediately contact a qualified attorney to determine your options and whether the employer/insurer properly followed the rules.

Q6.

I am on restriction from my physician and receive total disability benefits. My employer says they have work for me and I should immediately report to work. Do I have to report to work?

If your employer offers you a job while you are receiving disability benefits, the law requires the employer to follow the procedure noted in the beginning of this section at page 44. You are not required to report to work unless the employer sends you a written job description approved by your treating physician with "Form 240, Notice to Employee of Offer of Suitable Employment". Otherwise, the insurer cannot suspend your benefits. However, there are no Georgia laws which protect you from your employer firing you because of your refusal to report to work. A

federal law, the Americans with Disabilities Act (ADA), may protect you if you have a serious disability. Contact the U.S. Equal Employment Opportunity Commission (EEOC) for more information about your rights under the ADA.

Q7.

Will I receive advance notice that my benefits are going to be suspended?

Yes. If your benefits are going to be suspended, the insurer is required to send you a "Form WC-2, Notice of Payment or Suspension of Benefits" at least ten days before the date of suspension. An exemption to this rule is if you actually return to work following a full duty or limited duty release from the physician. In that case, your benefits will be suspended as of the day you start work, whether or not the WC-2 was sent ten days earlier.

Q8.

Will a release to full duty by my treating physician affect my right to continued medical care?

No. Your entitlement to disability benefits is separate and apart from your entitlement to continued medical care. If you are released to full duty, or if your weekly benefits are suspended for some other reason, you are still entitled to continued medical care for your injury

Medical Care Under Workers' Comp

If you are injured on the job, you are entitled to medical care for your injury without co-pays or deductibles. The law gives your employer and its insurance company the right to control which physicians treat you. Your employer must post at the worksite or office a list of treating physicians if you are injured on the job. This is known as the "panel of physicians," or "posted panel." Your employer is required to explain your rights and the procedure for use of the panel physicians if you are injured.

If your employer does not have a posted panel, if the panel is defective, or if the employer otherwise fails to correctly explain your rights to medical care, you are entitled to use any physician you choose, whether or not on the posted panel, and your employer and its insurance company will be responsible for payment of the physician's bills.

If the panel is valid and you are dissatisfied with the panel physician you chose, you are entitled to make one change to any other panel physician. After the first change, you can change physicians with the employer/insurer's consent or by filing a petition with the State Board of Workers' Compensation.

Your treating doctor is authorized to make referrals to other physicians for testing, physical therapy, surgery, counseling or other services for treatment of your injury.

Questions

Q1.

What does the panel look like and how many doctors will be listed?

The traditional panel of physicians must have a minimum of six physicians or professional physician associations. There must be a minimum of one orthopedic physician and not more than two industrial clinics on the list. The list may be blue or pink and have the words "Official Notice" in large bold letters at the top.

Your employer is required to post the panel in a prominent location at the workplace. The panel may be posted on a break room bulletin board or next to the time clock.

Your employer may be part of a workers' compensation managed care organization (WC/MCO) which is certified by the State Board. In that case, there may not be a traditional or conformed panel. Instead there will be a notice indicating the name of the WC/MCO and, among other requirements, 24-hour toll-free number which you can call to obtain medical care.

Q2.

Can my employer tell me I have to go to the local clinic before I receive other medical care?

Although this is standard practice for many companies, your employer is not permitted to restrict your right to see any of the physicians on the posted panel.

Q3.

How long can I receive medical care for my injury under workers' comp?

For accidents occurring before 07/01/13, you may receive medical care for the rest of your life if required for your injuries. For accidents occurring on or after

07/01/13, you may receive medical care for a maximum 400 weeks from the date of accident. If you never received Temporary Total Disability or Temporary Partial Disability payments for your injuries, a gap in treatment of a year or more may terminate your right to further treatment. Therefore, unless you are cured, it is important to follow up at least once a year with the authorized treating physician for your injury.

If your injuries are designated as "catastrophic" you will retain your entitlement to medical care for your injuries for life. (See "catastrophic injuries" at page 32, Q4)

Q4.

While on the job I was injured and taken by ambulance to the emergency room of a local hospital not on the panel of physicians. Is the workers' comp insurer responsible for this bill?

Your employer and their insurer must pay for medical care from your authorized physician and must pay for emergency care with any physician or hospital. Your emergency room, ambulance bills, and emergency admission to the hospital for overnight stays should be covered.

Q5.

My employer says I have to schedule medical visits when I am not working. Is that permitted?

Your employer is not permitted to interfere with your injury related medical care. If your employer refuses to allow you to attend scheduled medical appointments you can petition the State Board of Workers' Compensation to order your employer to stop this practice. However, your employer may require that you obtain your medical care at times that do not conflict with your work schedule, as long as it is reasonable.

Q6.

Can I do anything about the long time it takes for the insurance company to authorize medical care?

Delivery of medical care in the workers' compensation system is often unreasonably slow. To speed up the authorization process, your physician can send a "Form 205, Request for Authorization of Treatment or Testing" to the insurance adjuster. This is a written request to authorize the requested procedure or referral within five days or the referral is authorized as a matter of law. You can ask your physician or the medical staff to use this procedure.

You may be able to assert a claim for penalties against the insurer if the insurance company is consistently slow in authorizing medical care which interferes with your medical care. Contact an experienced attorney for advice.

Q7.

Am I entitled to a second opinion concerning my condition or treatment?

If you receive either Temporary Total Disability ("TTD") Temporary Partial Disability ("TPD") , or Permanent Partial Disability ("PPD") benefits you have the right to a second opinion by any physician you choose at the employer/insurer's expense. This is known as an "independent medical evaluation," or IME. You can exercise this right only one time. The physician may perform any test which is medically necessary unless the test was previously performed. If the test was already performed, the physician may order the test again, but the cost of the test must be under \$250.00.

The time in which to exercise your right to the independent evaluation is limited. You can exercise your right to the examination while you are receiving disability benefits and for one hundred twenty (120) days after you stop receiving benefits.

If you have not received disability benefits, there is no absolute right to a second opinion. Often, the insurer

will allow a second opinion, but they have the right to choose the medical provider.

Finally, there is not limitation on evaluations or treatment from any physician if you are able to afford and willing to pay the fees and costs.

Q8.

Will my group health insurance cover my work related injuries?

Generally, health insurers specifically exclude work related injuries from coverage. Each health plan has its own policies. You should review your health plan benefits to answer this question.

Q9.

Will Medicare or Medicaid cover my work injuries?

Medicare and Medicaid expressly exclude coverage for work related injuries. As long as you have an open claim for workers' compensation benefits, Medicare and Medicaid will not pay for medical care for the injuries. However, in some cases the injured worker may obtain Medicare coverage for their work injuries upon settling their workers' compensation claim. This issue is complex and an evolving area of the law. Questions should be referred to an experienced attorney.

Q10.

Can I change medical providers if I am dissatisfied?

As stated at the beginning of this section, you have an absolute right to change one time to any other physician listed on the "posted panel."

If you do not want any of the other physicians listed on the panel to treat you, you must either reach an agreement with your employer/insurer to select another physician, or you should file a petition with the State Board of Workers' Compensation to request the change in physician. Your employer/insurer may file an object-

ion to your request. Once the State Board makes a decision, anyone dissatisfied with that decision can file an appeal. If you cannot reach agreement with your employer/insurer, you should consult with an experienced attorney before filing a petition.

Q11.

My clinic physician says I need to be treated by an orthopedic physician. Do I have to use the orthopedist chosen by my employer/insurer?

No. There is no law that requires you to use the referral physicians chosen by the insurance company. If the authorized treating physician makes a referral to a specific medical provider, you have the right to see that health care professional. You can suggest a physician if none is designated.

Be aware that refusing to accept the medical provider chosen by your employer/insurer may cause problems with your future medical care and can cause delays in treatment if the insurer has complied with the law.

Q12.

My employer denied my injury was work related and refused to pay for medical care under workers' comp. As a result, my health insurance or I paid for the health care. Now, the workers' comp insurance company tells me they will cover my injuries, but insists that I use the physicians listed on the panel. Do I have to change physicians?

No. If the employer/insurer denied your claim for medical care under workers' compensation, they gave up the right to control the selection of your treating physician. As a result, the physician you chose will become the "authorized" physician once the claim is determined to be valid.

Q13.

My employer/insurer denied my injuries are work related so I tried to file a claim under my health insurance. What can I do if the health insurer denies my claim because it is work related?

Your employer/insurer should send you a written notice that your claim was denied. You should request the written notice if you do not receive it. Your health insurer may provide coverage if you give them a copy of this notice, subject to your agreement to repay the health plan if your workers' comp claim is later determined to be valid.

Q14.

If my employer/insurer denies my claim for disability benefits do they give up the right to control my choice of physicians?

No. If the workers' comp insurer does not deny medical coverage, but denies your disability benefits, they retain the right to control your access to medical care.

Q15.

Am I entitled to be reimbursed for driving to the medical providers?

You are entitled to 40 cents per mile for each mile you travel to and from appointments with your medical providers, including tests and physical therapy. You can also receive mileage for your trips to the pharmacist. The State Board can change the reimbursement rate based on rising or shrinking fuel costs.

Notice, Filing Requirements and Deadlines in Workers' Comp

If you are injured on the job, Georgia law requires you to notify your employer as soon as possible but not later than thirty (30) days from the date of the accident or the date you learned you have a work related injury. Unless you can provide a reasonable excuse, failing to provide the notice may bar your claim for benefits. You can notify your employer by telling your immediate supervisor in person or by phone that you were injured.

You can also have someone else, such as a family member, co-worker, or friend tell your employer.

If your employer provides you medical care and disability benefits, if needed, you do not have to file any formal notices or forms with the State board.

On the other hand, if your employer fails or refuses to provide either medical or disability benefits to you, there are time limits within which you must pursue your claim. If you miss such a deadline, your claim will most likely be barred. As a general rule, you are required to file a notice of claim form with the State Board of Workers' Compensation within one year of your date of accident. If you received authorized medical treatment for your injury under workers' comp, you have one year from the date you last received this treatment to file the claim with the State Board. If you received a weekly disability benefit check because you were out of work and the check was improperly suspended, your time to file is increased to two years from the date you last received the disability check.

One additional time limitation period is

referred to as the “change of condition” limitation period. If your weekly benefit check for lost time was properly suspended either because you were released to full duty, or returned to work on restriction at your full wage and your condition thereafter worsens to the point you are disabled, you must file a claim for benefits with the State Board not later than two years from the date your benefits were suspended, or your claim will most likely be barred.

For permanent partial disability benefits (“PPD”), you must file a claim within four years of the date you last receive a disability benefit check for being out of work.

Limitation periods or deadlines for filing are among the most complex aspects of workers’ comp law. If you have a question concerning these deadlines, it is strongly recommended you contact an experienced attorney for advice.

Questions

Q1.

How do I start a workers' compensation claim?

To start your claim, all you need to do is notify your employer of your injury. Your employer is then obligated to notify its workers' compensation carrier and provide the money and medical benefits discussed in this book.

Q2.

After I was injured, my employer told me my claim for workers' comp was filed. Do I need to do anything else?

When an employer says they have filed a claim, they generally mean they have notified their insurance company. This is not the same as filing a claim with the State Board of Workers' Compensation. You can verify a claim has actually been filed with the State Board by calling the Board.

Q3.

What date of accident is used if my injury developed gradually, such as carpal tunnel or a back condition gradually worsening because of the heavy work I do?

Some injuries are due not to a single incident but are due to repetitive trauma to your body, arms or legs. In these cases the employer/insurer may choose the date you report your condition to the employer, the date you first receive medical care for the injury or the last date you were able to work for the employer as the accident date. The actual date assigned is often arbitrary and you are not bound by the accident date they assign if another date is more appropriate.

Q4.

I injured my back on the job over a year ago. I notified my employer but did not ask for medical care and did not take any time off work. Over a year later my back has worsened to the point where i had to stop work. Is it too late to file for benefits?

No. The law is designed to encourage workers who are injured to keep working as long as possible. If the injury finally disables you from working, the last date you worked can be designated the date of accident and begin the time running on your filing deadline.

Q5.

I believe I am entitled to benefits but the insurance company refuses to pay them to me. What can I do?

If the employer/insurer refuses to pay weekly benefits to which you believe you are entitled or pay for medical care which you believe is necessary and related to the injury, you can request a hearing before an administrative law judge with the State Board of Workers' Compensation.

A hearing is a trial in which the employee and employer/insurer present testimony from live witnesses and other evidence. There is no jury in workers' compensation hearings, and no right to have a jury decide the case. By law, the administrative law judge is both judge and jury.

Q6.

I was injured on the job, but my employer refuses to make a report or notify the workers' comp insurer. What can I do to obtain workers' comp coverage?

If the employer refuses to make the report for you, you can contact the workers' comp insurer directly. The workers' comp insurer and its contact information will usually be shown on the "panel of physicians." (See "Medical Care Under Workers' Comp" at page 50). If not, you can contact the State Board of Workers' Compensation coverage desk to obtain this information.

Q7.

I had a job related back injury and was out of work receiving benefits for several months. I last received a disability check and returned to my regular job more than two years ago. Recently while at work I was lifting a heavy box and

No, it is not too late to pursue benefits. There is a two year statute of limitations from the date you last received a weekly benefit check to again pursue disability under workers' comp under your original claim. If you re-injure your back while at work in a specific new accident, as you described, you have a new claim for benefits as of the date of your new accident.

Q8.

What if I did not have a specific new accident after the two year limitations period, but was instead moved into a heavier job which gradually worsened my old back injury to the point I became disabled?

If you undergo a change of circumstances in your job duties which lead to a worsening of your pre-existing injury, you may be entitled to pursue a new claim for benefits as of the date you again became disabled or needed renewed medical care. This claim should be

treated as a new accident.

Q9.

Do I need to report my injury to my employer before seeking medical care for a work related injury?

In a non-emergency situation, any medical care you receive before your employer has notice of your injury will not be covered under workers' compensation. In emergency situations, you should be covered for the medical care you receive on an emergency basis even if it is before your employer has notice of the injury.

Death Benefits

If an employee is killed in a work related accident, or dies as a result of injuries or diseases sustained from work, in addition to paying any medical expenses incurred by the deceased employee, the employer/insurer is required to pay up to \$7,500.00 in burial expenses. Dependents of the deceased employee are also entitled to the following benefits:

a. If the spouse is the sole dependent of the deceased employee, the spouse is entitled to receive up to 400 weeks of weekly benefit checks in the same amount the deceased employee would have received if he or she survived but was totally disabled. In some cases the surviving spouse can receive benefits up to age 65 if it would provide more weekly benefits. The maximum amount a spouse without dependents can receive is \$230,000 for dates of accident after July 1, 2016. For dates of accident between July 1, 2015 and June 30, 2016 the maximum amount a spouse can receive is \$220,000. For dates of accident prior to July 1, 2015, the maximum amount a spouse could receive is \$150,000.

b. If the deceased employee has dependent children at the time of death, the children are entitled to receive the weekly benefit until age eighteen or up to age 22 if enrolled and in good standing in a post-secondary institution of higher education. A dependent child over eighteen may receive benefits if he or she is physically or mentally incapable of earning a living. There is no cap on the amount a dependent child can receive.

c. If the deceased employee leaves a spouse and dependent children, the weekly

benefit will be paid to the spouse for the children's benefit. If only dependent children remain, the children will equally divide the weekly benefit.

d. Other persons who were wholly or partially dependent on the deceased employee at the time of accident, such as a parent living with the deceased employee, are also entitled to receive up to four hundred weeks of benefits if there is no surviving spouse or dependent children. If the parent or other individual is only partially dependent upon the deceased, the weekly benefit is reduced based upon the percentage of dependency. For example, if the deceased employee paid 40% of a parent's monthly expense, the parent will receive only 40% of the weekly benefit payment.

Questions

Q1.

Is there a time limit to file a claim for death benefits?

Yes. The surviving spouse and/or other dependents have one year from the date of death to file a claim for benefits with the State Board if the insurer does not voluntarily commence benefits.

Q2.

My spouse was disabled and received weekly disability benefits before dying as a result of the injuries. Am I entitled to receive the full 400 weeks?

No. If your spouse received weekly benefits before dying from the injuries, you must subtract the number of weeks paid to the deceased from the 400 weeks. If there are more than 400 weeks until the surviving spouse turns 65 years old, the amount of benefits your spouse received before death will not decrease the number of weeks you receive benefits.

Q3.

I am receiving a weekly benefit check because my spouse died from a work related injury. If I remarry will my benefits be affected?

If the surviving spouse receiving benefits ever remarries, or lives with someone of the opposite sex in a relationship akin to marriage, which relationship includes either sexual intercourse or the sharing of living expenses, benefits will cease.

Q4.

I am under eighteen and my father died from a work related injury. I was born out of wedlock. My father was single when he died. Am I entitled to receive any benefits?

Yes. "Children" in workers' compensation law includes dependent step-children, legally adopted children, posthumous children and acknowledged children born out of wedlock.

Q5.

My wife and I have been separated over a year and planning to get a divorce. I do not have any children and have been living with my father. If I am killed on the job, I would prefer my benefits go to my father who is totally dependent on me. Is this possible?

Yes. The law provides that if you are separated from your spouse for ninety days or more prior to the accident resulting in your death, the presumption that your spouse was dependent on you can be challenged such that your benefits can go instead to your father.

Other Benefits and How They Affect Workers' Comp Benefits

Injured employees receiving workers' compensation disability benefits may qualify for other benefits, such as social security disability and short term or long term disability. In some cases the workers' compensation disability benefits and other benefits may offset one another.

Social Security Disability will not affect the amount of the weekly workers' compensation disability check, but the workers' comp benefits may offset the social security benefits. This offset will affect you if your income is below a certain level. There is a complex formula used by the Social Security Administration to determine the amount, if any, of the offset. You can learn the extent to which Social Security benefits will be offset by contacting the Social Security Administration.

Unemployment benefits may be available to injured workers who stop work due to layoff or otherwise. However, unemployment benefits are not permitted if the injured employee begins receiving workers' compensation disability benefits. If unemployment benefits are paid, and the injured worker later receives workers' compensation benefits for the same period, the employer/ insurer may be entitled to a credit against their obligation to pay workers' compensation benefits.

The interaction between workers' compensation benefits and private short-term disability ("STD") and long-term disability ("LTD") is more complex. The language in the STD or LTD policy controls the interaction between its benefits and workers' compensation benefits. Some policies state they will

not pay benefits for a work related injury. Others will pay, but will take a credit for workers' compensation benefits received by the employee. Still others will pay full benefits regardless of whether the employee is receiving workers' compensation benefits.

Georgia law gives the employer/insurer a credit for any benefits you are paid from a STD or LTD policy in direct proportion to the amount of the premium paid by the employer. For example, if a long term disability policy pays \$400.00 per week and the employer pays 100% of the LTD policy premium, the employer/insurer can take a weekly credit of \$400.00 against the workers' compensation disability payment. If the employer only pays 50% of the premium and the employee pay the other 50%, the employer is entitled to a credit of \$200 per week. If the employee paid 100% of the premium, the employer is not entitled to any credit.

Questions

Q1.

Can I apply for social security disability benefits at the same time I am receiving workers' compensation benefits?

Yes. However, there may be offsets as described above.

Q2.

How do I find out if my LTD or STD policy covers me for disability related to work injuries?

Generally, companies that provide the option of private disability insurance coverage also provide an employee handbook. Most of the handbooks will address this question and explain how the policies interact with workers' comp benefits. If the employee handbook does not answer this question, you can usually obtain this information directly from the private disability insurer. Be aware, however, that asking the private disability insurer for this information may cause the insurer to more closely examine your claim for disability benefits.

Q3.

I am trying to get my workers' compensation disability benefits started and do not have any income coming in. If my doctor says I am totally disabled, can I still apply for unemployment benefits?

To obtain unemployment benefits you must certify you are ready, willing and able to work. If your physician places you under work restriction, you can still certify that you are ready, willing and able to work so long as the job is within your work restrictions. However, if your physician says you are *totally* disabled, you will not be able to make this certification to obtain benefits. If you receive unemployment and later receive workers'

compensation benefits, the employer/insurer may be entitled to a credit for the unemployment benefits you receive. If you are receiving unemployment benefits and subsequently receive workers' compensation disability benefits, you lose your right to further unemployment benefits.

Second Jobs and Side Businesses

It is not uncommon when injured and disabled on one job to lose income from a second job, part time job or side business. Second jobs and side businesses are called “concurrent employment.” Whether you are entitled to receive benefits for lost wages or income from concurrent employment depends on whether the employment was similar to the work you performed when you were injured.

If your concurrent employment is similar to the work you performed when injured, the income you received from the concurrent employment during the thirteen weeks before your work accident is included in the calculation of your disability benefit. If the concurrent employment is different than the work you were doing when injured, income you received from the concurrent employment is not included in the calculation of your benefit amount.

For example, if you were injured while working for a landscaping company making \$300 per week and became disabled, your benefit amount would be \$200.00. If you had performed additional landscaping on the side earning \$150.00 per week, the average weekly wage would be \$450.00 and your benefit would be \$300.00.

Questions

Q1.

I work in a warehouse which requires a lot of lifting. In the evening I work for a different employer as a telemarketer. I was injured in the warehouse and cannot do the lifting, but I can still do the telemarketing job because it is a sit down job. Am I permitted to continue working at the night job even though I am getting total disability benefits?

Yes. Since your night job is not similar to the work you performed in the warehouse it is not similar employment. As a result, your income from the telemarketing job is not included in the calculation of your benefits. You are therefore permitted to continue working as a telemarketer without affecting your disability benefits.

On the other hand, if you worked at another warehouse doing lighter, but similar work to your main warehouse job, the lost income from the second warehouse job would be included in calculating your benefit. If you return to work at the lighter, second warehouse job, the income you earn will offset the disability benefits from your main job.

Q2.

What if I am already disabled from the warehouse job and on disability benefits when I first start working at the telemarketing job. Will the second job affect my benefits?

Yes. If you were not doing the telemarketing job before you were injured, it is not considered “concurrent employment.” As a result, going to work for the telemarketing firm will either reduce or eliminate the disability benefits from your workers’ comp claim.

Q3.

I am disabled and receive workers' comp benefits from my main job. My side business, which is different from my main job and much lighter, has now grown since I have put more time into it. Will this affect my weekly benefit check.

No. If your side business suffered because of your injury and you lost money from the business as a result, you would not be entitled to an increase in your workers' comp benefit. Similarly, if you increase your income from the side business, as long as you remain within your restrictions, your weekly benefit payment should not be affected.

Drug Use/Horseplay and Other Defenses to Workers' Comp Claims

Workers' compensation claims may be denied for various reasons. Sometimes, it is because the injury was not clearly work related. Other times, it may be clear the accident happened on the job, but the claim was denied because you were engaged in illegal or improper conduct at the time you were injured.

Under Georgia law, workers' compensation benefits (money and medical care) will be denied if the employee's injury or death arose from the employee's willful misconduct, including intentionally self-inflicted injuries, injuries which arose from the employee's attempt to injure another or injuries which arose from the willful failure to use a safety appliance or to perform a duty required by statute.

Benefits may also be denied if the employee was engaged in horseplay at the time he or she was injured or if the injury was due to the employee being intoxicated by alcohol, marijuana or a controlled substance at the time of the accident. Your employer may require a drug or alcohol test if you report a work related injury.

Benefits may also be denied if you fail to disclose a pre-existing condition when you were hired and you were later injured and became disabled due in part to the pre-existing condition. However, this duty to disclose prior conditions will only arise if you

were questioned about prior conditions by your employer at time of hire or in a pre-employment physical. For example, if you begin work for a new employer while under restrictions from recent back surgery and fail to disclose this condition in a pre-employment physical when questioned about pre-existing conditions, your claim for benefits will most likely be barred if you later aggravate your back condition while working at your new job.

Questions

Q1.

While working, my supervisor and I had an argument about work. He punched me, knocked me down and injured my back. Am I covered?

Yes. If a co-employee or a supervisor injures you in an attack at work and the attack arose out of some dispute related to the job, your injuries are covered under workers' comp. You are prohibited from suing the individual who attacked you but you can take out an arrest warrant on the attacker.

If instead the assault is due to a personal dispute unrelated to your job, it does not arise out of your employment and your claim will most likely be denied.

Q2.

I was at a party last week and smoked some pot. This week while driving a forklift at work I lost control of the forklift, crashed into some boxes and injured my back. I was given a drug test and it came back positive for marijuana. The employer denied my claim, even though I was not intoxicated at the time of the accident. Do I have a claim for benefits?

If you test positive for marijuana or other controlled substance pursuant to a drug test taken within eight hours of an accident, or positive for alcohol pursuant to a test taken within three hours of an accident, it will be presumed your injury was caused by intoxication and you will have the burden of proving you were not intoxicated at the time of the injury. If you cannot disprove you were intoxicated, your claim will be denied.

Q3.

What if I refuse to take a drug or alcohol test immediately following a work accident?

Unjustifiably refusing to submit to the drug or alcohol test has the same effect as testing positive for drugs or alcohol. You will be faced with the presumption you were intoxicated and the intoxication led to your accident. You will have the burden to prove you were not intoxicated.

Q4.

My employer denied my workers' compensation benefits because I violated a safety rule which led to an accident and my injury. Do I have a claim?

Yes. Failure to follow a safety rule is not a defense to workers' comp claims. The system is a no-fault system. Even if you violated job rules or your own negligence caused the accident, you are entitled to benefits.

However, if you intentionally and willfully violate the safety rule knowing that injury was very likely, your employer can use that as a possible defense to your claim. This is a fairly rare circumstance and if your claim is challenged on this basis, it is extremely important that you obtain legal advice from an attorney experienced with workers' comp.

Attorneys and Workers' Comp

The Georgia workers' compensation system is complex and often confusing and frustrating to injured workers. Issues arise in workers' compensation claims, such as disputes concerning medical care or disability benefits, which require knowledge of the laws of Georgia. Although you are not required to hire an attorney to represent you in workers' compensation claims, very often it is in your best interest to do so.

Insurance companies pay millions of dollars to attorneys to represent them and ensure they are protected and receiving the full benefit of the laws. It is therefore important that injured employees have someone whom they can trust to advise and represent them in their claims.

Questions

Q1.

How much do lawyers charge for workers' compensation claims?

Georgia Law regulates attorneys' fees in workers' compensation claims. An attorney may not charge more than \$100.00 in a workers' comp claim without obtaining approval of the fee from the State Board of Workers' Compensation. Attorneys who represent employees in workers' comp claims work on a "contingent fee basis" which means they will only receive a fee if they recover benefits for the injured worker. The amount of the fee is limited by law to 25% of weekly benefits or settlements recovered by the attorney. No fee can be charged for recovery of medical care or reimbursement of medical expenses.

Q2.

The adjuster told me that I do not need an attorney and that she could answer my questions. Should I listen to the adjuster?

Adjusters cannot give legal advice. Also, remember that adjusters are mainly concerned about protecting their insurance company, and not the injured worker. It costs you nothing to contact an attorney to whether using an attorney is appropriate.

Q3.

What kind of attorney should I talk to about my workers' compensation claim?

Just like doctors, attorneys are specialized. Questions concerning workers' compensation matters should be addressed to attorneys who are experienced in workers' compensation law and whose practices are limited primarily to the representation of injured employees.

Q4.

I am currently receiving workers' compensation disability benefits and the workers' comp insurance company is paying for my work related medical care. If everything continues to go smoothly, is there any reason to hire an attorney?

The workers' compensation system in Georgia is extremely complex. Injured workers have many rights and options under the law which they may not know about. If you have a serious injury, or if you expect to be out of work for an extended period because of your injuries, it is recommended you speak with an attorney. In your case, you could hire an attorney and feel confident that you will have someone to advise you of your rights and obligations through every step of your claim. You will have the added benefit of knowing that if any problems arise with your benefits or medical care, you will have an advocate who will be able to act quickly to help resolve any such problems.

Q5.

How do I choose a qualified attorney who is right for me?

No matter what led you to speak with a particular attorney, finding one who is right for you depends not only on the attorney's experience, but whether you feel comfortable working with that attorney. The attorney/client relationship in workers' compensation claims may last only a few months, or may last for years. Do not be shy about asking questions. What sort of experience does the attorney have? Does he or she answer your questions about your claim satisfactorily? Is the attorney someone you feel you can trust?

You may not always be pleased with the answers you receive, but you should feel confident that the attorney is honest with you and will look out for your best interests.

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Appendix

MAXIMUM DISABILITY RATES

BENEFIT	7/1/96	7/1/97	7/1/99	7/1/00	7/1/01	7/1/03	7/1/05	7/1/07	7/1/13	7/1/15	7/1/16
TTD	300.00	325.00	350.00	375.00	400.00	425.00	450.00	500.00	525.00	550.00	575.00
TPD	192.50	216.67	233.33	250.00	268.00	284.00	300.00	334.00	350.00	367.00	383.00
PPD	300.00	325.00	350.00	375.00	400.00	425.00	450.00	500.00	525.00	550.00	575.00

Maximum rates are effective as of the dates shown at the top of the columns

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