
Should A Lawyer Be Hired On Every Workers' Comp Case?

Many on-the-job accidents may not result in claims for which the injured worker needs to be represented by a lawyer. However, because many lawyers do not charge a fee for an initial consultation on a personal injury or workers' compensation case, any employee who is injured on the job should speak with a lawyer to understand his or her rights under the workers' comp system.

When going to consult a lawyer, the injured worker should take as much information as possible. This information should include:

- the worker's social security number, address, telephone number, education and job history and a description of the worker's job;
- the employer's address and type of business;
- the names, addresses and telephone numbers of all potential witnesses;
- the names, addresses and telephone numbers of any doctors consulted; and
- as much information as possible about the accident and any similar accidents sustained by the worker or by any other employees.

Lawyer's Fees

Before a lawyer can charge a fee on a workers' compensation case, the fee must be approved by the South Carolina Workers' Compensation Commission. The Commission's rules require that no lawyer's fee exceed one-third of the amount recovered. The one-third must be based on the amount disputed and may not be calculated on weekly benefits the employer voluntarily paid to the injured worker.

ADDITIONAL LEGAL TIPS AVAILABLE

To access prerecorded information on other legal issues, call the South Carolina Bar's LawLine. If you are calling from the Columbia area, dial 771-0011. If you are calling from anywhere else in South Carolina, dial 1-800-521-9788. Follow the recorded instructions.

SOUTH CAROLINA BAR LAWYER REFERRAL SERVICE

If you need a lawyer, contact the South Carolina Lawyer Referral Service from 9 a.m. to 5 p.m. Monday through Friday. Call 1-800-868-2284 or if you are in Richland or Lexington Counties, call 799-7100.



Provided as a public service of the South Carolina Bar

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WORKERS' COMPENSATION



AND THE LAW

Workers' Compensation

The South Carolina Workers' Compensation Act provides a system for workers injured on the job to receive medical care and financial benefits without having to prove anyone was at fault.

The law applies to most workers who work for an employer with four or more employees regularly employed in the same business. However, some workers are exempt.

If the employee is hurt on the job, benefits provided by the laws are the worker's only remedy. Under most circumstances, employees who are covered by the Act cannot sue an employer for injuries received on the job. However, if a third party, such as the manufacturer of a defective machine, is responsible for the injury, then the employee can sue the third party and also file a workers' compensation claim.

Another example would be a worker who is injured on the job in an auto accident by a driver who works for another company. The injured worker could file a workers' compensation claim and bring a separate action against the driver of the vehicle that caused the injury. When a worker recovers money from a third party, he or she must reimburse the workers' compensation insurance company for any benefits received. Usually the carrier will not expect to be paid back dollar for dollar.

Benefits

Primary benefits are provided to an injured worker. The worker is paid something for the time he or she is out of work. However, workers are not entitled to compensation for the first seven days they cannot work, unless the disability period extends for more than 14 days. The worker's medical expenses are paid by the employer or the employer's insurance company. Workers' compensation also pays when certain parts of the body are permanently injured, even if the worker can still perform the job requirements. For example, a worker who suffers a back injury on the job is entitled to compensation for the permanent back injury—even if there is only a partial loss of use and the injury does not keep the worker from returning to the job.

How Will I Be Compensated?

Workers who qualify for workers' compensation receive two-thirds of their average salary, not to exceed a maximum weekly amount that is set by the Workers' Compensation Commission.

Benefits paid under the Act are not taxable. Benefits are payable for a maximum of 500 weeks for all injuries except those that result in brain damage or cause the worker to be paraplegic or quadriplegic. For these types of injuries, benefits are paid for the lifetime of the worker.

If an employee returns to light duty or works part-time during recovery and the wages are less than the amount normally received, the employee is entitled to compensation for two-thirds of the difference between his or her normal salary before the injury and the amount received for light duty, until maximum medical improvement is reached.

All medical expenses for a job-related injury can be paid by workers' compensation, even if the worker does not miss any work.

What Types Of Accidents Are Covered?

To be eligible for workers' comp benefits, the worker must have been injured while working within the scope of his or her employment. Generally, any injury suffered by an employee at the employer's place of business during working hours qualifies. An injury that occurs while traveling to and from work usually does not qualify. However, if the employer provides transportation to a work site and the injury occurs while in route, the injury is within the scope of employment. Whether an accident occurs within the scope of employment depends on how much control the employer had over the circumstances when the accident occurred.

The workers' comp laws cover such accidents as falling from a high place or getting foreign matter in an eye. Compensation is also provided for injuries caused by normal work requirements, including back injuries from lifting, occupational diseases resulting from exposure to harmful substances in the workplace, and physical and emotional problems resulting from job-related pressures. Repetitive trauma injuries, such as carpal tunnel, are

usually considered medical claims only (payment of medical bills), and no permanency is awarded.

The employer may not be responsible if it is proven that the injury was caused by intoxication from alcohol or drugs, or if the employee failed to use safety equipment provided by the employer.

What To Do If An Accident Occurs?

If injured on the job, a worker should immediately report the injury to a supervisor. Under the workers' comp laws, the employer has the right to choose which doctor treats an injured employee. The employee must accept the treatment provided or lose the right to compensation until he or she agrees to accept the treatment. The employee has the right to see his or her own physician but is responsible for the costs.

When reporting an accident, the worker should note the time, place and circumstances; the extent of the injuries; and names of witnesses. The worker also should keep a copy of this information in case the employer later denies the workers' comp claim. The employer's workers' comp insurance company will pay the doctor directly. If the worker is disabled more than seven days, the insurance company normally will begin making payments to the worker within several weeks after the injury.

The worker must report an injury to the employer within 90 days. To receive benefits, a claim must be filed within two years of the date of the injury. Some circumstances may extend time limits.

The Commission

The South Carolina Workers' Compensation Commission has seven members who are appointed by the governor. Every claim is assigned to a commissioner, who will hold a hearing within several months to determine if the claim is valid. The commissioner may also decide if the employee is entitled to any benefits; if temporary benefits should be continued or stopped; if an employee is capable of returning to work; and the award for any permanent disability. The Commission is located at 1612 Marion St., Columbia, SC 29201. (803) 737-5700.