**Cullen, Haskins, Nicholson**

 **& Menchetti, P.C.**

**EMPLOYEE RIGHTS**

**UNDER**

**THE ILLINOIS WORKERS’**

**COMPENSATION ACT**

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**A GUIDE TO THE**

**BENEFITS PROVIDED BY THE**

**ILLINOIS WORKERS’**

**COMPENSATION ACT**

The Law Firm of Cullen, Haskins, Nicholson & Menchetti, P.C. concentrates in representing employees who have been injured on the job. The information in this pamphlet is intended to answer some of the most common questions asked of us.

You must understand that there are many provisions of the Workers’ Compensation Act and thousands of cases interpreting it. Each injury is factually different. Therefore, this guide should **not** be used to settle your claim or represent yourself in an action against your employer.

In 2005 ***and 2011*** the Illinois Workers’ Compensation Act was substantially overhauled. We helped write ***these*** new ***laws*** and know **these changes** inside and out. We can provide you with the most current information available.

If you have any questions about your rights or benefits, feel free to call us. There is no charge for the initial consultation. You should contact a lawyer who concentrates in Workers’ Compensation before you sign any document which could affect your rights.

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**I. THE BASIC QUESTIONS**

1. *AM I AN EMPLOYEE* ?

Most people employed in the State of Illinois are covered under the Workers’ Compensation Act. If you were hired in Illinois or your main employment is in Illinois, you are probably covered by the Illinois Act, even if the accident happened out of the State of Illinois.

1. *DO I HAVE A CASE* ?

Generally, if you are injured on the job, you are entitled to the benefits under the Act. Also, if you contact a work-related disease, you may be covered under the Occupational Disease Act.

1. WHAT ARE THE BENEFITS ?

There are three main benefits under the **WORKERS’ COMPENSATION ACT**. They are:

1. MEDICAL EXPENSE BENEFITS;
2. TEMPORARY TOTAL DISABILITY BENEFITS; and
3. PERMANENT PARTIAL DISABILITY BENEFITS.
4. *WHAT INJURIES ARE COVERED* ?

All job-related injuries or diseases, with few exceptions, are covered by the Workers’ Compensation Act. If an injury is caused by an accident that arose out of and in the course of the injured person’s employment, then it is covered under the Illinois Workers’ Compensation Act. In other words, the employee must be engaged in some task in the furtherance of the employer’s business and not some personal business of his own. An injured worker may even be entitled to full benefits if the accident was his own fault.

II. **REPORTING THE INJURY**

1. *HOW DO THE BENEFITS BEGIN* ?

Following the injury, the MOST IMPORTANT thing you must do is REPORT THE INJURY TO YOUR EMPLOYER. The Workers’ Compensation Act requires that you report the injury to your SUPERVISOR (NOTICE TO A CO-WORKER IS NOT NOTICE TO THE EMPLOYER)*within 45 days of the date of the injury.*

2.

1. FAILURE TO REPORT THE INJURY WITHIN THE 45 DAY TIME LIMIT CAN RESULT IN A LOSS OF ALL BENEFITS UNDER THE WORKERS’ COMPENSATION ACT.

FOR YOUR PEACE OF MIND, DO NOT HESITATE**.**  WHEN IN DOUBT, REPORT THE INJURY IMMEDIATELY TO YOUR SUPERVISOR IN WRITING AND KEEP A COPY OF THE REPORT.

III. **MEDICAL EXPENSES BENEFITS**

1. *WHAT DOES THE EMPLOYER, OR ITS INSURANCE COMPANY, HAVE TO DO FOR ME ?*

Provide all necessary medical care that is reasonably required to cure you of the injuries. Often, there are disputes over whether the medical care is necessary or whether the cost was reasonable. The resolution of that dispute could be determined by an Arbitrator at the Workers’ Compensation Commission in a formal hearing.

1. *DO I HAVE THE RIGHT TO SEE MY DOCTOR ?*

**ABSOLUTELY**. However, you are limited to two (2) choices. One choice in the PPP network, one outside of the network.The employer is also responsible for payment of the bills of any doctors or hospitals or medical care providers that you may incur because of referral by your chosen doctor(s). Of course, you may choose to be treated by the employer’s chosen physician(s).

**If your employer has a Preferred Provider Program, you are limited to one doctor choice outside of the PPP network. Make it count by consulting with an attorney about your choice.**

EMERGENCY TREATMENT IS NOT GENERALLY CONSIDERED ONE OF THE WORKER’S CHOICES

1. *WHAT SHOULD I TELL THE DOCTOR ?*

Be specific about the facts of the work accident and tell the doctor how it happened. Tell the doctor that it happened at work.

1. *WHAT IF THE EMPLOYER OR ITS INSURANCE COMPANY SENDS ME FOR AN EXAM ?*

The Workers’ Compensation Act provides that the employer, or its insurance company, is absolutely entitled to a medical exam. If you do not go for a medical exam, the total temporary disability payments could be stopped. The insurance company may stop paying your TTD benefits.

3.

1. *WHAT DOES REHABILITATION MEAN UNDER THE ACT ?*

Rehabilitation rights are technical. These rights cannot be explained fully in a guide such as this. If your employer or its insurance company suggests rehabilitation, you should discuss the offer with an attorney *WHO CONCENTRATES* in Workers’ Compensation cases. Only after a full investigation of all the facts and your injuries can the lawyer render an opinion regarding the feasibility of a rehabilitation program.

IV. **TEMPORARY TOTAL DISABILITY (TTD)**

1. *WHAT ARE TEMPORARY TOTAL DISABILITY BENEFITS ?*

These benefits are paid to the worker during the entire period he is off work recovering from the injury. The rate is based upon the worker’s average weekly wage before the accident, including in some cases, overtime. It is subject to certain maximums and minimums that can be explained best by your attorney. People who hold two or more jobs are entitled to a compensation rate based on the combined wages of all employments, provided the employer knows the employee was working two or more jobs. There is no limit to the length of time you can collect TTD payments. However, when a doctor releases you to go back to work, TTD payments may stop.

1. *WHAT IF THE DOCTOR RELEASES ME FOR “LIGHT DUTY” ?*

The employee should return to work if light duty is available through the employer or within the customary trade. If not available, then the employer, or its insurance carrier, must continue the TTD payments.

1. *IS THERE A WAITING PERIOD ?*

Yes. There is a three (3) working day waiting period. If you are off work for more than fourteen (14) days, the employer, or its insurance carrier, will compensate you starting the day after the accident.

1. *WHAT IF I RETURN TO WORK, THEN LOSE MORE TIME ?*

If you return to work and then have to take time off because of your injuries, you should be paid for the time off. Advise your employer and your treating physician that the time off was due to the earlier injury.

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V. **PERMANENT PARTIAL DISABILITY (PPD)**

1. *WHAT ARE PERMANENT PARTIAL DISABILITY (PPD) BENEFITS ?*

PPD benefits cover the complete or partial permanent loss of use of a part of the worker’s body. The compensation rate is set by the Workers’ Compensation Act based on your average weekly wage, and is subject to a minimum and a maximum PPD rate, which is different from the temporary total disability minimum and maximum limits.

The Workers’ Compensation Act provides a schedule for the number of weeks of compensation allowed for the total loss of use of each part of the body, and for the maximum and minimum rates. If you need a copy of these rate schedules, please contact our office, and we will be glad to mail a copy to you.

1. *HOW IS PERMANENT PARTIAL DISABILITY COMPUTED ?*

The Workers’ Compensation Act divides the body up into various parts. The percentage of loss of use of the injured part is determined by reviewing the medical records relating to the injury to determine how well it is healed. You may be entitled to these benefits even though it “seems fine”. This percentage is multiplied by the maximum number of weeks of disability for the part of the body injured. Each injury is different and the amount of disability can be determined only after a full disclosure of all the facts to your attorney and a review of the medical records and reports.

**New provisions in the law allow the use of certain Guides relating to impairment. Consult with a lawyer who is familiar with the Guides.**

VI. DEATH BENEFITS

1. *IF I DIE ON THE JOB, WHAT ABOUT MY SPOUSE AND CHILDREN ?*

A worker’s spouse, certain children or totally dependent parents who qualify for death benefits are entitled to certain weekly payments. In some instances, grandparents, grandchildren or collateral heirs may be entitled to benefits.

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1. *WHAT ARE THOSE PAYMENTS ?*

Again, it depends on the facts and circumstances of the case. The variables are too numerous to list. You should contact an attorney **concentrating** in Workers’ Compensation to discuss this in greater detail.

**VII. REDUCTION OF EARNINGS**

1. *WHAT IF MY EARNINGS ARE PERMANENTLY REDUCED ?*

Injured workers who now earn less money as a result of the work accident may be entitled to receive a percentage of the difference between the average weekly salary before and after the accident. **For injuries after September 1, 2011, these benefits are limited to age 67 or 5 years, whichever is greater.**

**VIII. WHAT SHOULD I DO TO PROTECT MYSELF ?**

1. Give written notice of the accident to the employer and keep a copy; and
2. Cause the claim to be filed within three years of the date of the accident or two years from the date you last received workers’ compensation benefits, whichever date is later.

IF YOU FAIL TO FILE WITHIN THE ABOVE TIME PERIOD, OR FAIL TO GIVE NOTICE, ALL WORKERS’ COMPENSATION BENEFITS COULD BE LOST.

**IX. MISCELLANEOUS QUESTIONS**

1. *WILL I LOSE MY JOB FOR FILING A CLAIM ?*

No. The Act provides that it is unlawful for any employer or insurance company to interfere with, restrain, coerce or discriminate against any worker in any manner because the worker has chosen to file a claim.

1. *WHEN IS A CLAIM PERMANENTLY CLOSED ?*

Only after settlement contracts are signed and approved by the Illinois Workers’ Compensation Commission. These forms are pink, and you should never sign anything, let alone anything pink, without first discussing it with your attorney.

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1. *SHOULD I GIVE A STATEMENT TO THE EMPLOYER OR INSURANCE COMPANY ?*

**ABSOLUTELY NOT!** If you are asked to give a statement, simply have the person asking you to do so call your attorney’s office for any information they may need. If you give a statement, it may be used as evidence against you either at a hearing at the Workers’ Compensation Commission or in any case you may file against someone else because of the injuries received.

1. *SHOULD I SIGN AN AUTHORIZATION OR ANY DOCUMENT FOR THE EMPLOYER OR ITS INSURANCE COMPANY ?*

No. Any document you may sign could cause problems with your claim. Check with your attorney.

1. *SHOULD I APPLY FOR UNEMPLOYMENT COMPENSATION ?*

If you apply for Unemployment Compensation, you are stating you are willing and able to work. The insurance company can then use that application against you to show that you are not entitled to weekly workers’ compensation benefits. Also, you may be penalized by the Department of Employment Security for filing a fraudulent unemployment compensation claim.

**X. BENEFITS OTHER THAN WORKERS’ COMPENSATION**

1. *IS THIS ALL I AM ENTITLED TO ?*

Depending on the facts of the case, there may be persons other than your employer, called third parties, who are really responsible for the injury you have sustained. You would then have the right to pursue another case called a **THIRD PARTY CLAIM.**

1. *WHAT KINDS OF THIRD PARTY CLAIMS ARE THERE ?*

Basically, there are two kinds of third party claims involved when a worker gets hurt.

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1. NEGLIGENCE

The law provides that if someone is negligent in the way that he does something that causes you to sustain injury, you may be entitled to damages. These damages are entirely different from the benefits you are entitled to under the Workers’ Compensation Act.

2. PRODUCTS LIABILITY

Generally, if a product (tool, ladder, crane, etc.) is defective or fails to operate correctly causing you injury, you may be entitled to damages for any harm that is caused to you for said failure. There may be other statutory claims.

1. *HOW DO I KNOW A THIRD PARTY CLAIM ?*

The only way to determine whether you have a claim against some individual or company besides your employer is to have a conference with an attorney who concentrates in those types of cases. This conference should be done as quickly as possible so that evidence may be preserved and witnesses can be interviewed.

1. *WHAT DAMAGES AM I ENTITLED TO ?*

An exhaustive discussion of these benefits is impossible in this brief guide, but they are generally nature and extent of injuries, pain and suffering, disability, loss of earnings, medical expenses, etc. To know exactly what you are entitled to, you should discuss it with your attorney.

1. *WHEN SHOULD A LAWSUIT BE FILED ?*

Generally, you have two years to file a claim. In some instances you have less time than that. Time is very important, so an attorney should be contacted immediately.

1. *WHY SHOULD I CONTACT AN ATTORNEY IMMEDIATELY ?*

An attorney who concentrated in Workers’ Compensation and injury law should know about the accident as soon after it happens as possible. It is important that your attorney get the facts together so that witness’ memories will be fresh and photographs and evidence can be preserved in their original state after the accident.

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That does not mean that you should ignore older cases, but you should try to discuss the matter with an attorney as soon as possible so that your case **is** not barred by the Statute of Limitations, and evidence is not lost. There is a lengthy backlog of cases at the Workers’ Compensation Commission and in the Court. The longer you wait to file, the longer you will have to wait to resolve your claim.

1. **SOCIAL SECURITY DISABILITY BENEFITS**
2. AM I ENTITLED TO SOCIAL SECURITY DISABILITY BENEFITS,

EVEN THOUGH I’M RECEIVING WORKERS’ COMPENSATION BENEFITS ?

Yes, but the amounts you receive could be reduced while you are receiving Workers’ Compensation benefits.

1. *WHEN SHOULD I FILE ?*

A written application should be filed as soon as it appears evident that you will be disabled for over one year. The date of filing an application may determine the date of your benefits.

1. *DO I NEED AN ATTORNEY TO PROTECT MY RIGHTS AT SOCIAL SECURITY* ?

Yes. It is a legal proceeding and your attorney, who is experienced in those claims, knows what steps to take to protect your rights.

1. **DO I REALLY NEED AN ATTORNEY ?**

Immediately after the injury, you become involved in a legal process which you may not understand.

IT IS VERY IMPORTANT THAT YOU TALK TO AN ATTORNEY WHO CONCENTRATES IN WORKERS’ COMPENSATION SO THAT YOU KNOW WHAT YOUR RIGHTS ARE.

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Only an attorney can give you the answers to your questions. Do not rely on your employer, or its insurance carrier, to immediately offer you the maximum benefits to which you are entitled or to answer your questions fairly.

Remember that insurance companies are in business to make money. Every dollar paid in benefits to you reduces their profits.

We would be more than willing to discuss the matter with you and explain your rights.

We concentrate our practice in the types of claims that are discussed in this guide.

There is no charge for the initial consultation.

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