

# WORKERS' COMPENSATION FOR D.C. PRIVATE SECTOR WORKERS



## WHAT IS WORKERS' COMPENSATION?

- Workers' compensation is a "no-fault" insurance system for employees injured on the job. Employees receive medical care and benefits in exchange for not suing their employers in court.
- You may be compensated if the injury was "caused" by the employer, a third party, a natural disaster or maybe even yourself. You are automatically entitled to certain benefits whenever you suffer from an accidental personal injury "arising out of" and "in the course or scope of" your employment.
- Fault on the part of the employer and/or yourself generally doesn't matter. You do not have to prove that the employer was at fault, and the employer cannot avoid paying workers' compensation if you were careless.
  - However, you may be prevented from receiving workers' compensation benefits if your employer can show that you were *intoxicated* or *willfully disobedient* to your employer's instructions.

## WHO IS COVERED BY WORKERS' COMPENSATION?

- Employees of private companies in D.C. are covered by the workers' compensation system.
- Coverage is limited to those having the status of an employee and does not include independent contractors.
- The D.C. workers' compensation plan does not cover city employees or employees of the federal government. These individuals are covered under separate programs.
- To receive D.C. workers' compensation benefits, your injury must occur in D.C., most of your work must have been completed in D.C., or your employer must be located in D.C. If you are not covered by the D.C.'s workers' compensation plan, you are likely covered by another state's system.
- Injured workers who are undocumented are still eligible to receive workers' compensation benefits in D.C.

## WHAT ARE SOME OF THE CONS OF RECEIVING WORKERS' COMPENSATION BENEFITS?

- In exchange for the certainty of receiving workers' compensation benefits regardless of fault, you are deemed to have given up the right to sue your employer for any injury the statute covers.
  - You may, however, still be able to sue a person or company other than your employer under another theory of liability, such as product liability or medical malpractice.

## WHAT TYPES OF INJURIES CAN BE COMPENSATED?

- The injury or harm to the worker must "*arise out of*" and "*in the course of*" employment. Injuries occurring during the performance of work duties generally are said to arise out of employment. This includes injuries that occur during paid work time, while you are on working premises, and where there is a substantial link between the injury and the workplace.
- Covered injuries include: (1) specific physical injuries, such as a broken leg; (2) occupational diseases like lung disease; and (3) injuries from the job that arise gradually, like those caused by such repetitive, continuous motions.
- If your job worsened an injury you already had, you may still be eligible for workers' compensation.
- If your injury was caused by the willful act of a third person and resulted from your employment, you are covered by the D.C. workers' compensation system. You may also be able to recover additional damages against the third person and should consider consulting a personal injury lawyer.
- Injuries occurring while traveling en route to/ from your work and home are non-compensable. However, they are compensable if they are the result of traveling *for* work, such as when driving a bus out of town as part of your job.
- You can be compensated for emotional damages if you can prove that a particular incident or situation at work was so stressful that any worker would suffer an emotional injury like yours.
- Survivors of workers who are killed as a result of job-related accidents are entitled to compensation.
- Injuries that arise out of workplace harassment usually are not compensable as workers' compensation. However, you may be able to recover under D.C. or federal anti-discrimination law, or a collective bargaining agreement.

## WHAT TYPES OF COMPENSATION ARE AVAILABLE?

- Under the act, your employer or its insurance carrier is required to provide **wage loss benefits**, if appropriate, and **payment of all medical expenses** related to your compensable injury. In appropriate cases, your employer or its insurance carrier may also be required to pay for scheduled loss benefits, vocational rehabilitation, death benefits, and/or attorney's fees.
  - **Wage replacement:** You may be entitled to a wage replacement of up to 2/3 of your previous salary when you have temporary or permanent partial disability. This lasts while you cannot work for up to 500 weeks (9.6 years). Compensation must be made within 14 days of the knowledge of the injury and every two weeks thereafter unless such

payment is disputed by your employer. As of January 1, 2014 the maximum weekly rate is \$1441.80 and the minimum weekly rate is \$360.20.

- **Total v. Partial Disability Benefits:** If your disability is total, you should be paid 2/3 of your monthly pay while you are totally disabled. If a disability is partial, you are paid monetary compensation equal to 2/3 of the difference between your weekly pay before your injury and your weekly pay after your injury.
- **Permanent v. Temporary Disability:** A disability is permanent if it has continued for a lengthy period and it appears to be of lasting or indefinite duration. An injury is not permanent if recovery merely requires a typical healing period. If an injury is permanent, you are entitled to a “scheduled award” based on payment “schedules” under D.C. law. The “schedule” lists values for the loss of specific disabled body parts.
- **Death Benefits:** Most often, the compensation to survivors of those who are killed as a result of job-related accidents is an effort to replace the lost stream of income to the decedent’s surviving dependents of up to 50% of wages. Children are each entitled to an additional 1/6 of the wages up to a maximum of 2/3 of the deceased worker’s wages. The employer must also pay for reasonable funeral expenses, up to \$5,000.
- **Medical Services:** Medical care for the injury must also be paid for. This includes travel expenses incurred while going to and from the doctor, medicine, false teeth, eye-glasses, and/or prosthetics.
- **Vocational rehabilitation:** You may be entitled to reimbursement for the cost of rehabilitation services that will lead you to reinstatement to a position similar to the one held before the injury occurred.
- **Continued Health Insurance:** If you had health insurance provided for by your employer at the time of injury, your employer must continue to provide this insurance and s/he must pay all premiums (including the employee-paid portion) for as long as you are eligible for workers’ compensation benefits.
- **Note:** Compensation is not paid for the first three days of work that you miss *unless* you miss more than 14 days.

### HOW DO I RECEIVE WORKERS’ COMPENSATION BENEFITS?

- You must give notice to your employer within **30 days** of the injury or within 30 days of becoming aware of the relationship between your injury and your employment.
- You must also file notice with the D.C. Office of Workers’ Compensation at the D.C. Department of Employment Services within **one year** of the injury, but no sooner than three days from the injury. The notice should be in **writing** and signed and can follow the template found at [does.dc.gov/node/156082](http://does.dc.gov/node/156082).
  - If you miss the 30 day deadline to provide formal written notice to your employer but the employer still knew about the injury, you may still be able to pursue your claim. Mental incompetence can extend the time limits, but only if you have no guardian or other authorized representative.
- Even if the injury occurs at work and during work hours, you may still be required to present medical evidence. You should always request a written medical opinion from your treating physician explaining in medical terms the connection between the injury-causing event at work and the resulting injury. Make sure your doctor writes his/her opinion early enough so that you can meet your filing deadline. You can write a letter to your doctor asking for his/her opinion about:
  - The cause of the injury and if the injury was caused in whole or in part by your work.
  - The extent of your injury, including whether the injury interferes with your ability to work.
  - Treatments s/he recommends.

### CAN I BE RETALIATED AGAINST FOR FILING A WORKERS’ COMPENSATION CLAIM?

- No. A worker may not be discharged or discriminated against for making or attempting to make a formal or informal claim regarding workers’ compensation, or for testifying in a workers’ compensation proceeding.
- A claim for retaliation may be brought up at any time after notice of the injury has been filed. Employees who prevail under a retaliation claim are entitled to reinstatement and back pay.

### CAN MY EMPLOYER FIRE ME WHEN I AM UNABLE TO WORK DUE TO MY INJURY?

- If you cannot return to your position within a reasonable period of time, your employer may be able to fire you. However, the employer cannot stop providing workers’ compensation benefits simply by terminating your employment. If you are fired, you should ask for job retraining benefits.

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*For more information about your workplace rights come to EJC’s Workers’ Rights Clinic from 6 – 9p.m. on Wednesdays at Bread for the City, NW (1525 7<sup>th</sup> Street, NW, between P and Q Streets, NW; list starts at 5 p.m.) or, from 11:00 a.m. – 2:00 p.m. the first, second, and third Fridays of each month at Bread for the City, SE (1640 Good Hope Road, SE). The clinic is first-come, first served, and no appointment is necessary. For more information, visit the D.C. Employment Justice Center website at [www.dcejc.org](http://www.dcejc.org).*

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