

Hurt On The Job?

That can be a terrible experience. But fortunately, the California workers' compensation system takes away a lot of the worry about job injuries and illnesses. It's no-fault insurance, paid for by employers and supervised by the state. This guide explains this valuable benefit.

What's Workers' Compensation?

California's workers' compensation law, passed by the state Legislature more than 90 years ago, guarantees prompt, automatic benefits to workers injured on the job.

Before workers' compensation, injured workers had to sue their employers to recover medical costs and lost wages. Lawsuits took months and sometimes years. Juries and judges had to decide who was at fault and how much, if anything, would be paid. Too often, the injured worker got nothing. It was costly, time consuming and unfair.

Today, workers' compensation is faster and fairer. If you can't work because of a job injury or job illness, workers' compensation pays your medical bills and provides money to help replace your lost income until you can return to work.

Who's Covered?

Nearly every working Californian is protected by workers' compensation, but there are a few exceptions. People in business for themselves and unpaid volunteers may not be covered. Maritime workers and federal employees are covered by federal laws.

What's Covered?

Any injury caused by the job is covered—everything from first-aid type injuries to serious accidents. Job-related illnesses are covered too. (For example, common colds and flu aren't covered, but if you catch tuberculosis while working at a TB hospital, that's covered.) The key is whether the injury or illness is caused by your job.

When Am I Covered?

Coverage begins the first minute you're on the job and continues anytime you're working. You don't have to work a certain amount of time or earn a certain amount before you're protected. Coverage is automatic and immediate.

How Do I Get Benefits?

Report the injury to your employer or supervisor immediately and complete a simple claim form if more than first aid is required. The claim form will ask what, where, when and how it happened. Your employer or supervisor will see that you get medical help right away and file the necessary reports.

Prompt reporting is the key. Your medical bills and any other workers' compensation benefits can't be paid until your workers' compensation claims administrator knows about the injury. In addition, you may not be able to get benefits if you don't file a claim within one year of the date of injury, the date you knew the injury was work related, or the date benefits were last provided. Insure your right to benefits by reporting every injury, no matter how slight. Even a cut finger can lead to disability if an infection develops.

What Are The Benefits?

California law guarantees three kinds of workers' compensation benefits:

- **All reasonable and necessary medical care to cure or relieve the effects of the injury or illness.** Not just doctor bills, but also medicines, hospital costs, fees for lab tests, x-rays, crutches—even travel expenses for required

medical treatment. For injuries on or after January 1, 2004, there are limits on some medical services – for example the number of visits for chiropractic care, occupational therapy, and physical therapy are subject to caps set by state law. In workers' compensation, there are no deductibles, and all medical costs are paid directly by the claims administrator, so you should never see a bill.

- **Cash payments to help replace lost wages.** Most injuries only keep you from working temporarily, and you'll receive "temporary disability" payments until the doctor says you're able to return to work. Under state law, for injuries on or after April 19, 2004, temporary disability may continue for no more than two years from the date of the first payment, or no more than five years from the date of injury for a few very serious types of injuries such as severe burns or chronic lung disease.
- Additional cash payments will be made after you're able to work if the work injury or illness caused a **permanent disability** -- for example, the loss of a finger or an eye -- or if you can't return to work at all. If the injury results in death, benefits will be paid to your surviving dependents.
- **Rehabilitation services necessary to return to work.** If the injury keeps you from returning to your regular work, your employer will advise you if your regular job can be modified or if another position can be provided to accommodate your permanent disability. Many employers are subject to laws governed by the Americans with Disabilities Act or the Fair Employment and Housing Act. An employer subject to these laws must provide reasonable accommodation -- if possible -- to qualified disabled individuals who can perform all the essential job functions. If you are not able to return to your regular job because of a disability, you may have rights under these laws. For more information call the Equal Employment Opportunity Commission at 1-800-669-4000.

If your injury or illness occurred before January 1, 2004, and if it results in a permanent disability, prevents you from returning to your job, and your employer doesn't offer modified or alternative work, you may qualify for vocational rehabilitation. A trained counselor will develop a plan to create new job opportunities for you. Again, workers' compensation insurance directly pays all costs up to a maximum set by state law. Changes in state law passed in 2003 replaced the vocational rehabilitation benefit for workers injured on or after January 1, 2004. Beginning in 2004, if a work injury or illness causes permanent disability, the employer does not offer appropriate modified or alternative work, and the employee does not return to work for the employer within 60 days after temporary disability ends, the injured worker is eligible for a supplemental job displacement benefit of \$4,000 to \$10,000 in nontransferable vouchers. The vouchers are to be used for education-related retraining and/or skill enhancement at state-approved schools, and the amount of the voucher depends on the level of permanent disability.

How Much Are The Cash Payments?

Temporary disability payments generally are two-thirds of your wages – subject to minimums and maximums set by the state. Temporary disability payments are based on the rate in effect on the date of injury, though payments made two years or more after the injury (such as those that might be made for a severe burn or chronic lung disease, or for injuries that occurred before April 19, 2004) are adjusted to reflect the current rates if justified by earnings.

In 2002, the law was changed to increase cash benefits to injured workers. The law called for the increases to be phased in over a period of 4 years, so the amount of your temporary disability payments depends on your date of injury. The maximum weekly cash payment on claims for injuries that occurred before 2003 is \$490, with a minimum of \$126 per week or actual wages if less. Beginning with claims for injuries that occur in 2003, the minimum temporary disability payment is \$126 per week, while the weekly maximum cash payment is \$602 for injuries occurring in 2003; \$728 for injuries occurring in 2004; and \$840 for injuries occurring in 2005. The minimum and maximum weekly temporary disability payments on claims for injuries occurring in 2006 and each year after that will be adjusted based on increases in the state average weekly wage.

- Compensation isn't paid for the first three days you're unable to work—unless you're hospitalized as an in-patient or unable to work for more than 14 days. In these instances, even the "waiting period" will be paid.
- If you report the injury promptly, your first temporary disability check should be mailed within 14 days. After that, you'll receive a check every two weeks until the doctor says you can go back to work or the time limit set by the state is reached.
- After you recover to the fullest extent possible, the doctor who treated you will evaluate the permanent effects of your injury. You and your employer may agree to rely on the treating doctor's report to establish your permanent disability payment. If you have questions about the report, or disagree with the treating doctor's opinions, you may contact the claims administrator, an Information and Assistance Officer at the Division of Workers' Compensation, or your attorney if you are represented. They can explain your rights and the process for resolving disputes, which varies depending on a number of factors.

Your level of permanent disability will be based on the doctor's opinion about how much of the permanent disability was directly caused by your work, as well as other factors including your age, pre-injury occupation, type of injury, and the date of injury. The weekly benefit is two-thirds of your income, subject to minimums and maximums set by the state. The minimums and maximums vary according to the date of injury and your level of permanent disability. If you have a permanent disability, the calculation of the benefit will be fully explained in a letter.

- Death benefit payments to survivors who were financially dependent on a deceased worker are set by state law according to the number of dependents and the date of injury. Generally, payments are made at the same rate as temporary disability benefits, however, no payments will be less than \$224 per week. Workers' compensation also pays a burial allowance.

Workers' compensation payments are tax free. There are no deductions for state or federal taxes, Social Security, union or retirement fund contributions, etc. For some workers the compensation check will be close to regular take-home pay.

What If There's A Problem?

Fortunately most claims are handled routinely. After all, workers' compensation benefits are automatic and the amounts are set by the Legislature.

But, mistakes and misunderstandings do happen. If you think you haven't received all your benefits, start by calling your employer or workers' compensation claims administrator. Many questions can be cleared up with a phone call.

- If you still have questions, contact the nearest office of the State Division of Workers' Compensation. Information & Assistance Officers are employed by the state to protect your rights, review your claim, and let you know what steps you can take. For example, they can tell you about the procedures for resolving medical disputes and direct you on how to proceed. Information and Assistance Officers also can provide you with free written materials about workers' compensation. Information and Assistance services are free. For the nearest office check the State Government Offices section of the phone book under "Industrial Relations Department," call 1-800-736-7401 for recorded information and the location of a local office, or visit the State Division of Workers' Compensation website at <http://www.dir.ca.gov/dwc>.
- Some problems may need to be resolved by the Workers' Compensation Appeals Board, the state agency responsible for handling disputes. The Appeals Board is a court of law. You can represent yourself or you can hire an attorney, but you should be aware that attorneys are paid out of the injured worker's permanent disability benefits awarded by the Appeals Board. Attorney fees generally are 12 to 15 percent of your award, and must be approved by a judge. For example, if you received a \$10,000 permanent disability award less 15 percent for attorney fees, your attorney would get \$1,500 and you would get \$8,500. In addition, if you have a pre-2004 injury and are eligible for vocational rehabilitation, your attorney will get 12 to 15 percent of the usual \$246 per week vocational rehabilitation maintenance allowance. In this situation, if your attorney gets 15 percent, he or she would receive \$36.90 per week, reducing your weekly maintenance allowance to \$209.10.
- You also need to be aware that if you hire an attorney, other people involved in your case—including your claims administrator—may no longer be allowed to speak directly to you about important matters, and the Division of Workers' Compensation Information & Assistance Officers may be unable to advise or assist you. If you choose to stop having an attorney represent you, or you want to change lawyers, your original lawyer can still claim a portion of your benefits as attorney fees.
- Delays in reporting may delay workers' compensation benefits, and you may not be able to get benefits if you don't file a claim within one year of the date of injury, the date you knew the injury was work related, or the date benefits were last provided. To insure your right to benefits, report every injury, no matter how slight, and request a claim form if it's more than a simple first aid injury. You also have the right to challenge the decision if your claim or benefits are denied, but there are deadlines for filing the necessary papers at the Appeals Board, so don't delay.
- Keep in mind, it's illegal for an employer to fire or discriminate against employees just because they file, intend to file or settle a workers' compensation claim—or because they testify for a coworker who was injured. A worker who proves this kind of discrimination will be entitled to job reinstatement, receive lost wages and increased benefits, plus costs and expenses up to a maximum set by the state Legislature.

Other Benefits

If the injury is very serious—one where you won't be able to work for a year or more—you may be eligible for additional benefits from Social Security. For information, contact the nearest office of the Social Security Administration (listed in the white pages of the phone book under "United States Government") or discuss it with your employer or claim administrator.

Workers' compensation sometimes is confused with another state program, State Disability Insurance (SDI). They seem similar, but there are important differences. Workers' compensation takes care of on-the-job injuries and illnesses, and is paid for by your employer. On the other hand, SDI covers off-the-job injuries or sickness and is paid for by deductions from your paycheck. If you are not receiving workers' compensation benefits, you may be able to get State Disability benefits. For information, call the local office of the state Employment Development Department listed in the government pages of your phone book.

Where Can I Get More Information?

Always start by asking your employer or the workers' compensation claims administrator (the name, address and phone number are posted at your workplace). Many times problems can be solved and questions answered with a simple phone call. In addition, you can get recorded information or order free written materials about workers' compensation by calling the State Division of Workers' Compensation at 1-800-736-7401, or by visiting the Division of Workers' Compensation web site at <http://www.dir.ca.gov/dwc>. If you would like a State Information & Assistance Officer to explain your rights, solve problems, or provide other information, you can call and leave a message at the nearest local office of the Division of Workers' Compensation. The address and phone number are posted at your workplace and are listed in the State Government section of the phone book under "Industrial Relations Department." The state's information and assistance services are free.

More About Medical Care

Good medical care is important—to you, your family and your employer. Quality medical treatment is the quickest way to recovery.

- If there's a first-aid facility at your workplace, get immediate treatment and report where, when and how the accident happened. (If it's an emergency, call for help immediately, get the best treatment available, then report the injury to your employer as soon as possible.)
- If it's more than a first-aid injury, your employer will give you a claim form. To make sure you get all your benefits, complete the form and return it to your employer as soon as possible. Within one working day of receiving the claim form your employer should return a signed and dated copy to you, send a copy to the claims administrator, and authorize medical treatment.
- If additional treatment is necessary, the claims administrator will arrange for medical care. If you haven't predesignated a personal doctor in writing prior to the injury you may be sent to a doctor you don't know, but that doesn't mean it's a "company doctor." Often, the doctor is a specialist for the specific injury. In addition, the doctor will be familiar with workers' compensation requirements and will report promptly so your benefits will be paid. If you want to change doctors for any reason, ask your employer or claims administrator. They're as interested as you are in your prompt recovery and return to work, and will select a doctor for you.

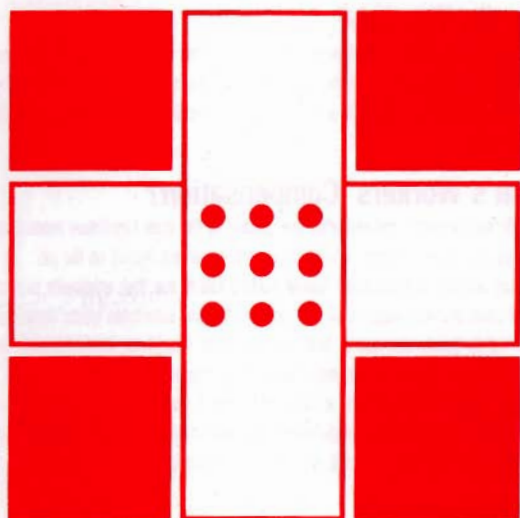
- The doctor with overall responsibility for treating your injury or illness is your "primary treating physician" (PTP). The PTP decides what kind of medical care you need and when you can return to work. If necessary, he or she will review your job description with you and your employer to define any limitations or restrictions that you may have when you go back to work. This doctor also is responsible for coordinating care between other medical providers, and if it is a serious injury, will write reports about any permanent disability, the need for future medical care, or if it is a pre-2004 injury, the need for vocational rehabilitation. Generally your employer selects the PTP you will see for the first 30 days, but different rules apply if you are a member of a Health Care Organization (HCO) or your employer has a workers' compensation medical provider network, so check with your claims administrator if that's the case. In any event, if you want to change doctors for any reason, ask your employer or claims administrator.
- You can be treated right away by your personal doctor (either a medical doctor or doctor of osteopathy who has treated you in the past and maintains your medical records) if your employer offers group health coverage, the doctor agreed in advance to treat you for any work injuries or illnesses, and you gave your employer the doctor's name and address in writing before the injury. If you gave your employer the name of your personal chiropractor or acupuncturist before the injury, different rules apply, and you may need to see an employer-selected doctor first, so check with your claims administrator.
- If you didn't give your employer the name of a personal doctor prior to injury, you can change to your own doctor after the employer's medical control expires if the doctor who treated you says further care is needed. The duration of an employer's medical control depends on the date of injury and the type of workers' compensation medical service plan your employer offers, but employers usually have medical control for at least the first 30 days after the injury is reported. If you're thinking of changing doctors, consider this decision carefully — most people don't have a family surgeon, for example. If you want advice about specialists, or want to change doctors for some other reason, talk to your claims administrator. In any event, always report your choice as soon as you make it so your bills will be paid for you.

Above all, don't treat yourself. Even minor injuries need expert care. Prompt, quality medical treatment is the best investment you and your employer can make.

WORKERS' COMPENSATION FRAUD IS A FELONY

Anyone who makes or causes to be made any knowingly false or fraudulent material statement for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony, and may be punished by imprisonment in county jail for one year, or in state prison for up to 5 years, and/or fined up to \$150,000 or double the value of the fraud (whichever is greater), and ordered to pay restitution for any medical evaluations or treatment.

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This pamphlet is available in Spanish. For a free copy, please write:
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FACTS FOR INJURED WORKERS

