

## GENERAL INFORMATION REGARDING WORKERS' COMPENSATION CLAIMS AND RELATED MATTERS

### EXCLUSIVE REMEDY

The Workers' Compensation Act provides your exclusive remedy against your employer and co-employees for on the job injuries if you did not reject workers' compensation coverage when hired and your employer had a notice properly posted, or if you have already received and cashed workers' compensation disability benefits.

If your employer or a co-employee **intentionally injured you** (to date gross negligence and/or negligence is not enough), the exclusive remedy provision would not prevent you from presenting and maintaining a civil lawsuit.

**Additionally, unlike the civil remedy provided for in a negligence or products liability claim, there is no additional compensation available under the workers' compensation system for pain and suffering.**

That if you believe your injury is the result of the negligence (or some other liability causing action or event – such as product or premises liability) of some party other than your employer or a co-employee, you have only one (1) year within which to file a lawsuit against the party you believe responsible for your injury. Should you fail to do so the claim will be assigned to the carrier. During the second year, you are only allowed to bring the lawsuit if the carrier reassigns the claim to you. It is, however, under no legal obligation to reassign the claim to you. If it does agree to a reassign the claim to you, it will usually seek to restrict your right to recovery. After two (2) years from the date of the injury, the statute of limitations expires and under almost all circumstances you cannot bring a successful lawsuit.

A personal injury claim, if successful, would provide a more complete recovery for your damages than a workers' compensation claim that only pays your medical expenses and a portion of your lost wages.

You should also be aware of the following:

- **Medical malpractice claim:** the statute of limitations usually begins to run from the date of the alleged malpractice or when you should have discovered the alleged malpractice. However, to assure that your rights are protected regarding such a claim you should consult with an attorney who handles such matters immediately to protect all deadlines;
- **Personal injury claim against a public entity**, such as the state, a city, a school or some other political subdivision: there is a shorter time period to file. Such a claim must be filed pursuant to the Arizona claim statute within 180 days of the date of the accident. If such a claim is properly filed the statute of limitations for then filing the lawsuit is usually only one (1) year; and
- **Claim arises out of a statutorily imposed duty or obligation:** there is usually just a one (1) year statute of limitation. In any case, if you do wish to pursue your claim, it is essential that you consult with another attorney promptly.

If your employer did not have workers' compensation coverage, you have the right to either file a workers' compensation claim, which would be processed by the No Insurance Fund of the Industrial Commission as if it were the insurance carrier, or to file a personal injury claim.

If you intend to file a workers' compensation claim, the claim must be filed with the Industrial Commission of Arizona within one (1) year of the date the injury became manifest and you had reason to know of the injury and its relationship to your work. If you intend to file a personal injury claim arising out of a claim of negligence on the part of your employer, you arguably have two (2) years within which to file such claim. However, to assure your rights are protected you should contact another attorney who handles such matters immediately, because you may jeopardize your claim by not pursuing it now. This is because your claim may actually have a shorter limitations period.

If you believe your injury is the result of the negligence of some party other than your employer, and your employer did not have workers' compensation coverage but you file a workers' compensation claim which is covered by the No Insurance Fund of the Industrial Commission, you have only one (1) year within which to file a lawsuit against the party you believe responsible for your injury. Should you fail to do so the claim will be assigned to the No Insurance Fund. During the second year, you are only allowed to bring the lawsuit if the No Insurance Fund reassigns the claim to you. It is, however, under no legal obligation to reassign the claim to you.

### **PERSONNEL MATTERS**

That if you believe your employer has improperly treated your terms of employment; you should contact an attorney who handles personnel matters immediately. You should not delay as many claims have a very short statute of limitations to present your claim. Failure to promptly present the claim can prevent you from ever presenting it. Because there are many different limitations periods that might apply to different types of claims I cannot give you a specific deadline that might apply in your matter. If I gave you the names of any attorneys who handle such matters, please understand that I cannot vouch for the work of another attorney and you must make an independent judgment about which attorney you hire and whose advice you rely upon.

### **DEADLINE INFORMATION**

**Filing your claim:** You only have **one (1) year** from the date your injury becomes manifest (such that you know you have a medical problem that requires medical attention) and you have some reason to know of its relationship to your work activities within which to have on file at the Industrial Commission a claim. **Failure to file the claim at the Industrial Commission within the time permitted will mean that the claim is forever precluded, except for the most limited of circumstances.** Some of these circumstances are reliance upon a material representation from the employer, commission, or insurance carrier, such as a statement that you will be cared for and need not file the claim **or** if you were incompetent. If you were incompetent, the time period is suspended during the period of incompetence. You must also **promptly report** your injury to your employer. Failure to do so is an affirmative defense that can be raised by the defendants.

**Protesting a notice or award:** You only have **90 days from the date of mailing to you of any notice/award** within which to have **on file at the Industrial Commission a request for hearing** or the notice/award will become **final and binding** upon you, **unless** you have received a notice that establishes a shorter period and then you must comply with the period set forth in the notice/award. Therefore, if you disagree with any notice or award issued in your claim, **you must have your request for hearing on file with the Industrial Commission within the time period permitted.** Failure to do so will allow the notice/award to become final and binding upon you.

### **INITIAL PROCESSING OF CLAIM**

A claim is begun by filing it with the Industrial Commission of Arizona (ICA). This can be done by completing the necessary paperwork at the hospital or doctor's office -- a Form 102 (Worker's report of injury and Physician's Initial Report of Injury) or by filing a claim form directly at the ICA. Once your claim is filed at the ICA, the ICA will notify your employer's workers' compensation carrier of the claim. The carrier then has 21 days from the time notification is sent to it to accept or deny the claim.

### **COMPENSABLE CLAIM INFORMATION**

If you believe you have a compensable (valid) claim and that you have required or will continue to require care to improve your condition you will need to have evidence, including medical evidence establishing such. You will also need to introduce evidence to prove that you suffered an injury arising out of and in the course of your employment. You may also have to address the carrier's claim that you did not promptly report your injury.

To prove that your injury required care you will need to have medical evidence indicating that your injury was at least a factor in producing the need for care.

### **INFORMATION REGARDING A CLAIM THAT YOU REQUIRE FURTHER ACTIVE CARE**

If you require further care to improve your condition causally related to your injury you will need to have medical evidence establishing such to prevail on such claim. To prove the need for further active care, you will need to have medical evidence indicating that your injury is at least a factor in

producing the need for further care. If your treating physician is a chiropractor, family physician or general practitioner, it is advisable to obtain the opinion of a specialist to support your doctor's opinion.

**SPECIAL RULES REGARDING CARDIOVASCULAR AND/OR MENTAL IMPAIRMENTS**

If your claim is that you require care for a heart related or perivascular injury or illness, the claim will only be found compensable if the injury, stress or exertion related to the employment is more than a slight or insignificant cause of the heart related or perivascular injury or illness.

If your claim is that you require care for a mental impairment, you will need to prove that you suffered a physical injury that is more than a slight or insignificant cause of your need for further care or that you had some unexpected, unusual or extraordinary stress that is more than a slight or insignificant cause of said condition.

**SPECIAL RULES REGARDING HERNIAS**

There is a statute that sets forth specific rules to prove a hernia injury is compensable. (See Arizona Revised Statutes §23-1043.) That statute also limits compensation to two (2) months for a compensable hernia, unless there is some complication other than the hernia that limits your ability to work beyond the sixty (60) days.

**SPECIAL RULES REGARDING OCCUPATIONAL DISEASE, HIV, HEPATITIS C, MRSA, SPINAL MENINGITIS, AND TUBERCULOSIS CLAIMS**

There are specific statutes that set forth specific rules to prove each of these types of claims. (See Arizona Revised Statutes §§23-1043.02 through .04 and §23-901.01.)

**AVERAGE MONTHLY WAGE**

The maximum average monthly wage ("AMW") upon which benefits will be calculated for an Arizona are as follows:

| MAXIMUM AVERAGE MONTHLY WAGE | PERIOD START DATE | PERIOD END DATE |
|------------------------------|-------------------|-----------------|
| \$3,920.75                   | 01-01-2011        | 12-31-2011      |
| \$3,763.44                   | 01-01-2010        | 12-31-2010      |
| \$3,600.00                   | 01-01-2009        | 12-31-2009      |
| \$3,000.00                   | 01-01-2008        | 12-31-2008      |
| \$2,400.00                   | 08-07-1999        | 12-31-2007      |
| \$2,100.00                   | 07-01-1991        | 08-06-1999      |
| \$1,800.00                   | 07-01-1989        | 06-30-1991      |
| \$1,650.00                   | 01-01-1988        | 06-30-1989      |
| \$1,325.00                   | 07-31-1980        | 12-31-1987      |
| \$1,250.00                   | 08-27-1977        | 07-30-1980      |
| \$1,000.00                   | 11-22-1948        | 08-26-1977      |

As you will note from the above chart, the maximum AMW for an injury sustained during 2011 will be \$3920.75; the maximum AMW for an injury suffered in 2010 was \$3763.44.

If you were earning more than the maximum average monthly wage at the time of your injury, your wage will be set at the maximum at the time of your injury. If you were earning less than the

maximum, your actual average monthly wage should be used. There are many factors that can affect the correct wage, including other jobs you may have been employed in at the time of your injury, tips earned, whether you were employed for less than 30 days and variations in your earnings, including time lost for sickness, etc.

### **TEMPORARY DISABILITY & PERMANENT DISABILITY OBLIGATIONS**

If you miss seven (7) or less calendar days from work after your injury (including weekend days), you are not entitled to temporary disability benefits. If you miss between eight (8) and fourteen (14) days from work, you will be compensated only for those days. If you miss fifteen (15) or more days, compensation is paid retroactive to the first day you missed from work after your injury. The days missed need not be consecutive.

If you are on temporary disability status, i.e., receiving medical care to improve your condition, working on light duty and earning less than your average monthly wage, you have a claim for 66-2/3% of the difference between your average monthly wage and what you are presently able to earn (rolled back to what your present earnings would have been on the date of your injury). Unemployment benefits are treated as earnings. If you have earnings, the total amount of money you will have between earnings and workers' compensation benefits is more than if you just received workers' compensation benefits. (One possible drawback to applying for unemployment benefits is that if you file for Social Security Disability benefits, the Social Security Administration may attempt to use evidence of your claim for unemployment benefits as evidence that you are not disabled.)

If it is established that you should be on temporary partial disability or permanent partial disability status for an unscheduled injury you will have certain obligations under the law. These are explained to you in general terms on the attached pages. Compensation may be reduced or denied if you fail to satisfy your obligations.

### **SELECTING A TREATING DOCTOR**

An injured worker is permitted to select his/her own treating doctor unless the employer has a plan approved by the Industrial Commission allowing it to direct treatment by a physician with whom it has contracted. You can determine if the employer has such a plan by contacting the Industrial Commission. An issue may arise with respect to whether the employer has a plan that is valid and complies with the law of Arizona.

### **CHANGE OF DOCTORS**

In order to change your doctor you will need to obtain carrier approval or ask the Industrial Commission, in writing, to authorize the change. The Commission has a form available for your use to request a change of doctors. Usually, the Commission will not approve a change from a medical doctor to a chiropractor, although this is not always the case. Additionally, if the employer is self-insured and has a plan approved by the Industrial Commission, you must establish that there is reasonable ground to believe that your health, life or recovery is endangered or impaired if the ICA did not permit the change.

### **DEFENSE MEDICAL EXAMINATION**

The employer and insurance carrier have the right to have an injured worker examined by a physician of its choosing upon the filing of a claim. If the injured worker sees the doctor that the worker is sent to for the examination more than once, it will be deemed that the worker has elected to select that doctor as his/her treating physician.

The carrier/employer may also schedule an injured worker for periodic examinations by doctors of their choosing during a claim. The worker can object to such an exam by asking for a protective order within three days after receiving notice of the examination. ARS §23-1026 and Rule 20-5-114 set forth the requirements for obtaining a protective order. Additionally, it may be possible to have the examination audio and/or tape-recorded.

### **SECOND OPINION EXAMINATION**

The carrier is not under an obligation to pay for a second opinion that you might want to have conducted. It can voluntarily agree to pay for a second opinion, if it chooses to do so. However, if your treating doctor wants to refer you to another doctor, such as a specialist, and the carrier

refuses to pay for that examination, you may well have the right to have the carrier pay for that examination.

### **PERMANENT IMPAIRMENTS**

If you believe you have a permanent disability it will be necessary to have the type of evidence set forth on the attached pages to prove that you have a permanent disability.

If you claim a permanent **mental impairment**, you will need to prove that either your on-the-job injury was a physical injury which is more than a slight or insignificant cause of your permanent mental impairment or that you had some unexpected, unusual or extraordinary stress which is more than a slight or insignificant cause of your permanent mental impairment.

### **GREATER PERMANENT IMPAIRMENT**

If you believe you have a greater permanent disability than found by the carrier it will be necessary to have medical evidence of this. This can be done by obtaining another rating of your impairment by another doctor familiar with rating your type of impairment. It is preferable to have your condition rated by a specialist. An explanation of the type of evidence needed to prove a permanent impairment is attached for you.

### **SCHEDULED AND UNSCHEDULED PERMANENT INJURIES**

There are two types of permanent disabilities. These are scheduled disabilities and unscheduled disabilities. I am attaching information regarding what is required to prove a permanent disability and the method by which permanent disabilities are compensated.

### **REOPENING AND REARRANGEMENT RIGHTS**

An injured worker always has the right to file a petition to reopen a claim that has been closed. If your claim is closed with an unscheduled disability (or it is later reopened and closed with an unscheduled disability), you will also have the right to file a petition to rearrange or readjust your benefits. General information regarding these rights is enclosed for you.

To prove you are entitled to reopening you will need to have medical evidence of a new, additional or previously undiscovered impairment or disability causally related to your injury that requires further care to improve your condition or that has resulted in a (greater) permanent impairment than when your claim was last closed. It is advisable to obtain the opinion of a specialist to support your claim, such as an orthopedist, neurosurgeon or neurologist. You should make certain that the doctor has seen your prior treatment records. Reopening will usually not be granted for the purpose of conducting testing to see if more care is needed. Additionally, because of a change in the reopening laws, you may have to address an argument from the carrier that you must show an objective change in your condition to justify reopening.

### **SUPPORTIVE CARE:**

Often an injured worker who has a permanent impairment will require medical care to prevent deterioration of the impairment. Such care is authorized by a supportive care award. Should insufficient supportive care be authorized, an injured worker may ask for a hearing on this issue. It is essential that medical evidence be presented to establish the care that is required.

### **RIGHT TO A HEARING PURSUANT TO ARIZONA REVISED STATUTE 23-1061 J**

If you believe that your employer, the insurance carrier and/or any other entity involved in processing your claim is not authorizing required care and/or paying benefits properly, you have the right to file a request for hearing and have the matter investigated by the Industrial Commission of Arizona. The Industrial Commission will schedule a hearing regarding any contested issue for which it has jurisdiction.

### **HEARING DEADLINES**

If a hearing is scheduled regarding any aspect of your claim you must be aware of the deadlines that apply. The most important deadlines are explained to you on the enclosed page. However, to be aware of all of your deadlines you should request a copy of the Rules of Procedure before the Industrial Commission from the Industrial Commission. You can obtain the Rules by calling (602) 542-4661.

## **FILING FOR SOCIAL SECURITY DISABILITY INSURANCE AND/OR LONG TERM DISABILITY BENEFITS**

If it appears that you will be unable to work for a year or longer, you may qualify for Social Security Disability Insurance benefits. To apply for such benefits you can call 1-800-772-1213 or visit the Social Security office closest to you. If you file for such benefits and you are denied, please get back in touch with me and we can discuss my assisting you in pursuing this claim. Such benefits, after the appropriate offset, are paid in addition to your workers' compensation benefits.

You may also be entitled to long term disability benefits. To be entitled to such benefits you must either have a group plan or personal policy that provides such coverage. You must also meet all the definitions of the plan or policy to qualify. There are many different plan and policy provisions. So, if you need some assistance regarding such an application, please let me know and we can determine precisely what your plan or policy requires and see if you meet the requirements.

### **IMPORTANT INFORMATION**

If we can assist you further in this matter, please let us know. Additionally, if we can ever assist you, your family or friends on any other legal matter, give us a call. We handle workers' compensation, Social Security Disability, long-term disability and personal injury (such as auto collision) claims.

**DISCLAIMER:** Nothing we have said or written should be taken as an attempt to persuade you not to pursue your claim(s) further. Rather, if you believe you have any basis to pursue your claim(s) we would encourage you to do so.

Also, please understand that the law is frequently undergoing changes and this information is based upon the present state of the law as we interpret it and is subject to change by court decisions and the legislature. Further, this information is not exhaustive.

Lastly, we have not agreed to represent you by responding to initial or follow-up inquiries and prior to legal representation both the client and an attorney of the firm must sign a fee agreement and a formal notice of representation or appearance. We do not presently have enough detailed information about the status of your particular matter and you remain responsible for meeting any deadlines or statutes of limitation until an attorney of the firm has formally agreed to represent you and entered an appearance in your specific matter.

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