

# ON THE JOB INJURIES: A Guide for Injured Workers - Ala. edition<sup>©</sup>



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## Annotated Table of Contents

- I. A Quick Summary of Alabama Workers Compensation Laws**

Provides a quick and easy to read summary of Alabama workers compensation laws to help injured workers get a basic understanding of the wage and medical benefits available to them after being injured on the job.
- II. On the Job Injury - Defined**

Covers the basic definition of an “on the job injury” and discusses reporting requirements for an on the job injury. This section also provides practical advice and recommendations to help report and document an on the job injury.
- III. Benefits Available to Injured Workers**

Discusses the difference between a scheduled and non-scheduled injury. Discusses the lost wage benefits available to injured workers and how benefits are calculated. It reviews the medical benefits afforded to injured workers. Discusses and reviews death benefits available to family members. Also, covers vocational retraining benefits.
- IV. Occupational Disease, Exposure Claims and Repetitive Injury Claims**

Covers the definition of occupational disease and exposure claims and includes injuries such as repetitive motion injuries. Defines legal and medical causation for these claims.
- V. Suggestions for the Injured Worker**

Provides injured workers with some practical suggestions related to workers compensation claims.
- VI. Hiring an Attorney**

Discusses factors for injured workers to consider such as when to consult with an attorney and when to consider hiring an attorney to assist with a workers compensation claim. Also covers the prescribed contingency fees authorized for attorneys under the Alabama Workers Compensation Act.

## **ABOUT BOTELER, FINLEY & WOLFE**

The law firm of Boteler, Finley & Wolfe is located in Mobile, Alabama. The firm was established in 1999 and serves clients throughout the Gulf Coast region. The law firm provides legal services to individuals and businesses with insurance claims and losses. This includes personal injury claims, workers compensation claims, homeowner claims, life insurance claims, and business loss claims.

The lawyers at BF&W maintain the highest professional ratings from numerous attorney rating and ranking services, such as AVVO.com, Lexis-Nexis, Super Lawyers and the National Trial Lawyers Association's Top 100. The firm has received high ratings from peer review services and, most importantly, from client review services. They are not only active in various professional organizations, but all the lawyers at BF&W have served in leadership roles for several state and national professional organizations.

The lawyers at BF&W are committed to helping in our community. Each lawyer serves on a local, statewide and/or national charity or civic organization in a leadership capacity. The members of the firm believe they have an obligation to be make tomorrow better than today.

### **I. AN INTRODUCTION TO ALABAMA WORKERS COMPENSATION**

**LAWS HISTORY OF THE ALABAMA WORKERS COMPENSATION ACT:** The Alabama Legislature enacted the Alabama Workmen's Compensation Act to replace the common law claims of injured workers. Alabama presumes all employers and employees are covered by the Workmen's Compensation Act; however, there are a few statutory exceptions to coverage. The three most common exceptions are employers with less than five employees, employees of the State of Alabama, and municipalities having a population of less than 2,000. Alternative compensation remedies may be available to those employees excluded from coverage under the Alabama Workers Compensation Act. For example, an injured worker not entitled to coverage under the Alabama Worker's Compensation Act may be entitled to bring claims for negligence under common law or under the Employer's Liability Act. Additionally, Federal employees are covered for work related injuries prescribed under the Federal Workers Compensation Act. Dock workers and shipbuilders are covered by the Federal Longshore and Harbor Workers Compensation Act.

**WORKERS COMPENSATION CLAIMS NOT BASED UPON "FAULT:"** Under Alabama Workmen's Compensation Act, an injured worker does not have to prove his/her injuries were caused by the negligence of his/her employer or a co-worker to receive benefits. In fact, under the Alabama Workmen's Compensation Act, an injured employee is prohibited by law from bringing a claim of negligence against an employer for causing an on the job injury. NOTE: This prohibition does not prevent an injured worker from making a negligence claim against a third party who may have caused the on the job injury; e.g., a delivery truck worker who was injured in a car collision while delivering a product for his employer may file a worker's compensation claim against his/her employer AND present a third party liability insurance claim against the at-fault driver.

Also, there are limited situations where an injured employee can bring a claim against his/her employer and/or a co-worker for an on the job injury that was caused intentionally or willfully. An example would be the intentional removal of a machine's safety device.

**AUTHORIZED COMPENSATION BENEFITS.** An injured worker is entitled to a number of benefits for an on the job injury. These are:

- 1) MEDICAL BENEFITS
- 2) WAGE LOSS BENEFITS
- 3) TEMPORARY TOTAL DISABILITY (TTD) BENEFITS
- 4) VOCATIONAL BENEFITS
- 5) PERMANENT PARTIAL DISABILITY (PPD) BENEFITS
- 6) PERMANENT TOTAL DISABILITY (PTD) BENEFITS
- 7) DEATH BENEFITS

**STATUTE OF LIMITATIONS:** As a general rule, in Alabama an injured worker has two years from the date of the on the job injury to file a verified complaint of injury in the Court of proper jurisdiction. This period of time is tolled or expanded for the period of time the injured worker is receiving a TTD wage benefit after the work related injury. For occupational diseases or repetitive motion injuries, the date of injury is deemed to be the last day the employee was subject to the forces of injury. In limited situations, the Courts have expanded the two-year statute to include the date at which time a wage benefit was claimed by the employee. The two year statute of limitations applies to the injured workers claim for wage benefits, not the medical benefit.

## **II. ON THE JOB INJURY - DEFINED**

As originally written, the Alabama Workmen's Compensation Act defined an on the job injury as "personal injury or death caused by an "accident" arising out of and in the course of employment." The term "accident" has been modified in Alabama to mean an injury to the physical structure of the body. In 1992, the Act was, again, modified to include cumulative trauma disorders such as carpal tunnel syndrome. The Act, also, recognizes certain occupational diseases. These secondary covered claims may not necessarily require evidence of an "accident" as we commonly know that term, but constitute an injury to the physical structure of the employee. Additionally, Alabama recognizes certain mental disorders or emotional injuries may be compensable, even if the physical injury is negligible or slight. However, as in all cases, it is the worker's burden to prove that an "on the job injury" occurred and the related medical care was necessitated or "caused by" the on the job injury.

**REPORTING A WORK RELATED INJURY:** It is the injured worker's responsibility to make sure his/her employer is notified of an on the job injury. Alabama law generally requires an injured employee to notify his/her employer, in writing, within five days of suffering a work place injury. The events causing the injury should be described and the injury should be described. If additional medical care will be required, the written notification of injury should also request the employer provide the name of a healthcare

provider for follow up care. The notice of injury should be dated and the injured worker should retain a copy of the letter. Once on notice of a work related injury to an employee, the employer must file with the Alabama Department of Industrial Relations (the agency responsible for overseeing the Alabama Workmen's Compensation Act) an Employer's First Report of Injury form.

**MEDICAL CAUSATION:** While the injured worker must prove a claimed injury was caused by a work related event, the injured worker does not have to prove the on the job injury was the sole cause of the claimed injury. The burden is simply to prove that the work or employment condition was a contributing cause to the injury or death of the employee. This law is very favorable to employees, especially, in the area of pre-existing medical conditions. Pre-existing medical conditions can be known to the employee or unknown to the employee. Subsequent injuries to the original compensable injury may, also, be compensable if the second or subsequent injury was a direct and natural consequence of the original compensable injury.

### III. BENEFITS AVAILABLE TO INJURED WORKERS

**AUTHORIZED COMPENSATION BENEFITS.** An injured worker can be entitled to a number of benefits<sup>1</sup>:

**MEDICAL BENEFIT:** This is an "immediate benefit." The employer is responsible for paying all reasonable and necessary medical bills incurred by an employee who is hurt on the job. The related medical bills are paid as incurred. Since the employer is directly responsible for the payment of the medical bills for an injured employee, the employer is allowed to participate in the selection process of the injured worker's healthcare providers. Most employers delegate this responsibility to their worker's compensation insurance carrier.

Under Alabama Workers' Compensation Law, an employee who sustains a compensable injury by accident or occupational disease, is entitled to lifetime medical benefits for the work-related injury. Medical treatment must be medically necessary and appropriate for the treatment of the injury or illness and must be provided by an authorized physician. Medical services provided by an unauthorized physician are not covered and will not be reimbursed. If an employer/agent fails to direct the injured worker to a specific physician or medical facility, the injured worker may be entitled to see the physician of his choice.

**WAGE LOSS BENEFIT:** This is an "immediate benefit." The wage benefit is available to an injured worker who cannot return to his/her job per the treating physician's orders. During the time the injured worker is taken off of work the employer is responsible for paying the worker two-thirds of his/her average weekly wage (AWW) for the period of time the worker is temporarily disabled from returning to work. The two-thirds payment is mandated because worker's compensation wage benefits are not subject to state or federal income taxes. This period of time that an injured worker is not able to return to work is commonly referred to as the "TTD"(Temporary Total Disability) benefit period.

<sup>1</sup> NOTE: The wage benefits described above are subject to a maximum weekly wage benefit prescribed by statute and subject to duration limitations set forth by statute.

TTD benefits do not start until three days after the injury; however, if the temporary disability exceeds twenty-one days then the first TTD compensation benefit after that shall include wage compensation for the first three days missed. If an injured worker is partially disabled from returning to his/her pre-injury wage rate then Temporary Partial Disability (TPD) benefits are available.

**VOCATIONAL BENEFIT:** If an Injured workers is not able to return to his pre-injury duties, he/she may be entitled to vocational retraining benefits to help him return to the work force. The costs, where rehabilitation requires residence at or near a facility or institution away from the employee's customary residence, shall include reasonable charges for the employee's necessary board, lodging and travel.

**PERMANENT PARTIAL DISABILITY (PPD) BENEFIT:** If an on the job injury results in a worker returning to work, with a permanent disability or disfigurement, the injured worker is entitled to a permanent partial disability benefit. The PPD benefit owed is determined on whether the injury is a "scheduled" or "non-scheduled" injury:

*SCHEDULED INJURIES:* When an on the job injury involves the total loss, or partial loss of function, of a specific body part (e.g., finger, hand, arm, toe, foot, leg) or the loss of sight and/or hearing) Alabama law has a prescribed schedule for the number of weeks for wage benefits for that specific body part. Generally, if there is a permanent partial loss of use of a scheduled body part, the loss of function is determined by the treating doctor and usually expressed as a partial disability rating. The disability rating is often expressed as a percentage to the damaged area or the whole body. This disability percentage is multiplied by 2/3 of the average weekly wage and that amount is paid for a pre-set number of weeks. For example, an injured worker who loses a thumb is entitled to 62 weeks of 2/3 of his/her average weekly wage in addition to any temporary benefits. [Permanent partial disability wage benefits can not currently exceed \$220.00 per week.] If an injury results in a partial loss of function to a scheduled body part, then the compensation rate is determined by the scheduled number of weeks of compensation multiplied by the percentage of assigned disability

*NON-SCHEDULED INJURIES:* Injuries that do not result in the total or partial loss of a "scheduled" body part are referred to as non-scheduled injuries. The most common non-scheduled injury for workers is a back or neck injury. The loss of function is determined by the treating doctor and usually expressed as a partial disability rating. The disability rating is often expressed as a percentage to the damaged area and/or the whole body. This disability percentage is multiplied by 2/3 of the average weekly wage and is paid for 300 weeks, less any period of time the injured worker received Temporary Total Disability (TTD) benefits. For example, a worker injures his/her neck and has a 15% permanent loss of function in the neck, that might equate to a 5% whole body impairment. If the injured worker's average weekly wage (AWW) was \$600 then he or she would be entitled to \$20.00 (5% x \$400) per week for 300 weeks less any temporary benefits paid. This amount could be calculated to a lump sum payment of \$6,000.00, less any temporary benefits paid.

**PERMANENT TOTAL DISABILITY (PTD) BENEFIT:** If an on the job injury is so severe that it prohibits the injured worker from returning to the work force, then the injured worker may be entitled to PTD (Permanent Total Disability) benefits. Permanent Total Disability (PTD) does not mean total helplessness. Permanent Total benefits have no limitations on the amount or length of time of payment. If an injured employee is determined to be a permanent total, whereby, he is unable to obtain suitable or gainful employment as a result of the injury, he is entitled to PTD benefits for the remainder of his life, or until he is gainfully employed through vocational rehabilitation.

Permanent Total Disability means the inability to:

- 1) Perform one's trade,
- 2) Obtain other reasonable gainful employment,
- 3) Perform gainful employment with reasonable accommodations, or
- 4) Be retrained for reasonably gainful employment.

Permanent Total Disability is computed at 66 2/3 % of the average weekly wage, not to exceed the maximum in effect at the time of injury. Benefits are paid for duration of disability (lifetime benefits), but can be altered by vocational rehabilitation.

**DEATH BENEFIT:** Where death results within three (3) years of the work place accident, compensation is payable to dependents. Death benefits are based on the employee's average earnings at the time of the accident. If the employee leaves only one dependent, the dependent is entitled to 50% of the employee's AWW, subject to the state's maximum and minimum AWW in effect at the time of injury. If the employee leaves two or more dependents, the dependents are entitled to share in 66 2/3% of the employee's AWW, subject to the state's maximum and minimum AWW in effect at the time of injury. Death benefits are payable for 500 weeks, subject to limitations such as remarriage of the widow.

**OTHER BENEFITS:** Mileage costs to and from medical and rehabilitation providers shall be paid at the rate as provided by law for official state travel. Effective January 1, 2007, the rate for mileage is 48.5 cents per mile - the rate paid to state employees - subject to change. Mileage rates are also subject to regular adjustment by the Legislature.

#### **IV. OCCUPATIONAL DISEASE, EXPOSURE CLAIMS AND REPETITIVE INJURY CLAIMS**

Any disease legally and medically caused, or contributed to, by a worker's job is covered under the Alabama Workmen's Compensation Act. The word disease is generally defined as a serious disorder that impairs the body or results in a chronic effect that is detrimental to the employee's general health. The term disease does not include temporary ailments or disorders that do not result in a chronic and continuing medical condition. Any chronic or permanent medical condition related to the normal working conditions of the trade, process, occupation or employment may be classified as an "occupational disease" if the condition has been brought about by exposure over a period of time.

**LEGAL CAUSATION:** For an illness or medical condition to be considered a compensable occupational disease, two legal requirements must be met: First, the illness or medical condition must be from a hazard in excess of those ordinarily encountered in employment in general. Two, the illness or medical condition must be peculiar to the occupation in which the employee is engaged. In other words, an ordinary disease, with no real specific employment connection, is excluded from coverage.

**MEDICAL CAUSATION:** It is not necessary that occupational factors be the sole cause of an illness or medical condition to be considered an occupational disease under the Alabama Workmen's Compensation Act, but rather whether occupational factors medically contributed to the illness or medical condition. The occupational factors do not have to be the dominant cause of the illness or medical condition. Even if occupational factors aggravate a pre-existing disease or condition, a compensable claim may exist.

**DATE OF INJURY AND NOTICE:** For the purpose of determining the statute of limitations for an occupational disease worker's compensation claim, the "date of injury" is determined to be the date of the last exposure to the hazards of the disease in the employment of the employer in whose employment the employee was last exposed to the hazards of the disease. Notice by the injured worker to the employer of a occupational disease is not required in order to prosecute a claim.

## **V. SUGGESTIONS FOR THE INJURED WORKER**

**REPORT INJURY.** Don't just assume your employer knows about your work related injury or condition. Any work related injury that requires medical care should be reported in writing.

**DOCUMENT THE INJURY.** Prepare a written history of how the injury occurred, describe the injury and/or injuries and describe all pain complaints. Also, include specific information about the physical requirements of your job. E.g., "I am required to lift 15lb boxes repetitively throughout the day ( 8 hours) and have to maneuver 100lb crates with a hand truck 3 -4 times a day." Give this to your treating physician and/or his/her nurse and ask that this History of Injury and Job Description Report be placed in your medical chart. This will better help the doctor assess your injury and any physical limitations related to the injury.

**REVIEW THE AVERAGE WEEKLY WAGE CALCULATION.** If you are going to be out of work for a period of time and receive a lost wage benefit, the workers compensation carrier may calculate your wage benefit. In every instance, you should check the wage benefit to make sure it accurately reflects your true wages.

**USE YOUR MEDICAL SECOND OPINION WISELY.** Pursuant to Alabama law, an injured worker does have a right to request a second medical opinion at the employer's expense. However, you should use this second opinion option wisely. We would suggest only using this option once the current treating doctor has placed you at maximum medical improvement (MMI) and, only if you disagree with the doctor's opinion about your

physical limitations, ability to return to work and/or the disability rating related to your injury. You may want to consider consulting with an experienced worker's compensation attorney in your area for advice and guidance on how to best go through this process. In most cases, it is recommended the injured worker communicate with the treating doctor regarding his/her continued complaints before seeking a second opinion.

**CLOSING FUTURE MEDICAL BENEFIT.** If a work related injury results in a permanent condition or impairment, the injured worker is entitled to have all future medical care related to that injury paid for by his/her employer and/or its workers compensation insurance carrier. In this situation, the injured worker may be offered additional monetary compensation to "close" or forego this right of future medical benefits. Closing future medicals for "cash" today may seem like a good idea, but such a decision should be fully and carefully thought out. A lifetime of future medical care for a work related injury is probably the best benefit for an injured worker under Alabama's Workmen's Compensation Act. Before agreeing to close out future medicals, you should think about the long term consequences of such a decision. Before agreeing to "close-out" future medical benefits, you should consider consulting with an experienced workers compensation attorney in your area. Note: For those on Medicare or Medicare eligible, be particularly cautious of closing medical benefits; in most cases a Medicare Set Aside Trust is required to be established with a certain portion of the settlement funds.

**SETTLEMENT APPROVAL.** The Alabama Workmen's Compensation Act requires all worker's compensation disability settlements be approved by a Circuit Court or a state employed Ombudsman.

**DRUG TESTING OF INJURED EMPLOYEE:** The Alabama Workmen's Compensation Act holds that no compensation shall be allowed for an injury or death caused by an accident due to the injured employee being intoxicated from the use of alcohol or being impaired by illegal drugs. In order for this to be a defense to an on the job injury claim, the employee's intoxication or impairment must be the proximate cause of the claimed injury. Because of this defense, it is not unusual for an employer to require an employee to undergo an alcohol and/or drug test after a work related injury is reported. Refusal by the employee to submit to such testing may also be grounds to deny workers compensation benefits.

**THIRD PARTY CLAIMS:** It is possible for an injured worker to have a worker's compensation claim related to an on the job injury and a viable liability claim, i.e., negligence, against another person or entity who actually caused the injury. For example, a nurse injured in an automobile accident, while traveling to see and treat a home bound patient, may have a worker's compensation claim through his/her employer and a liability claim against the at-fault driver. In such a situation, the law does not allow the injured party to recover "double" benefits, but workers compensation benefits can be used while the liability claim is pending. If a settlement is reached with the at-fault third party, the employer or its insurance carrier is entitled to repayment of a portion of the benefits paid from the liability settlement proceeds. However, because the third party liability claim includes additional damages, such as pain & suffering, it is often financially beneficial to pursue.

## **VI. HIRING AN ATTORNEY**

Not every person who suffers a work related injury needs to hire an attorney. However, it is important for injured workers to know their rights and have a general understanding of the wage and medical benefits available to them under the Alabama Workers' Compensation Act. As with most personal injury claims or cases, the more severe the injury, the more benefit an experienced attorney will be able to provide. Contingency fees for workers compensation claims are limited by statute at 15% of the recovered wage benefits.

Most experienced workers compensation lawyers offer free consultations for workers who have a job related injury. Often times, right after a work related injury it is too early in the process to tell if an attorney will be needed, but a free consultation can at least provide you with helpful information and guidance for your claim. An early consultation with an attorney may help you get a better understanding of the worker's compensation benefit process. Such a consultation may also help identify specific legal or factual issues which may hinder or slow down the wage and medical benefits available. An experienced worker's compensation attorney can also identify key issues that may trigger the need for an attorney's involvement in the workers compensation claim process.

As a general rule, please consider a consultation with an attorney as soon as possible. Also, as a general rule it is recommended you hire an attorney if the work related injury has any permanent effect on your health or your ability to return to work. As noted in this Guide, the computation of disability benefits, even for a "minor" permanent impairment, can be complicated. An experienced worker's compensation attorney can help you with the calculation and determine whether a different methodology can be utilized. Also an attorney can help determine if additional benefits such as vocational retraining may be available.

# INJURED WORKER'S RIGHTS IN ALABAMA

1. You can not be terminated by your employer solely because you make a claim for worker's compensation benefits.
2. You have a right to receive wage compensation benefits within 30 days after the benefits are determined to be due.
3. You have a right to have all undisputed medical bills paid by your employer, and/or its insurance carrier, within 25 days of submission.
4. You have the right to vocational retraining or vocational rehabilitation if deemed necessary by your treating doctor.
5. You have a right to a second medical opinion at the employer's expense. Upon request, the employer, or its worker's compensation insurance carrier, must provide you with the names of four other doctors for you to choose from for your second medical opinion.
6. You have a right to have any settlement for wage or medical benefits approved by Court. In most instances, court approval is required.
7. You have a right to free assistance on your worker's compensation claim from the Alabama Department of Industrial Relations via the Omsbudman Program:  
1 800 528-5166.
8. You have the right to prosecute your worker's compensation claim in Court.
9. You have a right to hire your own attorney to assist you in the presentation and/or prosecution of your claim based upon a limited contingency fee. The contingency fees in worker's compensation claims is limited to 15% plus expenses and is only paid if wage benefits are recovered.
10. You have a right to bring a liability claim or case against a third party responsible for causing your on the job injury. Third party meaning someone other than your employer and/or a co- worker who may have caused your work related injury.

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