

As a workers' compensation attorney, I advise injured workers about how the law applies to their particular workers' compensation claim. I have yet to talk to an injured worker who felt that the workers' compensation laws were fair or adequate. There is good reason for this. Legal limitations and restrictions as to how much an injured worker may recover result in many workers' receiving inadequate benefits. Unfortunately, the workers' compensation system was not designed primarily to benefit the injured worker. Instead, it was created to protect employers and workers' compensation insurance companies by limiting their legal liability and obligations.

Despite these negatives, workers' compensation has evolved over the years to include some fairly decent worker protections. Although many of these are buried in hard-to-understand rules and procedures, informed workers who understand how the system works and are willing to assert their rights have a good chance of being treated fairly. Sadly, most workers have little, if any, knowledge about their workers' compensation rights. This book aims to change that.

This book can help you if you're handling your own workers' compensation case or filing a claim on someone else's behalf, such as a minor. (In legal terms, this is referred to as acting in the capacity of a Guardian ad Litem, where you file a workers' compensation claim on behalf of a minor or someone who is incompetent.) If you're represented by an attorney, she will be better able to guide you through the process if you're well-informed about workers' compensation procedures and understand the important decisions you'll need to make.

If you were injured on or after January 1, 1994, this book will provide up-to-date information on California workers' compensation laws. Due to changes in the law, this book cannot be relied on for injuries occurring prior to 1994, although it should still be very helpful.



INJURIES BETWEEN 1/1/90 AND 12/31/93

If you were injured before 1994 and your case hasn't settled yet, you will need to go beyond this book to find information that applies to your date of injury. Appendix 1 provides a summary of the important laws for injuries that occurred between 1/1/90 and 12/31/93. In addition, the Workers' Compensation Information and Assistance Unit provides free help, as discussed in Section C1, below.

LEGAL CITATIONS

Throughout this book, you'll see references to laws that govern the California workers' compensation system. If you want more information, you can look up these legal citations, as discussed in Chapter 27.

Labor Code (LC). The vast majority of workers' compensation laws are contained in the California Labor Code, the basic state laws that regulate employment matters.

California Code of Regulations (CCR). These rules and regulations expand upon, interpret and explain procedures for implementing and enforcing the California Labor Code.

United States Code (USC). Many laws that apply to people not covered by California workers' compensation laws can be found in the United States Code.

A. What Is Workers' Compensation?

Workers' compensation is a system of benefits set up to help employees who are injured on the job. If a worker dies as a result of work injuries, the employee's dependents are entitled to receive workers' compensation death benefits.

Work-related injuries (which broadly include injuries, occupational illnesses and diseases) are also referred to as "industrial injuries." For workers' compensation purposes, an industrial injury is any injury—in any occupation—that occurs as a result of your employment. Put another way, "industrial" is synonymous with "work." You may also hear the term "compensable injury," another term that refers to an injury that's covered by workers' compensation.

The workers' compensation system is sometimes described as a "no-fault" system of give and take. The injured employee gives up the right to sue an employer in court. In return, the employee receives compensation without having to prove that the employer caused the injury. In exchange for providing compensation regardless of fault, the employer's liability is limited to benefits specified in the California Labor Code. Not surprisingly, these amounts are almost always significantly less than what might be available if employees could sue in court. For the vast majority of cases, the rule that all work-related injuries must go through the workers' compensation system is a fact

of life. (There are a few situations where an injured employee is not covered by workers' compensation and may sue an employer in the regular (municipal or superior) court system; see Chapter 17 for a discussion.)

At first glance, a no fault system sounds like a fair deal—workers who are hurt are taken care of without having to go through a costly process of assigning blame. Unfortunately, the existing system is complicated and hard to understand. It has evolved into what too often becomes a bureaucratic nightmare that commonly intimidates and hinders people with valid claims. But perhaps the worst aspect of the California workers' compensation system is that it doesn't deliver on its fundamental promise to cover all injured workers on a no-fault basis. The employer and its workers' compensation insurance company will often fight an employee's perfectly legitimate claim every step of the way.

WORKERS' COMPENSATION FRAUD

Over the last several years, alleged workers' compensation fraud (the filing of false claims) has been a major concern of employers and workers' compensation insurance companies alike. In response to these concerns, California passed major revisions to its workers' compensation laws, which are incorporated in this book. *It is now a felony for anyone to knowingly file a false or fraudulent workers' compensation claim.* The laws that make it harder to commit fraud unfortunately also make it much more complicated for injured workers to file and receive compensation for legitimate claims.

B. What an Injured Worker Is Entitled To

Enough about the problems with workers' compensation laws. If you've been injured on the job, you probably want to know how you'll be compensated. California workers' compensation laws provide a limited number of benefits (mostly money payments). Workers' compensation benefits are tax exempt; in other words, they are not considered income for income tax purposes.

1. Take an Active Role in Obtaining Benefits

It's a fact of life that you're the one who must see to it that the insurance company provides you with benefits. If you (or your attorney, if you have one) don't go after all the benefits to which you are entitled, you will likely be shortchanged. In the workers' compensation system of limited benefits, you cannot afford to be complacent.

Lest you let your pride get in the way, clearly understand that workers' compensation benefits should not be considered charity. Whether you like it or not, the existence of the workers' compensation system means that you have given up valuable legal rights. For example, you cannot sue your employer, you are not entitled to payments to cover lost wages (past, present or future) and you cannot receive compensation for your pain and suffering.

Accept workers' compensation benefits for what they are: part of a system set up to get you medical treatment for your injury, provide minimum income while you are off work and help you get back to work in some capacity as soon as possible.

WORKERS' COMPENSATION JARGON

In few places on earth will you find a system that uses more confusing, contradictory and just plain batty terminology. Unfortunately, you will simply have to master a number of confusing terms and acronyms used in the workers' compensation system or you won't understand how to handle your claim. Whenever you hit a mind-boggling term, take a moment to learn what it means. In no time at all, you'll be talking with ease about your TTD, VRMA, QME, P&S and QRR.

2. Workers' Compensation Benefits

The following summary discusses what is available and refers you to the chapters that explain how to obtain and make the best use of available benefits:

- **Medical Treatment and Related Costs.** You are entitled to medical treatment, at no cost to you, to cure and relieve the effects of your industrial injury. You are also entitled to be reimbursed for costs of mileage going to and from your medical appointments. You are not, however, entitled to mileage reimbursement for attending court hearings or traveling to the insurance company's office. (Chapters 9, 10 and 11 cover all aspects of medical benefits.)
- **Temporary Disability.** You are entitled to receive monetary payments while you are off work and temporarily disabled due to your injury. The amount of temporary disability is based upon two-thirds of your average weekly wage, with established maximums, depending upon the date of your injury. In short, don't expect to receive as much money as when you were on the job. (See Chapter 12.)
- **Permanent Disability.** If your injury affects your ability to participate in the open job market in the future, you may receive a set dollar amount as compensation. How much you'll receive is determined by the part of your body that is injured, your age, your occupation and any work restrictions as determined by various doctors. These factors are plugged into a standard rating schedule to determine how much you can recover. If you're 70% to 99.75% disabled, you may additionally receive a small pension for the rest of your life. If you're 100% (totally) disabled, the amount you are entitled to receive increases substantially. (See Chapter 13.)
- **Vocational Rehabilitation Benefits.** If you cannot return to your former job because of limitations caused by your industrial injury, you are entitled to assistance in finding other employment. Vocational rehabilitation is a program designed to assist you in returning to the labor market. To this end, vocational rehabilitation employs a number of means, including possibly a retraining program, designed to help you acquire the skills necessary to return to suitable gainful employment. (See Chapter 14.)
- **Death Benefits.** If you were a total or partial dependent (one who relied upon another for support) of an employee who died as a result of an industrial injury, you may have the right to recover certain benefits, including burial expenses and a sum of money. (See Chapter 15.)

OTHER WORKERS' COMPENSATION BENEFITS

In unusual circumstances, you may be entitled to benefits that are not available in a typical workers' compensation claim. Turn to Chapter 16 if any of the following remedies may apply to your situation:

- **Subsequent Injuries Fund Benefits.** You may be eligible if you had a prior injury or illness before your present workers' compensation injury, regardless of whether or not the prior injury happened at work.
- **Uninsured Employer's Fund.** This fund is available if your employer does not have workers' compensation insurance and is not self-insured.
- **Discrimination Benefits Under LC § 132(a).** You may be eligible to file a separate claim if your employer discriminated against you because you asserted your right to file a workers' compensation claim.
- **Employer's Serious and Willful Misconduct.** You may qualify for increased benefits if your employer's seriously improper action or inaction—such as the failure to remedy an obvious safety violation—contributed to or caused your work injury.

3. Other Benefits and Remedies

You may qualify for benefits and remedies outside the workers' compensation system, including:

- **State Disability ("SDI").** Most workers have a small amount deducted from each check for "SDI." In the event of disability for any reason (work or otherwise), you may be entitled to disability payments. SDI is usually paid where workers' compensation temporary disability is not being paid. (See Chapter 17, Section A.)
- **Social Security Benefits.** If your injury is severe enough, you may qualify for Social Security disability, which is paid by the federal government. (See Chapter 17, Section B.)
- **Claims or Lawsuits for Personal Injuries.** If your work injury was caused, entirely or in part, by an outside third party (someone not working for your employer), you may be able to sue that person or entity in civil court for damages. (See Chapter 17, Section C.)

- **Claims or Lawsuits Based on Discrimination.** In some instances where you have been discriminated against, you may be able to file a claim under the Americans with Disabilities Act, the California Fair Employment Housing Act or other legal avenues. (See Chapter 17, Section D.)

C. Where to Get Additional Information and Help

While this book may answer most of your questions, it's quite possible that you'll need further assistance. You may contact any of the agencies listed below for help. In addition, Chapter 27 provides information on how to utilize the law library and the Internet to do legal research. If you decide that you want to be represented by an attorney, you may also find Chapter 26 on lawyers helpful. Be aware, however, that it may be difficult to find a workers' compensation attorney willing to take your case, as lawyer fees are relatively low and most workers' compensation attorneys have many more possible cases than they can handle.

1. Information and Assistance Officers

The Workers' Compensation Appeals Board is the place where your matter is heard by a workers' compensation judge, and where documents in your case are filed. Despite its name, all workers' compensation matters (not just appeals) are handled by the Workers' Compensation Appeals Board, also known as the "Appeals Board" or the "WCAB." There are approximately 18 Appeals Boards in the State of California.

Each Workers' Compensation Appeals Board has at least one Information and Assistance officer (also called an I&A officer). The Information and Assistance officer's role is to assist injured workers in navigating their way through the workers' compensation system. Some Information and Assistance officers can be your best source of information and help in resolving problems you encounter.

Information and Assistance officers are there to give you free help in pursuing your workers' compensation claim. See Appendix 6 for the number of your local workers' compensation office. You may get helpful general information from the automated Workers' Compensation Information and Assistance Unit line at 800-736-7401,

which provides prerecorded information about workers' compensation.

In addition, "Injured Worker Workshops" are held the first Tuesday of every month at every district office. These free one-hour workshops consist of a presentation by an Information and Assistance officer followed by a question and answer session. Call your district office for more information. (See Appendix 6 for the phone number.)

2. Workers' Compensation Insurance Rating Bureau (WCIRB)

The Workers' Compensation Insurance Rating Bureau (WCIRB) is helpful in finding out who your employer's workers' compensation company was at the time of your injury. Here's where to reach the WCIRB:

Workers' Compensation Insurance Rating Bureau
525 Market Street
Suite 800
San Francisco, CA 95105
Telephone 415-777-0777

3. Division of Workers' Compensation Website

The Workers' Compensation Division has developed a helpful website at www.dir.ca.gov/DWC/dwc_home_page.htm. Here you can find an overview of workers' comp laws and rules, an FAQ (frequently asked questions) area and guides for injured workers on topics such as how to object to a summary rating, how to file an appeal and how to fire your attorney. This site also provides workers' compensation forms and the manual for rating permanent disabilities in PDF format (readable by Adobe Acrobat Reader).

D. How to Use This Book

No two injuries are alike, and no two injuries are ever handled the same way by the same insurance company, let alone by different companies. How much of this book you'll choose to read will depend on your individual circumstances.

I suggest that you read Chapter 2 (Overview of a Workers' Compensation Claim) to get a good understanding of the workers' compensation system, and to determine where your claim is in the system. Read Chapter 21 (Preparing Your Case) in conjunction with Chapter 2, as trial preparation should begin on day one of your claim and continue until the day of trial.

If you have a cumulative trauma, or repetitive stress injury, read Chapter 4 (Cumulative Trauma Disorders).

A thorough reading of Chapter 6 (Keep Good Records to Protect Your Claim) will assure that you properly prepare and maintain the information you will need for trial.

At least glance through Chapter 5 (What to Do If You're Injured) to make certain that you have done everything you should following your injury. Feel free to turn to relevant chapters as the need arises and skip any chapters that do not apply to your situation. For example, if the employer's workers' compensation insurance company has already accepted your case and begun providing benefits, you may want to skip Chapter 3 (Is Your Injury Covered by Workers' Compensation?). Likewise, if the insurance company has proposed a settlement, you'll want to turn to Chapter 19 (Figure Out a Starting Settlement Amount).

While great care has been taken to provide you with a comprehensive and informative book on your workers' compensation benefits, this book cannot cover each and every aspect of workers' compensation law in detail. Particularly if your claim has been denied or delayed, you'll need to go beyond this book. (See Chapters 26 and 27 on hiring a lawyer and doing your own legal research.)

Finally, to avoid using the cumbersome "he or she," I have randomly alternately used masculine and feminine pronouns throughout the book.



E. What This Book Does Not Cover

Workers' compensation laws have changed tremendously over the last few years. This has inevitably resulted in uncertainty, as three different sets of laws are on the books—laws that apply to years prior to 1994, to 1994–1997, to 1998–2002 and after 2002. Many of the new or revised laws are subject to various interpretations, and will continue to be interpreted for many years to come as workers' compensation cases are brought to trial and legal decisions are appealed. I have given my best effort to provide you with accurate explanations of the law for injuries on or after January 1, 1994. However, this book is not a legal opinion on any issue or law and should not be relied on as such. If you have questions or concerns regarding a workers' compensation issue or law, you should attempt to consult with a workers' compensation attorney, get help from an Information and Assistance officer or do your own research. If you face any of the following issues, you should seek help beyond the book:

- **You were injured before January 1, 1994.** Appendix 1 gives an overview of workers' compensation laws between 1/1/90 and 12/31/93 and gives some suggestions for where to find additional information.
- **Your employer was not insured.** By law, your employer must carry workers' compensation insurance or be permissibly self-insured. If, however, your employer does not have workers' compensation insurance, you'll probably need to seek compensation from the Uninsured Employers Fund, discussed in Chapter 16, Section B.
- **An injured worker died.** If an employee's death was due to a work injury, at least in part, the worker's dependents may file a claim for death benefits. The worker's estate may be entitled to any accrued workers' compensation benefits as of the date of death. (See Chapter 15 for more information.) If you feel the death was due to the work injury and the insurance company denies coverage, seek help from an Information and Assistance officer or see a lawyer.
- **You have a stress-related (psychological) injury.** Insurance companies almost always deny these claims and will fight you every step of the way. If at all possible, find a workers' compensation attorney to represent you or seek help from an Information and Assistance officer. (See Chapter 3, Section B4, for more information.)

- **If the statute of limitations has run.** If the insurance company has denied your claim because it asserts that you failed to file your claim in a timely manner, you'll need help beyond the book. Contact an Information and Assistance officer or see a lawyer. (See Chapter 5, Section C1, for more information.)
- **Apportionment.** Insurance companies sometimes claim that all or part of a permanent disability is due to preexisting or subsequent factors, such as a non-work-related auto accident. If so, seek help from an Information and Assistance officer or see a lawyer. (See Chapter 3, Section B7, for more information.)
- **Post-termination claim.** Sometimes an insurance company will deny a claim if you were terminated or laid off. If this happens, seek help from an Information and Assistance officer or see a lawyer.

ICONS USED IN THIS BOOK

Look for these icons to alert you to certain kinds of information.



Caution: Alerts you to potential problems you may encounter in your workers' compensation case.



Tip: Gives practical suggestions for handling a legal or procedural issue that may come up.



Fast Track: Lets you know when you may skip reading some material that is not relevant to your situation.



Resources: Refers you to additional books or resources.



See a Lawyer: Advises you to see a workers' compensation attorney or other source of assistance.



Case Law: Lets you know there is an important court decision or case on this legal area, discussed in Chapter 28, Case Law Review.