

# **PENNSYLVANIA WORKERS' COMPENSATION LAW**

*WITH PRACTICAL TIPS*

---

## **Darren K. Parr Law Firm**

Working hard for working families

---



(412) 566-1245  
or (717) 412-4518  
[www.DKPLaw1.com](http://www.DKPLaw1.com)  
Pittsburgh ♦ Harrisburg

---



**Pennsylvania Workers'  
Compensation Law  
With Practical Tips**

**2014-15 Edition**

**Darren K. Parr, Esq.  
Kevin W. Tucker, Esq.**

Copyright © 2014 Darren K. Parr Law Firm. All rights reserved.

Printed in Pittsburgh, Pennsylvania.

Darren K. Parr Law Firm  
Offices in Pittsburgh and Harrisburg  
**Working hard for working families**  
Phone: (412) 566-1245 or (717) 412-4518  
Email: Darren@dkplaw1.com  
Kevin@dkplaw1.com  
Website: www.DKPLaw1.com

The material in this booklet has been prepared by Darren K. Parr Law Firm, LLC, for informational purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. These materials do not, and are not, intended to constitute legal advice.

Distribution of this booklet is not intended to create, and receipt does not constitute, an attorney-client relationship between Darren K. Parr Law Firm and receiver. Readers should not act upon this information without seeking professional counsel.

You may reproduce materials available from DKP Law for non-commercial distribution. All copies must include our copyright notice.

# Table of Contents

<b>Section One: Preliminary Matters</b> .....	<b>1</b>
Foreword .....	1
Introduction to DKP Law .....	2
Introduction to Workers' Compensation .....	3
<b>Section Two: Types of Work Injuries</b> .....	<b>4</b>
Definition of "Work Injury" .....	4
"Obvious" Injuries .....	4
Worsening of a Previous Injury or Condition .....	4
Repetitive Trauma Injuries .....	5
Loss of Body Part.....	5
Hearing Loss.....	5
Loss of Vision .....	6
Scarring and Disfigurement.....	6
Death .....	7
Occupational Disease .....	7
<b>Section Three: What Qualifies as a "Work"</b>	
<b>Injury?</b> .....	<b>8</b>
Course of Employment.....	8
Driving or Commuting .....	9
Walking Into Work.....	9

<b>Section Four: Employees' Obligations after an Injury</b> .....	<b>10</b>
Notice .....	10
Who must you tell?.....	10
What must you say?.....	10
When must you give notice? .....	11
How should you give notice? .....	12
Deadline to File a Claim .....	13
Medical Treatment .....	13
Panel Doctors.....	13
90-day Rule.....	13
Exception to the 90-day Rule .....	13
 <b>Section Five: Employers' Obligations after an Injury</b> .....	 <b>14</b>
Reporting Rules .....	14
Accept or Deny an Injury .....	15
21-Day Rule .....	15
Notice of Compensation Payable (NCP).....	15
Medical Only NCP .....	15
Notice of Compensation Denial (NCD) .....	15
Notice of Temporary Compensation Payable .....	16
Independent Medical Examination .....	16
 <b>Section Six: Benefits</b> .....	 <b>17</b>
Wage Loss Benefits .....	17

Total Disability .....	17
Maximum Compensation Rates .....	18
Partial Disability .....	18
Specific Loss and Disfigurement Benefits .....	19
Extremities .....	19
Hearing Loss.....	21
Loss of Sight .....	21
Death Benefits .....	22
Illegally Employed Minors .....	22
Medical Benefits.....	22
Insurance Copays .....	23
Travel Expenses .....	23

**Section Seven: How Long do Benefits Last? ....24**

Termination of Benefits .....	24
Termination of Benefits .....	24
Termination of Death Benefits .....	24
Partial Disability Benefits.....	24
Suspension of Benefits .....	25
General Procedures .....	26
Supplemental Agreement.....	26
Notification of Suspension .....	26
Challenging a Suspension Notice.....	27
Petition for Suspension .....	27
Modification of Benefits.....	28
General Procedures .....	28

Supplemental Agreement.....	28
Notification of Modification.....	29
Challenging a Modification Notice .....	29
Petition for Modification.....	29
<b>Section Eight: How to Reopen a Claim .....</b>	<b>30</b>
Time to Act.....	31
After Benefits are Terminated.....	31
After Benefits are Modified to Partial Disability.....	31
After Benefits are Suspended.....	31
<b>Section Nine: Other Benefits and Offsets .....</b>	<b>32</b>
Unemployment Compensation .....	32
Severance Pay.....	33
Pension Benefits .....	33
Social Security Retirement Benefits .....	34
<b>Section Ten: Settlement .....</b>	<b>34</b>
<b>Section Eleven: Rights Against Third Parties.....</b>	<b>36</b>
<b>Section Twelve: Other Legal Remedies .....</b>	<b>37</b>
Automobile Accidents.....	37
A “To Do” List for After an Accident.....	37
Who Pays the Medical Bills? .....	37

Can I Recover Lost Wages?.....	38
How Long do I have to File a Lawsuit? .....	38
Social Security Disability .....	39
What is a Disability? .....	39
The Compassionate Allowance Initiative .....	39
<b>To-Do List for after a Work Injury .....</b>	<b>40</b>
<b>Thank you.....</b>	<b>42</b>



## **Section One: Preliminary Matters**

### **Foreword**

This booklet was prepared by Darren K. Parr Law Firm, LLC. In creating the DKP Law booklet, we set out to make a guide that was easy to understand when you need it most.

Over the years, I have made countless presentations on workers' compensation law. I often travel to unions to provide boards, committees, and membership updates on this topic. Of the comments I receive after these presentations, I am often thanked for discussing the law in the context of real scenarios and practical tips.

The DKP Law booklet is designed like our presentations. We provide practical tips to explain important workers' compensation rules. I sincerely hope our effort in this regard is helpful. That said, the DKP Law booklet cannot replace the guidance of an actual attorney, and workers should feel comfortable contacting us for additional help.

-Darren K. Parr, Esq.

## **Introduction to DKP Law**

DKP Law provides legal services in a manner different than other firms. This is achieved through constant contact with you as a client. DKP Law is a small firm by design. This means that when you call our office, you will speak with someone familiar with you, and your case.

Working families should have fair access to the best representation. In an effort to provide such access, DKP Law travels to union halls and offices in western and central Pennsylvania every month. During these visits, we offer free legal consulting to brothers and sisters of various unions.

You will find our union schedule on our website, at **[www.dkplaw1.com](http://www.dkplaw1.com)**. In addition to this schedule, we often make "house calls," coming to your home or a nearby union hall to discuss your legal concerns.

If you have a question, please consider contacting us. We are passionate about the work we do, and the people we meet and serve through this work.

**(412) 566-1245 - Pittsburgh    [Darren@DKPLaw1.com](mailto:Darren@DKPLaw1.com)**  
**(717) 412-4518 - Harrisburg    [Kevin@DKPLaw1.com](mailto:Kevin@DKPLaw1.com)**

## **Introduction to Workers' Compensation**

Workers' Compensation law in Pennsylvania is largely rooted in two pieces of state legislation: (1) the Pennsylvania Workers' Compensation Act of 1925, and (2) the Occupational Disease Act of 1939. These Acts have undergone many changes since they were originally enacted. The DKP Law Booklet summarizes some of the key provisions of the Acts' current form.

This body of law applies to all injuries, sustained by employees while in the course and scope of their employment, that occur within Pennsylvania.

The law represents a "social contract" between employees and employers. Pursuant to this contract, employees relinquished their rights to sue an employer or coworkers in civil court for a work injury.

In exchange, employees received a new resolution process, called workers' compensation. This process is considered to be "no fault" and quicker than traditional courts. Because of this "social contract," the workers' compensation process is often said to be a worker's "exclusive remedy" against an employer.

## **Section Two: Types of Work Injuries**

### **Definition of “Work Injury”**

A “work injury” refers to “an injury to an employee, regardless of his previous physical condition, arising in the course of his employment and related thereto.” This includes aggravation, exacerbation, or death resulting from an injury.

### **“Obvious” Injuries**

For the purpose of this booklet, DKP Law will use the phrase “obvious injuries” to refer to those types of work injuries for which the relationship between the cause of the injury, and the injury itself is fairly obvious.

Workers are most likely to report these injuries to their employer, and to pursue workers’ compensation benefits for missed work and medical benefits.

### **Worsening of a Previous Injury or Condition**

Many people work through preexisting pain or illnesses. Sometimes these same individuals become

injured at work, thus worsening their previous pain or illness. Do employees give up their right to workers' compensation benefits because they chose to work instead of taking time off? Absolutely not. If a preexisting injury or illness is worsened by work duties, the employee is still entitled to benefits.

**Practical Tip.** This type of injury is called an aggravation of a preexisting condition.

## **Repetitive Trauma Injuries**

An injury need not be pinpointed to a specific event as long as the injury arises in the course of and is related to a person's employment. A work-related injury or disability, like carpal tunnel, may be shown to result from the cumulative effect of the recurring trauma of a person's work duties.

## **Loss of Body Part**

A person is entitled to workers' compensation benefits if he or she suffered an amputation or permanent loss of use of a body part, such as a finger, arm, leg, or toe. A person is entitled to these benefits even if he or she never missed a day of work.

## **Hearing Loss**

A person is entitled to benefits if he or she suffers

hearing loss because of work. This is a common “no lost time” injury, because these injuries occur gradually over time.

**Practical Tip.** A person suffering from hearing loss is also entitled to be paid for medical devices, such as hearing aids.

## **Loss of Vision**

A person is entitled to benefits if he or she suffers a loss of vision in one or both eyes.

## **Scarring or Disfigurement**

A person is entitled to compensation benefits if he or she suffered disfigurement or scarring of the head, face, or neck.

Scarring or disfigurement may occur as a direct result of a work-related incident, such as scalding liquid coming into contact with a person’s face. A person is also entitled to benefits if he or she received an incision scar following surgery for a work-related injury, such as a bulged disc.

A person is entitled to these benefits even if he or she never missed a day of work.

**Practical Tip.** An injured worker must wait 6 months to file a claim for disfigurement. At the 6-month point,

the disfigurement is considered “permanent.”

## **Death**

Where death results from an injury or occupational disease, weekly compensation benefits and burial expenses are provided. Dependents who are entitled to receive benefits generally include a widow or widower, children under the age of 18, and in certain circumstances, parents and siblings.

## **Occupational Disease**

A person who suffers a disease that is caused by exposure to harmful substances and related to his or her employment is entitled to workers' compensation benefits. Likewise, an employee with a preexisting disease not related to work, is entitled to benefits if the disease is nevertheless aggravated or worsened by his or her employment.

**Practical Tip.** A worker suffering from mesothelioma, lung cancer, or asbestosis may be entitled to additional substantial compensation from asbestos trust funds created by asbestos manufacturers that are now bankrupt. These funds are established to specifically compensate such injured workers.

## **Section Three: What Qualifies as a "Work" Injury?**

### **Course of Employment**

In order for an injury to be compensable under workers' compensation, it must be sustained while the employee is in the course and scope of his or her employment.

There are two ways in which an employee may prove his or her injuries were sustained while in the course and scope of employment.

(1) The employee, whether on or off the employer's premises, is injured while actually engaged in the furtherance of the employer's business or affairs.

(2) The employee (a) is on the employer's premises or work site, (b) is required by his or her job to be on the premises or work site, and (c) is injured by the condition of the premises or worksite, or by the activities going on.

**Practical Tip.** An employee does not have to be on the clock to be in the course and scope of employment. Merely being on the premises may put one in the "furtherance of the employer's business."



## **Driving or Commuting**

Commuting to and from work is not an act considered to be within the course and scope of a person's employment. This concept is often referred to as the "coming and going rule." There are however four exceptions:

1. The employee has no fixed place of work;
2. The employment contract includes transportation to and from work;
3. The employee is on a special assignment for the employer; or
4. The employee was furthering the business of the employer by way of a "special mission."

**Practical Tip.** For an assignment to be part of a special mission, it cannot be part of the employee's regular duties.

## **Walking into Work**

Employees are frequently injured in their employer's parking lots. These injuries are compensable, so long as the three-part "premises" test discussed in the "Course of Employment" section is satisfied.

## **Section Four: Employees' Obligations after an Injury**

### **Notice**

#### **WHO must you tell?**

An injured employee must notify a manager or supervisor that he or she suffered a work injury. Notice may also be given to a work nurse or human resources director. Notice to another employee or coworker is not adequate.

**Practical Tip.** Notice must be given to a person of authority. A coworker or union official is not enough, even if that person is working as a leadman.

#### **WHAT must you say?**

An employee must do more than simply tell a boss he or she is in pain or injured. An employee must describe (1) the nature of the injury and (2) how the pain or injury is related to the employee's work.

An employee is not required to use medical terms to describe injuries. Rather, plain and ordinary language, like "soreness in my elbow," or "sharp pain in my back," is appropriate. A specific diagnosis is not necessary.

If pain or an injury occurred at a specific moment, the employee must describe what he or she was doing at the time of the injury, and where it occurred.

If an employee's pain or injury developed or progressed over a period of time, such as carpal tunnel or back soreness, the employee must describe what activities at work he or she believes caused the gradual pain or makes it worse.

**WHEN must you give notice?**

An employee must notify an employer within 120 days of a work injury. For injuries that worsen over time, such as carpal tunnel, an employee must give notice within 120 days of the last day worked.

Many employers require employees to report work injuries within 24- or 48-hours. These rules often discourage employees from reporting work injuries several days or weeks "late." Do not be intimidated. These rules do not override an employee's right to give notice in the 120-day window.

**Practical Tip.** An employee should notify an employer that he or she has been injured as soon as possible. This may require the employee break from his or her shift in order to notify the employer *immediately*. Sometimes, this can be difficult. If the employee is unable to break from a shift, he or she should provide

notice during a scheduled break or before leaving work.

**HOW should you give notice?**

An employee must prove that his or her employer actually received notice of the employee's work injury. Employees should fill out and submit formal accident, incident, or work injury reports when giving notice. Employees should make sure to include a date and that a supervisor signs the report as well. Employees should retain a copy of the report.

**Practical Tip.** If no reporting process exists, the employee should write a note or email to her boss or supervisor describing the injury, how and where it occurred. The employee should obtain signatures and retain a copy.

An employee who does not submit a written report, must at the very minimum, communicate verbally a work injury to an employer.

**Practical Tip.** For an occupational disease, repetitive injury, or hearing loss, notice does not have to be provided until a doctor advises the injured worker that his or her injury is related to work.

## **Deadline to File a Claim**

An employee must file a workers' compensation claim within three (3) years of the date of injury.

If an injury gets worse every work day, such as carpal tunnel or hearing loss, then a claim must be filed within (3) years of the employee's last day of work.

## **Medical Treatment**

### **Panel Doctors**

Employers must give written notice to employees that treatment with a "panel doctor" is required (subject to the 90-day Rule below) for a work injury.

Employers must provide a list of (6) physicians with whom employees must treat for a work injury. These physicians are called "panel doctors."

### **90-day Rule**

If an employer has posted a list of (6) panel doctors, and if an employee has acknowledged the list in writing, the injured employee must see (1) or a combination of these panel doctors for a period of (90) days after the first treatment date.

### **Exception to the 90-day Rule**

You may, at your own expense, see other doctors or specialists, in these (90) days.

## **Section Five: Employer's Obligations after an Injury**

### **Reporting Rules**

An employer must report all work injuries suffered by its employees to its insurance company, as well as the Workers' Compensation Bureau, on a Notice of Injury form. This form must be submitted within 48 hours if the injury results in death, and within 7 days if the injury does not result in death.

Employers do not have to report injuries that result in less than a day off work.

Employers must also keep a record of each injury, including its description, how it occurred, and the time during which the injured employee was unable to work.

**Practical Tip.** Employers sometimes provide an incentive for periods of no-lost time injuries. However, employees should not be discouraged from pursuing claims because of these nominal bonuses. Employees must make the employer report the injury in order to protect their right to medical care and wage benefits.

## **Accept or Deny an Injury**

### **21-day Rule**

An employer is to issue one of four documents within 21-days of receiving notice of an employee's injury.

1. Notice of Compensation Payable
2. Notice of Compensation—Medical Only
3. Notice of Compensation Denial
4. Notice of Temporary Compensation Payable

### **Notice of Compensation Payable (NCP)**

By issuing a NCP, an employer acknowledges its employee's work injury and right to benefits. An NCP should identify the parties, the date and description of injury, average weekly wage, and compensation rate.

### **Notice of Compensation Payable—Medical Only**

An employer will issue a Medical Only NCP when it agrees to pay an employee's medical bills, but denies payment of weekly compensation for wage loss.

### **Notice of Workers' Compensation Denial (NCD)**

If an employer denies liability for an injury, thus refusing to pay medical bills or compensation for wage loss, it must issue an NCD. The NCD must include a date and description of injury, and reasons for the denial.

**Notice of Temporary Compensation Payable (NTCP)**

Sometimes, an employer lacks the information necessary to accept or deny an employee's work injury claim. In such cases, the employer may issue compensation payments to the employee for a period up to 90 days while it continues its investigation.

**Practical Tip.** Special attention should be paid to the description of injury. Most employers and insurance companies accept injuries as a sprain or strain because these injuries resolve quickly. An injured worker should always push to have their injury described correctly.

**Independent Medical Exam**

If an injury is accepted as work-related, an employer may request the employee undergo a physical examination by an independent physician. The examiner is selected and paid by the employer.

**Practical Tip.** An employer is entitled to schedule an IME every six (6) months, but only two (2) times in a calendar year.



## **Section Six: Benefits**

There are five general types of workers' compensation benefits:

1. Wage or earnings loss benefits;
2. Specific loss benefits;
3. Death benefits;
4. Illegally employed minor's benefits; and
5. Medical benefits.

### **Wage Loss Benefits**

An employee is entitled to weekly wage loss benefits only if he or she suffered a loss of wages or earning power because of the work injury.

Workers' compensation benefits are based on the employee's Average Weekly Wage (AWW).

Benefits must be paid on the same schedule as the employee's wages before the injury. Therefore, if an employee received a paycheck every two weeks before the injury, he is entitled to a compensation payment every two weeks after the injury.

### **Total Disability**

An employee is entitled to total disability benefits if he

is unable to perform any job whatsoever, or is unable to perform the job held at the time of injury.

**Practical Tip.** Generally, an injured worker receives two-thirds (2/3) of his or her AWW. The payment is designed to get the injured worker as close to their net pay as possible.

**Maximum Compensation Rates**

Every year, Pennsylvania sets a maximum amount of workers' compensation benefits an employee may receive each week. These amounts are based on the year in which an employee is injured.

Year of Injury	Max Weekly Benefits
2012	\$858 per week
2013	\$917 per week
2014	\$932 per week

**Partial Disability**

If an employee returns to work at a lesser wage after an injury, or a judge decides the employee is able to work at a lesser wage, then her benefits may reduce.

The amount of partial disability benefits to which an employee is entitled equals two-thirds of the difference

between the employee's pre-injury AWW and his or her earning power after the injury.

**Practical Tip.** There is no cost of living adjustment from year to year. Therefore, the benefit rate you receive for a given work injury will never change.

## **Specific Loss and Disfigurement Benefits**

Compensation is payable for the amputation or permanent loss of use of parts of the body, loss of hearing or vision, and disfigurement and scarring.

**Practical Tip.** An employee is entitled to specific loss benefits even if he or she did not miss any work after the injury.

### **EXTREMITIES**

Pennsylvania law sets the amount of workers' compensation benefits a person is entitled to upon the amputation or loss of use of an extremity. The amounts of these benefits are based on the following schedule:

<b>Nature of Injury</b>	<b>Benefit Period</b>	<b>Healing Period</b>
Hand	335 weeks	20 weeks
Forearm	370 weeks	20 weeks
Arm	410 weeks	20 weeks
Foot	250 weeks	25 weeks
Lower leg	350 weeks	25 weeks
Leg	410 weeks	25 weeks
Thumb	100 weeks	10 weeks
First Finger	50 weeks	6 weeks
Second Finger	40 weeks	6 weeks
Third Finger	30 weeks	6 weeks
Fourth Finger	28 weeks	6 weeks
Great Toe	40 weeks	12 weeks
Other Toes	16 weeks	6 weeks

**Practical Tip.** Pennsylvania workers' compensation law also provides loss of use benefits for a loss less than 100%, but greater than 50%.

### **HEARING LOSS**

An employee must suffer binaural hearing loss of greater than 10% in order to recover workers' compensation. According to the AMA guidelines, many employers give employees annual tests to measure hearing loss from year to year.

**Practical Tip.** Employees are entitled to these tests results, and may treat with their own doctor for hearing loss. Although employers often tell employees they have not suffered the required 10% loss, it is a good idea to consult an attorney.

An attorney can quickly compare test results to determine the amount of hearing loss. Depending upon the amount of loss, an employee may be entitled to substantial worker's compensation benefits.

### **LOSS OF SIGHT**

A worker is entitled to benefits for the loss of his or her sight, in one or both eyes, as a result of a work injury. This is true even where a person can still see perfectly well with the other, uninjured eye.

<b>Nature of Injury</b>	<b>Benefit Period</b>	<b>Healing Period</b>
Eye	275 weeks	10 weeks

## **Death Benefits**

Where death results from a work injury or occupational disease, the deceased employee's dependents are entitled to receive weekly benefits and burial expenses.

Based on the circumstances, an employee's dependents may include his or her widow, widower, children, parents, brothers, and sisters.

## **Illegally Employed Minors**

If an individual under the age of 18 is employed in violation of state laws relating to the employment of minors, and is injured, then the injured minor is entitled to receive an extra 50 percent (50%) of workers' compensation benefits.

## **Medical Benefits**

An employer must provide payment for all reasonable, necessary, and related medical expenses incurred by an employee as a result of an accepted work injury. These expenses may include, among other things,

- Doctor's visits and follow-ups;
- Diagnostic testing, like an X-ray or MRI;
- Surgery;

- Medicine and supplies;
- Orthopedic appliances;
- Prosthetic limbs;
- Home nursing services; and
- Services from duly licensed practitioners of the healing arts, such as chiropractors.

An employer must pay expenses even if the employee has not suffered a decreased earning power or missed work.

**Practical Tip.** The voluntary payment of medical bills is not an admission of liability. It does not always mean that the employer is accepting responsibility for the work injury.

### **Insurance Co-Pays**

An employee may seek reimbursement for out-of-pocket co-pays made in connection with reasonable, necessary, and related medical treatment of a work injury.

### **Travel Expenses**

An employee may seek reimbursement for reasonable travel expenses related to his or her reasonable, necessary, and related medical treatment.

## **Section Seven: How long do benefits last?**

### **Termination of Benefits**

#### **Termination of Benefits**

An employee's right to benefits ends upon his or her full recovery from the work injury. The employer must prove the employee's disability has ceased, or that any current disability arises from an unrelated cause.

#### **Termination of Death Benefits**

Benefits paid to a deceased employee's dependent, such as a widow or child, terminate upon the:

1. Dependent's remarriage;
2. Dependent's death;
3. Dependent becoming self-supporting; or
4. Dependent's engagement in prostitution.

### **Partial Disability Benefits**

An employee may only receive 500 weeks of partial disability benefits for a work injury. After 500 weeks, compensation ceases as a matter of law.



## **Suspension of Benefits**

If an employee's workers' compensation benefits are suspended, he or she is no longer entitled to weekly wage loss benefits. The employee's injury, however, continues to be recognized and his employer or its insurance carrier must continue paying for the reasonable and necessary medical expenses related to the work injury.

An employee's right to workers' compensation benefits may be suspended for various reasons. The most common basis for a suspension is that the employee's injury no longer affects his or her ability to work. Other grounds for a suspension include:

1. Refusal of reasonable medical treatment;
2. Refusal to comply with an order for an IME or other similar interview;
3. Incarceration after conviction;
4. Failure to complete and return a verification;
5. Voluntary withdrawal from the labor market;
6. Total and permanent injury from a non-work-related condition or event.

**Practical Tip.** Generally, benefits are suspended when the injured worker is not fully recovered but can return to some level of work.

**General Procedures**

One of these documents must be properly executed before benefits can be stopped or suspended:

1. A Final Receipt, or in other words, an agreement between the employee and employer, stopping payment;
2. A Supplemental Agreement, signed by the employee;
3. A Notification of Suspension

**Supplemental Agreement**

A Supplemental Agreement terminates both the payment of weekly compensation benefits and medical expenses.

The employee's signature is required to enforce a Supplemental Agreement. Because of the serious medical and weekly benefits at stake, an employee should never sign a Final Receipt or a Supplemental Agreement without first speaking with an attorney.

**Notification of Suspension**

An employer seeking to unilaterally suspend an injured employee's workers' compensation benefits—without the employee signing an agreement—must first file a Notification of Suspension.

**Practical Tip.** In order to suspend an employee's benefits, an employer must prove that (1) a job is available to the employee, (2) the employee is physically able to perform the job without significant pain; and (3) the employee will earn at least as much money working the job as he or she did prior to being injured.

**Challenging a Suspension Notice**

In order to challenge a Suspension Notice, the employee must mark and mail to the Bureau of Workers' Compensation the check-off section of the Suspension Notice within 20 days.

Upon an employee's challenge, a special supersedeas hearing before a judge will be scheduled within 21 days. At this hearing, the judge will focus only on the issues of whether and when the employee returned to work without wage loss.

**Petition for Suspension**

If an employee challenges the employer's Notification of Suspension, then the employer must file a Petition for Suspension with a request for supersedeas. Otherwise, the employer may not continue to suspend the employee's workers' compensation benefits.

## **Modification of Benefits**

In some instances, the amount of weekly benefits an employee is entitled must be modified. Below are some circumstances that may justify this modification:

1. An employee's ability to earn wages changes based upon the fact his or her injury has worsened or improved;
2. An employee returned to work, but his or her new job results in a loss of weekly earnings;
3. The employer proves there is work available and within the employee's restrictions;
4. An employee's injury worsens and results in a specific loss, such as an amputation.

### **General Procedures**

One of these documents must be properly executed before benefits can be modified:

1. A Supplemental Agreement, signed by the employee;
2. A Notification of Modification

### **Supplemental Agreement**

A Supplemental Agreement should be used when the employer and employee agree that the employee's compensation status has changed. The employee's signature is required.

**Practical Tip.** An injured worker should never sign a Supplemental Agreement to modify benefits without first consulting an attorney.

**Notification of Modification**

An employer seeking to unilaterally modify an injured employee's workers' compensation benefits—without the employee signing an agreement—must first file a Notification of Modification.

An employer must prove that (1) a job is available to the employee, (2) the employee is physically able to perform the job without significant pain; and (3) the employee will earn some amount of wages.

**Challenging a Modification Notice**

In order to challenge a Suspension Notice, the employee must mark and mail to the Bureau of Workers' Compensation the check-off section of the Modification Notice within 20 days.

Upon an employee's challenge, a special supersedeas hearing before a judge will be scheduled within 21 days. At this hearing, the judge will focus only on the issues of whether and when the employee returned to work without wage loss.

**Petition for Modification**

If an employee challenges a Notification of

Modification, then the employer must file a Petition for Modification demonstrating why a change in benefits is necessary.

## **Section Eight: How to Reopen a Claim**

Sometimes, a prior work injury will return or unexpectedly worsen after an employee has returned to work. In this case, the employee's receipt of workers' compensation benefits have likely already been suspended or terminated. Obviously, it would be unfair if the previously injured employee were denied the right to go back on workers' compensation. As a result, Pennsylvania law specifically allows injured employees to return to workers' compensation under certain situations. Some of these situations include:

1. The injury or condition worsens;
2. The injury returns after the employee goes back to his or her pre-injury job;
3. The injury returns after the employee begins working a modified or light duty job;
4. The employee suffers wage loss upon returning to work in either the old job or in a light duty position because of the work injury.

**Practical Tip.** If an injured worker returns to work under restrictions and is subsequently laid off, his or her workers' compensation benefits are to be automatically reinstated.

## **Time to Act**

### **After Benefits are Terminated**

If an employee's workers' compensation benefits have been terminated, the employee must file a Reinstatement Petition within 3 years of receiving his or her last workers' compensation payment.

### **After Benefits are Modified to Partial Disability**

If an employee is receiving partial disability benefits, then he or she must file a Reinstatement Petition within 500 weeks of the first date he or she received a partial disability payment.

### **After Benefits are Suspended**

If an employee's workers' compensation benefits have been suspended, the employee must file a Reinstatement Petition within 3 years of receiving his or her last workers' compensation payment.

There is an exception for working injuries involving an employee's eyes. There is no time limit to file a Reinstatement Petition claiming that a previous work injury to an employee's eye has worsened.

**Practical Tip.** If an employee's benefits are suspended because the employee is earning his pre-injury wage, his employer remains responsible for medical expenses.

## **Section Nine: Other Benefits and Offsets**

An employer, or its insurance company, is sometimes allowed to reduce the amount of weekly workers' compensation benefits it pays an injured employee. This reduction occurs when the employee is already receiving, or has already received, other benefits, including:

- Unemployment compensation;
- Severance pay;
- Pension benefits;
- Sickness and Accident; and
- Social Security Retirement Benefits.

### **Unemployment Compensation**

An employee's receipt of unemployment compensation does not prevent him or her from receiving workers' compensation benefits. An injured employee should file a workers' compensation claim



even if he or she is receiving unemployment compensation, because the workers' compensation benefits will often exceed the unemployment compensation payments. However, an employee may not "double dip." As a result, an employer may reduce the workers' compensation benefits it pays an employee by an amount equal to the unemployment compensation also paid to that individual.

## **Severance Pay**

An employee's receipt of workers' compensation benefits may be offset by the amount of severance pay he or she has received, as long as the same employer is paying both benefits.

**Practical Tip.** Workers' compensation payments may not be offset by amounts paid to an employee in the form of a furlough.

## **Pension Benefits**

An employee's receipt of workers' compensation benefits may be offset by the amount of pension benefits she received or continues to receive, as long as the same employer funded the pension plan.

## **Social Security Retirement Benefits**

An employee's receipt of workers' compensation benefits may be offset by an amount equal to 1/2 of the social security retirement benefits the employee collected after suffering the work injury.

### **Section Ten: Settlement**

An employee may settle his or her workers' compensation claim against an employer by way of a Compromise and Release Agreement. An employee may settle the entire claim, or just a part.

In exchange for settling his or her claim, an employee may be entitled to a lump sum, cash payment.

Settling a workers' compensation claim by way of a Compromise and Release Agreement has serious legal consequences. Once settled, an employee can never again pursue benefits against the employer for his or her prior work injury.

**Practical Tip.** If after a settlement, the settled injury worsens, the employee bears the burden of paying the

bills for new treatment or medication. Further, the injured worker will no longer be entitled to weekly workers' compensation benefits.

Some work injuries require years of medical treatment, medication, and surgeries. As a result, an employer or its insurance company may be responsible for huge amounts of medical bills. To avoid paying these future medical bills, an employer might offer to settle its employee's workers' compensation claim.

**Practical Tip.** Where an employee is still undergoing medical treatment, or is likely to resume treatment for the work injury in the future, the employee generally should not accept the settlement offer. In some cases, there simply is too great a risk that the future medical bills will be far more than the money received in the settlement.

Because of the legal rights and medical bills at stake, an employee should always consult a workers' compensation attorney before settling a claim, or signing any document relating to a work injury.

## **Section Eleven: Rights against Third Parties**

Generally, an employee who suffers a work injury is limited to the wage loss and medical benefits available to him or her under Pennsylvania's Worker's Compensation Act. However, there are certain circumstances in which an injured worker may collect against a third party. These include:

1. Defective products that cause immediate physical injuries upon malfunction;
2. Defective products that cause long-term occupational disease, such as asbestosis, mesothelioma, and lung cancer; and
3. Intentional misconduct by a coworker that results in injuries to another employee;
4. A non-employer contractor or subcontractor is present on a worksite and the conduct of that contractor creates a dangerous condition that results in an employee's injury; and
5. Automobile accidents that occur beyond the scope of a person's employment.

## **Section Twelve: Other Legal Remedies**

### **Automobile Accidents**

#### **A “To Do” List for After the Crash**

1. Determine whether anyone is injured;
2. Put on hazard lights and relocate, if uninjured, to a safe and nearby location;  
Call 9-1-1 to report the accident and request an ambulance if someone is potentially injured;
3. Exchange information with others involved in the accident, including name, address, phone number, insurance company, policy number, driver license number, and license plate number.
4. Report factual information to first responders and police. Do not accuse other drivers of being at fault, and never admit that you are at fault.
5. Take pictures if it is safe to do so and make notes.
6. Stay at the accident scene until police say that you may leave;
7. Notify your insurance company.

#### **Who pays the medical bills?**

In Pennsylvania, all motorists are required to purchase

car insurance, and all insurance companies are required to provide medical benefits of at least \$5,000. This coverage does not depend on who caused the accident.

If a person's medical bills exceed the medical benefits of his or her car insurance, then the person's personal health insurance should kick in, covering whatever medical bills are not covered by his or her car insurance. If you do not have health insurance, then you may pursue reimbursement from the other driver at fault

**Can I recover lost wages?**

If you are unable to work because of the accident, you may be entitled to reimbursement of lost wages, no matter who is at fault. Check your car insurance to see whether it includes Income Loss Benefits.

**How long do I have to file a lawsuit?**

In Pennsylvania, you only have two years to file a lawsuit against the driver at fault in your car or motorcycle accident. Although this may seem like a long time, waiting until the last minute will likely disadvantage you or your attorney from effectively litigating your case. For example, the driver at fault may move or fail to notify his or her insurance company of the accident. As a result, you should act

quickly and responsibly in notifying your insurance company and attorney.

## **Social Security Disability**

Social Security Income (SSI) is a Federal income supplement program funded by tax revenues. SSI is designed to assist older individuals, or those who are blind or disabled, and who have little or no income.

SSI provides cash to individuals for basic needs, such as food, clothing, and shelter.

### **What is a “disability?”**

If you are age 18 or older, the Social Security Administration may consider you “disabled” if you have been medically diagnosed with a physical or mental impairment (including an emotional or learning problem) which:

- results in an inability to do any substantial gainful activity; and
- has lasted or can be expected to last for a continuous period of not less than 12 months; or
- may result in death.

### **The Compassionate Allowances Initiative**

SSA has an obligation to provide benefits quickly to applicants whose medical conditions are so serious that their conditions obviously meet disability standards. The Compassionate Allowances (CAL)

initiative allows Social Security to target the most obviously disabled individuals for claims approval based on objective medical information that it can obtain quickly. Currently, there are 200 medical conditions that entitle a person to social security benefits, immediately. You should speak with an attorney to determine whether you qualify for these immediate benefits.

## **To-Do List for after a Work Injury**

1. Tell a supervisor, immediately. You have 120-days to notify an employer of a work injury. This law trumps any 24-hour or 48-hour reporting policies your employer may maintain. Make sure this notice is in writing and that an incident report is filed.
2. If you are a member of a union, be sure to tell a union representative of your work injury. These representatives will make sure you and your legal rights are protected.
3. Watch for mail. Your employer must “accept” or “deny” your injury within 21-days.
4. If the employer accepts your claim, and you want it to pay for your medical bills, you must treat with a “panel doctor” for 90-days. If you are willing to



pay these medical bills yourself, you may treat with your own doctor. However, your personal health insurance may refuse to cover this treatment.

5. If the employer denies your claim, you can treat with your own doctor, using your personal health insurance to pay the bills.
6. If your claim is denied, or if you miss more than (7) days of work, but are not paid workers' compensation benefits within (21) days, then you should contact an attorney or union representative.

## **Thank you.**

Thank you for looking through our workers' compensation booklet. We hope our practical tips help you better understand the legal principles that affect Pennsylvania's working families on a daily basis.

This booklet provides a snapshot of the important issues employees face after a work injury. However, it does not include all the answers.

DKP Law is here to fill in those gaps. We are a small firm, by design and on purpose. Our small firm guarantees you are not left wondering what attorney will show up at your next court date, or who will return your telephone call.

With offices in Pittsburgh and Harrisburg, DKP Law provides legal services across Pennsylvania. Every month, DKP Law travels to hard-working families from Sharon to Milton, and everywhere in between.

If you have a question, please consider reaching out. We are passionate about the work we do, and the people we meet through this work.

**(412) 566-1245 - Pittsburgh    Darren@DKPLaw1.com**  
**(717) 412-4518 - Harrisburg    Kevin@DKPLaw1.com**

---

## **Darren K. Parr Law Firm**

Working hard for working families

---

Workers'  
Compensation

Social Security  
Disability

Car, Motorcycle, &  
Truck Accidents

Asbestos & Related  
Cancers

Personal Injury &  
Defective Products

Serious Injuries &  
Wrongful Death

**(412) 566-1245**

or **(717) 412-4518**

[www.DKPLaw1.com](http://www.DKPLaw1.com)

**Pittsburgh ♦ Harrisburg**

