

# **WORKERS' COMPENSATION & YOUR RIGHTS**



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**Serving the Needs of the  
Community for over 25 years  
in the areas of**

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Construction Site Accidents

Workplace Accidents

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Municipal Court

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## **INTRODUCTION**

Workers' compensation is the method under New Jersey law of providing benefits to an employee or in some cases, an employee's dependent or dependents, when an employee is hurt or dies in an accident or by an occupational disease arising out of and in the course of employment. Concepts such as fault or negligence are not considered as far as an employee's entitled to benefits. Generally speaking, an employee is entitled to three benefits in workers' compensation; medical treatment, temporary disability benefits, and permanency. These benefits are discussed in greater detail in this brochure.

When an employee is injured at work, there are usually several questions that immediately come to mind. An injured worker often wonders; "If I can't work, what will I do for money?" or "Who will pay my medical bills?" or "Can I lose my job if I make a claim for benefits?" or "What if my injuries are permanent?"

The information contained in this brochure is designed to give you some answers to basic questions concerning workers' compensation. It is not designed to answer every question or address every situation which may arise in the course of an accident or injury and its aftermath. It is merely a guide to address what experience has shown us to be an employee's immediate concerns. It is not meant to be a substitute for advice or advocacy from an experienced Workers' Compensation attorney. The fact is that there is no substitute for an experienced Workers' Compensation attorney. Our attorneys will take the time to meet with you, answer all of your questions, explain your rights and entitlement to benefits as well as the process in obtaining benefits, and take all such steps as is necessary to protect your interests.

If you or a family member, friend, or co-worker is injured, we welcome the opportunity to provide assistance. We have experienced Workers' Compensation attorneys who are available to assist you as the need arises.

Sincerely,  
The Attorneys at  
**GILL & CHAMAS, LLC**

**Q.     “What benefits am I entitled to under our Workers’ Compensation system?”**

**A.** An employee or worker injured or who suffers a condition in an accident or by occupational exposure arising out of and in the course of employment is entitled to three benefits.<sup>1</sup> These benefits are the following:

1.     **Temporary Disability** – these are money payments made to you while you are under medical treatment authorized by your employer or their insurance company and while you are temporarily but totally disabled from working. Specific information as to this benefit is discussed later in this brochure.
2.     **Medical and Hospital Service and Treatment** – the payment of all hospital and medical bills for treatment deemed reasonably necessary to treat your injury or occupational disease. There are no co-payment or deductible payments due from you.
3.     **Permanent Disability** – a monetary award paid over the course of a specific number weeks (which is set forth in a chart for the year of the injury or illness) for a functional restriction of a worker’s body part, body parts, or organ that has impaired the workers’ ability to perform his or her duties or to make money.

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<sup>1</sup> If a worker dies in an accident or by occupational exposure arising out of and in the course of employment, his/her dependent or dependents are entitled to dependency benefits as well as the payment of outstanding medical bills and a funeral allowance. For more information concerning these benefits, we recommend that you consult with an experienced Workers’ Compensation attorney.

**Q. “How long must I be employed before I am entitled to these benefits under Workers’ Compensation law?”**

A. You are entitled to Workers’ Compensation benefits from the moment you are hired so long as your injury or condition arises out of and occurred in the course of your employment. There is no waiting period for eligibility such as with personal health insurance. Employers are required under the law to maintain Workers’ Compensation insurance coverage regardless of the size of the company or an employee’s length of employment service.

**Q. “What do I do if I am injured or suffer an occupational disease arising out of and in the course of my employment?”**

A. If you are injured or suffer an occupational disease, you should immediately notify your employer. You should do so regardless of the seriousness of the injury or occupational disease in order that a record of your complaints is established. This is especially important if the injury did not initially seem particularly serious but is progressing. Where possible, you should complete an accident or incident report in order to document an accident resulting in injury or occupational exposure.

You should also request of your employer the name of a company doctor or facility where you may seek medical treatment. The reason for this is explained later in this brochure but it is because the employer and their insurance company has the right to control your medical treatment.

You should also know that you are entitled to Workers’ Compensation benefits even if you had a condition that pre-existed your accident or occupational exposure so long as your accident or occupational exposure contributed to your disability in a material degree.

- Q. “If the injury was my fault, am I still entitled to Workers’ Compensation benefits?”**
- A. Absolutely. In almost all cases (there are some very narrow and limited exceptions such as voluntary intoxication or failing to use safety equipment when required to do so and after being warned repeatedly about the failure to use the required safety equipment) fault is irrelevant and not a factor in deciding a worker’s entitlement to benefits. The only requirement for benefits is that the injury or occupational exposure arose out of and in the course of your employment.
- Q. “What if the injury is caused by another person while I am at work?”**
- A. You are still entitled to Workers’ Compensation benefits. If the injury is caused by your employer or a co-worker, you are limited to Workers’ Compensation benefits under New Jersey law. If the injury however is caused by a person other than a co-worker or your employer, you may also have a personal injury claim against that person and his employer. It is not uncommon for an injured worker to have two separate claims; one for Workers’ Compensation benefits which is filed in the Workers’ Compensation court as an administrative claim, and one for personal injury damages which is filed in a separate civil court by way of a lawsuit. With respect to the latter, proving negligence and fault on the part of the person other than a co-worker or employer is a requirement for recovery. If you have further questions regarding a personal injury claim, you should speak with a personal injury attorney.

**Q. “How much money will I receive while I am temporarily disabled?”**

A. In order to receive temporary disability benefits, you must be out for seven days, which is called the seven-day waiting period. After you are out seven days, you will be paid back to day one. Generally speaking, an injured worker will receive 70% of his/her gross weekly wages although there is a maximum and a minimum benefit. The rates increase slightly each year. In 2014, the minimum weekly rate is \$225.00 and the maximum weekly rate is \$843.00. The maximum rate applies even if a worker is earning a substantially amount of money such as more than \$150,000 a year. If you are a public employee, you may be entitled to your full wages for a specified period. If you are a member of a union, you may be entitled to additional wage benefits depending upon the terms of your collective bargaining agreement.

**Q. “Who determines which doctors I see for my injury or occupational disease?”**

A. New Jersey has a managed healthcare system in Workers' Compensation. This means that your employer or their workers' compensation insurance carrier gets to control and direct your treatment. If you are injured or suffer an occupational disease, you should ask your employer or their workers' compensation insurance carrier for the name of a doctor with whom to seek treatment. If you go to a doctor on your own or obtain any treatment other than emergent treatment such as an emergency room visit, you will likely be responsible for the payment of those medical bills even if you have personal health insurance who may look to you for reimbursement. If a dispute arises with the doctor you are authorized to see, you should notify your attorney immediately who can advise you what course of action to take including when necessary the filing of a motion with the Worker's Compensation court for medical treatment and/or benefits.

**Q.     “Am I responsible for any medical bills?”**

A.     No, so long as the hospital or medical treatment or services you are receiving are authorized by your employer or the workers' compensation insurance carrier. All authorized treatment is paid 100% by your employer or their insurance carrier with no co-payments or deductible due from you. These benefits include but are not limited to doctor's bills, hospital bills, bills for diagnostic testing like MRIs or x-rays, prescription medications if prescribed by the authorized doctor, and devices such as knee or back braces.

**Q.     “Are injuries such as heart attacks or lung disorders covered?”**

A.     Yes. If the worker's employment exposure caused or contributed in a material degree to the development of the condition, then the worker is entitled to workers' compensation benefits.

**Q.     “Who is entitled to an award for permanent disability?”**

A.     Generally speaking, workers who can demonstrate through objective medical evidence like x-rays and MRIs that they suffered a functional restriction of a body part or organ that impairs the workers' ability to perform his or her duties or make money even if only slightly, are entitled to an award for permanent disability.

**Q.     “How is permanent disability determined?”**

- A.     There is two-step process in determining the amount of award to which a worker may be entitled. First, a percentage of disability is determined for the injured body part or parts for the year in which the worker was injured. Second, there is a Schedule of Disabilities used by the courts which sets forth an exact dollar amount for the percentage of disability determined for the injured body part or parts. The following are examples of disability values for the year 2014<sup>2</sup>:

<u>Injury</u>	<u>Percentage of Disability</u>	<u>Amount of Award</u>
Third Finger	10%	\$ 675.00
	50%	\$ 3,375.00
Leg	10%	\$ 7,087.50
	35%	\$ 26,293.50
Back	10%	\$ 13,500.00
	37.5%	\$101,250.00
Neck	(rate is same as Back)	
Heart	(rate is same as Back)	
Hearing (1 Ear)	10%	\$ 1,350.00
	66.66 %	\$ 9,000.00

**Q.     “Is there any time limitation in which to file a claim for workers’ compensation benefits?”**

- A.     Yes. A claim for workers’ compensation benefits must be filed within two years from the date of the accident, the date of the last authorized treatment or the last compensation payment, whichever is latest. For example, if the accident occurred on January 14, 2014, and the last temporary disability payment was June 30, 2014, then a claim must be filed no later than June 30, 2016. There are virtually no exceptions to the two year period and it is not enough that the employer and their workers’ compensation insurance carrier know about the claim. The claim must be filed with the Workers’ Compensation court within that two year period by the filing of a document called a Claim Petition or else the worker will be forever barred from pursuing a claim.

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<sup>2</sup> Be aware that the amount of a workers’ salary can affect the amount of an award of permanency. This is called a capped-rate and can be fully explained by a workers’ compensation attorney.

- Q. “Is the time limitation different for occupational exposures and diseases?”**
- A. Yes. In cases of occupational exposures or diseases, the two year time period begins to run on the date on which the worker first learns of the nature of the disability and its relation to the worker’s employment. Therefore, a worker must file a claim petition within two years from the date on which he or she first learns of the nature of his or her disability and its relation to his or her employment.
- Q. “If I am working for a new employer but I was injured at my previous job, can I still make a claim for workers’ compensation benefits?”**
- A. Yes, but the claim must be made to your prior employer and their worker’s compensation insurance carrier and the claim must be made within the two year limitation period explained above. All payments will be paid at the rates set forth with the prior employer.
- Q. “Can I be fired for making a workers’ compensation claim?”**
- A. No. It is against the law for an employer to discharge or discriminate against an employee who has filed or attempted to file a workers’ compensation claim. The Department of Labor and Workforce Development has a separate complaint procedure for workers who claim to have been fired or discriminate against for making a workers’ compensation claim.
- Q. “How much will my lawyer’s fees be?”**
- A. Lawyer’s fees are determined by the workers’ compensation court only if a lawyer is successful in obtaining benefits for you. If no benefit is obtained, there is no lawyer’s fee. The lawyers’ fee cannot exceed 20% of the amount of benefits obtained. In most cases, the lawyer’s fee is shared between the worker and the employer or their insurance company.

As indicated at the beginning of this brochure, the information contained within is meant to serve as a basic guide. If you, a family member, friend or co-worker have questions concerning an accident, injury or occupational exposure at work, you should contact an experienced workers' compensation lawyer. You cannot be charged a fee to consult with a lawyer regarding a workers' compensation claim.

Any experienced workers' compensation lawyer is capable of answering your questions, explaining your rights and entitlements, explaining the process of making and filing a claim, and giving you peace of mind at a difficult time. At Gill and Chamas, there is over 150 years of collective workers' compensation experience available to you.

The information in this brochure is provided for general informational purposes only and is not intended to be legal advice or a substitute for legal advice. We attempt to provide quality and updated information, but the law regarding workers' compensation changes frequently and varies from time to time and from jurisdiction to jurisdiction. The information provided is general in nature and does not necessarily apply to a specific factual or legal circumstance. An attorney and client relationship should not be implied. Nothing in this brochure is intended to substitute for the advice of an attorney. If you are in need of legal advice, please consult with a competent attorney licensed to practice in your jurisdiction.

