

Do I Need A Lawyer After A New York Work Injury?

No employee expects to be hurt on the job, and while most are at least passingly familiar with workers' compensation, few are prepared for just how complex and difficult it can be to get the compensation they need. Injured workers need to be aware of their legal rights and responsibilities, as well as the responsibilities of the other parties involved, such as their employer and the employer's workers' compensation insurance carrier. Moreover, employees need to understand their options, including the option of retaining a [workers' compensation lawyer](#) to help them through the claims process.

The workers' compensation process in New York

Workers who are injured on the job in New York have two responsibilities immediately after an on-the-job accident. First, the injured worker needs to obtain necessary medical treatment. Second, the employee needs to promptly notify his or her supervisor or manager of the accident. Notifying a coworker is not sufficient – a supervisor needs to be informed.

Within 30 days of the accident, the employee needs to formally notify the employer of the accident orally or in writing. Finally, the injured worker has up to two years from the date of to file a claim with the [New York Workers' Compensation Board](#) by sending a Form Employee Claim (C-3) to the Board. For injuries that occur over a period of time, such as repetitive strain injuries, the employee has two years from the day he or she knew, or should have known, that the injury was job-related.

The medical provider who sees the employee immediately after the accident has to complete a Form Doctor's Initial Report (C-4) and send it to the Workers' Compensation Board. The employer has 10 days to report the injury to the Workers' Compensation Board and to its workers' compensation insurance company, and the insurance company must then provide the injured worker with a written statement of rights under the law within 14 days of being notified by the employer.

These deadlines are strictly enforced, and a mistake in filling out a single form can jeopardize a worker's ability to recover compensation. An attorney with experience handling workers' compensation claims can help the injured worker fill out all necessary forms and also make sure that the other parties involved are taking care of the steps that they are responsible for. Moreover, an attorney can be an invaluable advocate for the injured worker if there is a dispute regarding the injury.

Benefits of workers' compensation

In New York, workers' compensation benefits can be divided into three broad categories: medical benefits, cash benefits for wage loss, and scheduled loss of use benefits for workers who sustain permanent disabilities.

Medical benefits

Medical benefits include all necessary medical care directly related to an on-the-job injury or illness and recovery from a disability due to such an injury or illness. With the exception of emergency care, all treatment must be provided by a health care provider who is authorized by the [New York Workers' Compensation Board](#). If diagnostic tests are required, the insurance carrier has the legal right to require the injured worker to obtain diagnostic tests from a diagnostic network that the carrier has contracted with, again with the exception of emergency care.

Workers' compensation must pay for all reasonable and necessary treatment for the work injury in full, with no out-of-pocket cost for the injured worker. This includes doctor's visits, medical procedures, prescription medications, medical devices and any other reasonable and necessary treatment. In addition, patients are entitled to reasonable reimbursement for their automobile mileage to and from their health care providers' offices.

Cash benefits

Cash benefits provide compensation for wages lost due to an on-the-job injury. For workers who are unable to work for more than seven days, cash benefits will be awarded on a weekly basis, based on 2/3 of the worker's average weekly wage for the previous year up to a state maximum. If the worker is unable to work for more than fourteen days after the injury, the first seven days become compensable as well. Workers who are only partially disabled receive a percentage of that benefit, based on their percentage of disability.

Wage loss benefits are also available for workers who can return to work, but are unable to earn the same wages due to their physical restrictions. For example, the injured worker may need to work reduced hours, or take on a "light duty" position at a lower wage than his or her original position. In these and similar situations, workers' compensation pays for 2/3 of the difference between the pre-injury wage and the post-injury wage, again up to the state maximum.

Scheduled loss of use benefits

For workers who sustain permanent injuries to the extremities, loss of hearing or sight, or disfigurement to the face, neck or scalp, New York law allows for scheduled benefits. In order to receive these benefits, the worker must be assessed by a doctor after reaching maximum medical improvement (MMI). These schedule loss of use awards depend on the percentage of disability, the worker's average weekly wage, and the body part injured. New York's schedule for loss of use is as follows:

Member Lost	Weeks of Compensation	Member Lost	Weeks of Compensation
Arm	312	First Finger	46
Leg	288	Second Finger	30
Hand	244	Third Finger	25
Foot	205	Fourth Finger	15

Eye	160	Great Toe	38
Thumb	75	Other Toe	16

For example, a worker earning \$600 per week who was assessed by a doctor to have lost 40 percent of use of one hand would be entitled to the following scheduled loss of use award: \$400 (two thirds of weekly wage) X 244 (scheduled loss for a hand) X 40 percent = \$39,040. This award is payable even if the employee did not miss a day of work due to the injury.

Many injured workers are not aware of the full extent of the benefits they are entitled to receive by law, and some may be left under-compensated for their injuries and the effects those injuries have had on their careers. One of the key benefits of working with an experienced workers' compensation lawyer is that an attorney can help the injured worker seek all available compensation.

Appeals for disputed claims

For a variety of reasons, workers' compensation insurance carriers often dispute injured workers' claims. For example, the insurance company may question whether an injury occurred at all, or whether the injury occurred at work. The insurance company may also question the extent of the injuries, argue that the employee should be able to return to work, or dispute whether particular medical treatments are reasonable and necessary.

If the insurance carrier and the injured worker cannot reach an agreement, New York law establishes an appeals process. The steps in the [appeals process](#) are:

- **Judge hearing:** The Board will hold a hearing before a workers' compensation law judge, who will review medical and wage records and take testimony. The judge then sets the amount of the award. Either side has up to 30 days to appeal the judge's decision in writing.
- **Three Board members:** Three members of the Workers' Compensation Board will review the appealed case. They may uphold the judge's decision, change it in part, or reject it entirely. While the case is under review by the three Board members, the insurance company is generally not obligated to pay lost wage benefits.
- **Full Board review:** If either side is not satisfied with the decision made by the three Board members, they have the option of appealing further to the full Workers' Compensation Board. The Board again has the option of upholding, changing or overturning the previous decision. While the case is under review by the full Board, the insurance company is legally obligated to pay any award upheld by the three Board members, even if it has already appealed that portion of the award.
- **Supreme Court:** The final level of appeals is to the Supreme Court of the State of New York. Appeals to the Court must be filed within 30 days of the Board's decision.

At each stage of the appeals process, the insurance company can choose to appeal the entire decision or only a portion. For example, the insurance company could choose to appeal the

medical benefits portion of an award while accepting the indemnity (wage loss) portion, or vice versa. In these cases, the insurance company is always legally required to pay the accepted portion of the award while the case remains under review.

The appeals process is complex, with tight deadlines and requirements to be met, and revolves around questions of law. It is highly advisable for injured workers who need to appeal a denied claim to seek experienced legal representation. Attorneys who take on these cases can neither request nor accept a fee from the injured worker. Rather, the Board determines the legal fee, which is deducted from the compensation awarded.

Settlements and Section 32 waiver agreements

It is quite common for workers' compensation claims to be resolved via a lump sum settlement. Depending on the nature, severity and circumstances of the injury, it is often in the best interest of both the employee and the insurance company to settle. In New York, settlement agreements are called Section 32 Waiver Agreements, and must be negotiated between the injured worker and the insurance carrier and approved by the Workers' Compensation Board.

A Section 32 Waiver Agreement can settle the medical portion of a claim, the indemnity (wage loss) portion, or both. In exchange for a lump sum payment, the portion of the claim that is settled is closed and cannot be reopened. That is, if a settlement is reached for medical benefits, then the insurance company will no longer pay for any medical care related to the injury; likewise, if indemnity benefits are settled, the insurance company will not send the injured worker any further payments for lost wages due to the injury.

In general, waiver agreements need to go through a hearing process before the Board prior to being approved. The Board can also use a desk review process under the following circumstances:

- The injured worker is represented by an attorney, and the settlement is for indemnity only; or
- All parties to the agreement request desk review.

Reaching a settlement is a complex process, and while the need for Board review and approval provides some protection for all parties, an employee who tries to appeal alone is at a significant disadvantage. An attorney with experience handling Section 32 settlements can help make sure that the settlement does in fact meet the injured employee's needs and that his or her rights are respected and honored.

For more information

Contact Pasternack, Tilker, Ziegler, Walsh, Stanton & Romano, LLP, a New York law firm with decades of experience handling workers' compensation claims. The firm has 11 offices throughout New York City and the surrounding communities, all geared towards getting their clients the justice they deserve.