

employee may have the right to sue an employer that acted intentionally and knew that those acts were substantially certain to cause serious injury or death. And, the employee may have a right to sue an employer if the legal dispute does not involve a work-related injury or disease. These types of claims are fairly unusual, the majority of employment related disputes will be covered by the Act.

**Denied Claims** • The workers' compensation laws provide guidelines for requesting a hearing should an employee disagree with the decision of the insurance carrier/employer. If an employee wishes to pursue a claim that has been denied, he should file a North Carolina Industrial Commission Form 18 within two years. In cases involving injuries, the two years most often runs from the date of the injury. In cases involving occupational diseases, the two years most often runs from the date that the employee (1) is advised by "competent medical authority" of the work-related nature of his condition and (2) becomes disabled. This two-year limitation is an absolute rule, and the failure to timely file a Form 18 will bar a claim forever, no matter how meritorious it may be.

**Some Things Not Covered by the Workers' Compensation Act** • What is commonly known as "pain and suffering" is not compensable. Ongoing pain may contribute to a disability which may be compensable, but the pain itself is not.

Some opinions from other doctors are not automatically covered by the insurance carrier/employer, unless ordered by the North Carolina Industrial Commission or pre-approved by the carrier/employer, except that the employee is allowed a second opinion from a physician of his choosing on an impairment rating.

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# THIS IS THE LAW

## **WORKERS' COMPENSATION: What to Do in Case of an On-the-Job Accident**

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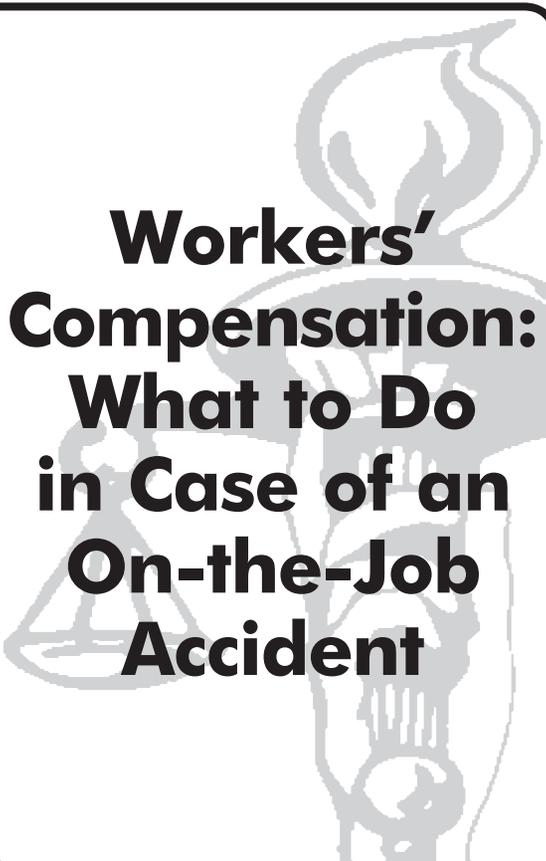
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## **WORKERS' COMPENSATION**

### **What to Do in Case of an On-the-Job Injury •**

The purpose of this pamphlet is to provide a general framework and a broad overview regarding the responsibilities that employees and employers have in the event of an on-the-job injury or a work-related disease. On-the-job injuries and work-related diseases are usually covered by The North Carolina Workers' Compensation Act ("Act"). The Act assigns specific responsibilities to employees and to employers in the event that an injury or a disease is believed to be work-related. The North Carolina Industrial Commission is the administrative agency that applies and enforces the Act. Particular questions about the Act should be directed to the North Carolina Industrial Commission, or you should consult an attorney.

### **Who is Subject to The North Carolina Workers' Compensation Act? •**

Not everyone who works in North Carolina is covered by the Act. Most agricultural workers, residential workers, residential domestic workers, independent contractors, and casual workers are not covered by the Act. Federal, maritime, and railroad workers are not covered by the Act, but instead, they are covered under other state and federal laws.

A worker is usually covered by the Act if he works for an employer that regularly employs three or more people, or if he is the employee of a construction subcontractor. This Act's coverage usually extends to individuals who work for the state, a county, or a city. Employees who work with or around radiation are covered by the Act, even if their employers do not employ more than three employees. And, employers with fewer than three employees may choose to cover their employees by voluntarily purchasing workers' compensation insurance.

### **What to Do in the Event of an On-the-Job Injury or a Work-Related Disease or Condition**

Employees should immediately report any on-the-job injury to their supervisors. This report should include the time and date of the injury, the manner in which it occurred, and the nature of the injury. If an employee is informed by a doctor, or otherwise believes that he has a medical condition which is work-related, then that report should also be made to the employee's supervisor.

**Notice/Time Requirements •** Reports of injuries or work-related diseases or conditions should be documented in writing within 30 days, but it is preferable that these reports are documented in writing as soon as is practicable. Employers must keep a record of all injuries that are reported to the employer.

To make a written report of an injury or other work-related condition, employees should request a North Carolina Industrial Commission Form 18 from their employers, or from the Industrial Commission if their employer does not provide a Form 18. Employees should fill out the Form 18, give it to the employer, keep a copy, and provide a copy to the North Carolina Industrial Commission.

**Workers' Compensation Insurance •** Most workers' compensation claims are administered either by a workers' compensation insurance carrier or, in the case of a self-insured employer, a claims administrator.

If an insurance carrier/employer admits that a claim is covered by the Act, or if the North Carolina Industrial Commission determines that a claim is covered by the Act, then it is considered to be "compensable." Compensable claims should be documented by a ruling from the North Carolina Industrial Commission, or on an appropriate North Carolina Industrial Commission form. The insurance carrier's/employer's payment of medical expenses, alone, may not bind an insurance carrier/employer to pay other kinds of benefits, and it is not an admission that the claim is compensable. If an insurance carrier/employer denies that a claim is compensable, then it must file a Form 61 with the North Carolina Industrial Commission stating why the claim is denied.

### **What Benefits are Available Under The North Carolina Workers' Compensation Act? •**

As a general rule, reasonable medical expenses that are medically necessary are covered during the healing process. Some limited mileage expenses are also covered. After the healing process has stabilized, the possibility of future medical payments usually remains open for a period of two years. This two-year period runs from the date of the last payment of any compensation, including medical compensation. The two years can be extended by the North Carolina Industrial Commission.

Apart from medical payments, if the consequences of a compensable claim are serious, then an injured employee may be eligible for payments of compensation. These compensation benefits are payable during periods of disability, and they are often referred to as "temporary total," "temporary partial," "permanent partial," or "permanent total." Injured employees who are entitled to compensation are generally allowed to select the most favorable kind of benefit, but they are not generally allowed to receive more than one kind of compensation benefit at the same time.

**Death Benefits •** If death results from a compensable claim, then compensation may be due to the deceased employee's dependants. Generally, the death must have occurred from a compensable injury or disease and within six years of the date of injury, or within two years of the final determination of disability, whichever comes later. Widows, widowers, and children have priority status, but the amounts of compensation due, and the persons who may receive compensation often involve the application of technical rules based upon specific facts and circumstances. The Act also provides for the payment of limited funeral expenses.

**Other Benefits •** Under some circumstances, an injury or disease may result in scarring or other disfigurement for which compensation is due. The maximum compensation for head or facial disfigurement is \$20,000. The maximum compensation for other bodily disfigurement is \$10,000. Permanent loss of an important bodily organ as the result of an occupational injury or disease may entitle an employee to compensation up to \$20,000.

If caused by an occupational disease or accident, the loss of hearing or a portion of hearing in one or both ears or loss of vision or a portion of vision in one or both eyes may be compensable.

**Exclusive Remedy •** Generally, an injured employee's rights are limited to his workers' compensation claim, and there is no other legal claim that an injured employee may make against his employer. However, there are narrow exceptions to this rule. For example, an injured worker may have the right to sue an employer that fails to carry workers' compensation insurance. Similarly, the