

Common Questions (WC)

Q. Are all disabilities covered under Workers' Compensation Law?

A. No. Only those disabilities that are causally related to an accidental injury "arising out of and in the course of the employment" or to occupational disease, are compensable.

Q. What if the worker fails to file a claim for workers' compensation?

A. The worker may lose his/her right to benefits and medical care.

Q. Is it necessary for the worker to retain an attorney?

A. No. W.C. Law Judges may assist a worker not represented by an attorney. An attorney's assistance may be desirable if the issues are complicated. Attorney's fees are deducted from the claimant's award, as determined by a Workers' Compensation Law Judge. A claimant must not pay an attorney directly.

Q. How is the weekly cash benefit for temporary total disability determined?

A. The weekly cash benefit for temporary total disability is computed by taking two-thirds of the workers' average weekly wage for one year immediately preceding the accident. It may not, however, exceed the legal maximum in effect on the date of the injury.

Q. Is medical care provided in the case of an accidental injury even when no claim is made for weekly cash benefits?

A. Yes. If medical care is necessary, it will be provided even though there has been no lost time from work (or less than eight days lost time) and no cash benefits paid.

Q. When does medical care require advance authorization?

A. When the services of a specialist, consultant or surgeon, or special lab tests, physiotherapeutic procedures or X-rays costing more than \$500 are engaged, authorization must be obtained from the employer or carrier.

Q. Are prescription drugs and medications covered under the law?

A. Yes. The claimant should send a receipted bill and letter from the attending physician to the insurance carrier, stating that the purchase was necessary and in accordance with the physician's direction.

Q. May a doctor proceed with care if the insurance carrier withholds authorization without reason?

A. Yes. When the authorization has been requested and withheld without reason, the doctor may proceed to render the services required for the claimant's welfare.

Q. Must an injured worker submit to a medical examination when requested to do so by the employer or insurance carrier?

A. Yes. The employer or insurance carrier is entitled to have the worker examined by a qualified physician. Refusal to submit to an exam may affect the worker's claim.

Q. What happens when a claim is contested by the insurance carrier?

A. The insurance carrier contesting a claim must file a notice of controversy with the Board within eighteen days after the disability begins or within ten days of learning of the accident, whichever is greater. The carrier must give the reasons why the claim is not being paid. The issue is resolved by a W.C. Law Judge at a prehearing conference or a hearing.

Q. May an insurance carrier suspend or modify the cash benefits?

A. In a case where the carrier has made payment without waiting for a Judge's decision, it may suspend or modify the payment based on payroll or medical evidence submitted to the Board.

Q. What can a worker do if he/she is not satisfied with the Judge's decision?

A. The worker may file with the Board a written application for review within thirty days of the filing of the notice of the Judge's decision. The application must specify why the claimant disagrees with the decision.

Q. What can a worker do if he/she is not satisfied with the Board's decision after an application for review?

A. The worker may appeal to the Appellate Division, Third Department, within thirty days after the decision has been served upon the parties.

Q. What is the penalty for making a false claim?

A. A person who willfully misrepresents the circumstances surrounding his or her case in order to obtain benefits is guilty of a felony.