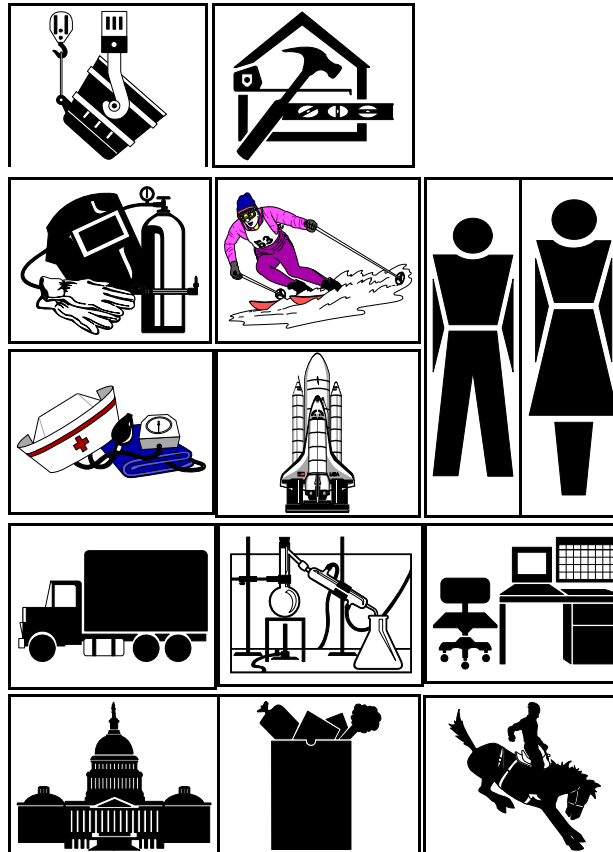


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UTAH LABOR COMMISSION
DIVISION OF INDUSTRIAL ACCIDENTS

EMPLOYEE'S GUIDE TO
WORKERS' COMPENSATION

October 2008



(801)530-6800

Toll free phone numbers are:

Division of Industrial Accidents

1-800-530-5090

Utah Anti-Discrimination and Labor Division

1-800-222-1238

<http://www.laborcommission.utah.gov>

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EMPLOYEE'S GUIDE TO WORKERS'
COMPENSATION**

**EMPLOYEE'S GUIDE TO WORKERS'
COMPENSATION**



Question (Q) 1. WHAT IS WORKERS' COMPENSATION?

Answer (A) Workers' compensation is a wage replacement and medical care program for a worker who suffers a work related injury or illness.

Q 2. IF I HAVE A WORK RELATED INJURY OR ILLNESS, WHO PAYS MY MEDICAL BILLS AND LOST TIME FROM WORK?

A. Your workers' compensation benefits are paid by your employer / carrier. These benefits cover only work related injuries, illnesses and fatalities.

Q 3. ARE ALL EMPLOYERS REQUIRED TO HAVE WORKERS' COMPENSATION INSURANCE?

A. Yes. All employers are required to have workers' compensation insurance except employers of agricultural laborers with payroll less than \$50,000 (agricultural operations with payroll between \$8,000 to \$50,000 have the option of either workers' compensation coverage or liability coverage), casual or domestic workers, real estate brokers, sole proprietors and partners.

NOTE: A general contractor will now have to ensure all subcontractors, including sole proprietors and partners, have workers' compensation coverage.

Q 4. WHO PAYS FOR WORKERS' COMPENSATION INSURANCE?

A. Your employer pays for your workers' compensation insurance and cannot deduct the premium cost from your pay.

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Q 5. AM I COVERED UNDER WORKERS' COMPENSATION BENEFITS IF I WORKED ONLY A SHORT TIME FOR MY EMPLOYER?

A. Yes. You are entitled to workers' compensation benefits even though you have been on the job a short time or employed part time.

Q 6. HOW DO I FIND OUT WHO THE WORKERS' COMPENSATION INSURANCE CARRIER IS FOR MY EMPLOYER?

A. By law, your employer is required to post his workers' compensation insurance carrier's address and phone number at your site of employment, or indicate that he is self-insured. You may also obtain this information by calling the Labor Commission's Policy Section, (801) 530-6842 or toll free (800) 530-5090.

REPORTING AN ACCIDENT



Q 7. HOW LONG DO I HAVE TO FILE A CLAIM?

A. Report the accident to your employer **immediately**. However, a worker has up to 180 days to report an injury or work related illness.

Q 8. ARE THERE ANY REPORTS REQUIRED TO BE FILED?

A. Yes. Your employer is required to fill out "Employer's First Report of Injury or Illness" (Form 122) within 7 days from when you report a work related illness or injury. You are to receive a copy of the report along with a statement of your rights and responsibilities.

Your doctor is required to complete the "Physician's Initial Report of Injury or Illness" (Form 123) within 7 days of your first visit. Tell your physician **HOW, WHEN** and **WHERE** the accident happened.

Q 9. WHAT WILL WORKERS' COMPENSATION PAY FOR?

- **Continued Medical Care.** The employer / carrier is to pay reasonable medical expenses, hospital bills and prescriptions to treat the employee. Broken appliances such as eyeglasses may be replaced if medical treatment is necessary. Medical providers cannot bill you for any unpaid balances.
- **Temporary Total Compensation.** Wage replacement is paid for doctor-approved time off from work due to a work related injury or illness.
- **Temporary Partial Compensation.** Partial wage replacement is paid in addition to earnings when employee works less time or is paid less than at the time of injury.
- **Permanent Partial Impairment Benefits.** An impairment rating is given by a doctor for a permanent impairment resulting from a work related injury or illness. Payment is made when a doctor determines you have reached a fixed state of recovery.
- **Permanent Total Disability Benefits.** This benefit is paid if the impact of your work related injury or illness prohibits you from performing any gainful employment. If you are permanently totally disabled, you may be eligible for Social Security Disability Benefits.
- **Burial and Dependent Benefits in Case of Death.** When an employee dies due to a work related injury or illness, death benefits are paid to spouse and dependents. An \$8,000 burial allowance is also provided.
- **Mileage To and From Authorized Medical Care.** Requests for travel reimbursement must be submitted to your employer's carrier for payment within 1 year of receiving medical care.

Q 10. ARE ILLNESSES RELATED TO MENTAL STRESS COVERED UNDER WORKERS' COMPENSATION?

A. Mental stress is covered under workers' compensation in very limited circumstances. Good faith employer personnel actions (disciplinary actions, work evaluations, retirements) are not covered under workers' compensation. Alleged discrimination, harassment, or unfair labor practices may not form the basis of a mental stress claim.

WAGE REPLACEMENT BENEFITS



Q 11. WHEN WILL MY WORKERS' COMPENSATION CHECKS START?

A. Your workers' compensation benefits will begin after the employer / carrier receives the "Employer's First Report of Injury or Illness" (Form 122), and the "Physician's Initial Report of Injury or Illness" (Form 123) indicating time lost from work. Your doctor must take you off work for you to be eligible for workers' compensation benefits.

Upon receipt of these reports the employer / carrier has 21 days to accept, deny or notify you of further investigation. If further investigation is required, the employer / carrier may have an additional 24 days to complete their investigation. Therefore, the employer / carrier may have a total of 45 days to review a claim to decide whether or not it will be accepted or denied.

Workers' compensation checks are usually issued every two weeks, and will continue to be issued if a doctor still reports you are unable to work.

Compensation benefits are not paid for the first 3 days after injury unless your doctor takes you off work for more than 14 days. These days do not have to be consecutive days.

Q 12. HOW MUCH AM I PAID WHILE OFF WORK DUE TO WORK INJURY OR ILLNESS?

A. You will be paid two-thirds of your average weekly wage up to the state's maximum average weekly wage. In addition, you will be paid \$5 for your spouse and \$5 for each dependent child under 18 years of age to a maximum of \$25. The sum cannot exceed the state's maximum average weekly wage.

For more information regarding the maximum and minimum wage replacement rates, contact your workers' compensation carrier or the Labor Commission

Q 13. WHAT IF I HAVE A SECOND JOB AND CAN'T WORK?

A. If your doctor has also taken you off your second job, you are entitled to receive two-thirds of your average weekly wage for both jobs plus \$5 for your spouse and \$5 each dependent child. The total benefit cannot exceed the state's maximum average weekly wage at the time of injury.

Q 14. HOW LONG WILL I RECEIVE WORKERS' COMPENSATION BENEFITS?

A. You will receive compensation benefits until a doctor releases you to return to work, or finds you have reached a fixed state of recovery. You can receive compensation benefits for up to a total of 312 weeks unless you are declared permanently and totally disabled.

Q 15. CAN ANYTHING BE DEDUCTED FROM MY WORKERS' COMPENSATION CHECK SUCH AS TAXES, MONEY OWED ON BILLS, OR CHILD SUPPORT?

A. Workers' compensation is not taxable income. Child support can be garnished from your check. Past due bills cannot be garnished.

RELEASE TO RETURN TO WORK



Q 16. WHEN CAN I GO BACK TO WORK?

A. You can return to work when a doctor gives you a light duty or full-duty work release.

Q 17. CAN I REFUSE AN OFFER OF LIGHT DUTY?

A. When the employer makes a light duty available for you and it is approved by a doctor, you are required to accept the light duty or risk losing your benefits.

Q 18. WHAT IF MY DOCTOR SAYS I CAN RETURN TO LIGHT DUTY WORK AND MY EMPLOYER DOES NOT HAVE LIGHT DUTY WORK AVAILABLE?

A. If your employer does not offer light duty work, you are to continue receiving temporary total disability benefits until a doctor finds you are at a fixed state of recovery.

CHOOSING A MEDICAL PROVIDER

Q 19. CAN MY EMPLOYER / CARRIER REQUIRE ME TO GO TO A SPECIFIC DOCTOR OR HOSPITAL FOR TREATMENT?

A. Yes. The employer / carrier has the right to designate a preferred medical provider, and you must treat with that preferred provider.

If you seek treatment from any other medical provider, other than the preferred provider, you may be obligated to pay charges in excess of the preferred provider allowances. The emergency room is to be used in life threatening situations only unless your employer directs you to the emergency room for treatment.

Q 20. AM I REQUIRED TO DO EVERYTHING THE EMPLOYER / CARRIER REQUESTS IN REGARDS TO MY CLAIM?

A. Yes. You are required to do everything the employer \ carrier asks you to do within reason. Submitting up to 10 years of past medical history is usually considered reasonable. If you have questions, call the Labor Commission at 530-6800 or toll free (800) 530-5090.

Q 21. IF I'M UNHAPPY WITH MY DOCTOR, CAN I CHANGE TO ANOTHER DOCTOR?

A. You are entitled to make one doctor change. However, notify your employer \ carrier as soon as possible of the change.

A referral from your treating doctor to another doctor is not considered a change. Nor is a change from an emergency room (ER) doctor to a private doctor considered a change. Once doctor care has begun, emergency room visits are prohibited except in cases of: 1) threat to life or limb, or 2) a doctor's referral.

Q 22. MAY I CHOOSE A CHIROPRACTOR AS MY DOCTOR?

A. Yes. You may select a chiropractor as your doctor; however, treatments beyond initial 8 visits must be preauthorized by the employer / carrier.

Q 23. DO I GET PAID LEAVE FOR GOING TO THE DOCTOR OR THERAPY AFTER I HAVE RETURNED TO WORK?

A. You may get paid leave for doctor visits and therapy appointments after you have returned to work.

Q 24. DO MY HEALTH CARE BENEFITS CONTINUE AT WORK WHILE I'M ON WORKERS' COMPENSATION?

A. The state Workers' Compensation Act does not require employers to continue paying for personal or family health care plans while you are off work and receiving workers' compensation benefits.

You should talk to your employer about the Family and Medical Leave Act (FMLA) to see if it applies to you. (See page 13 for a short description of FMLA.)

Q25. HOW LONG WILL WORKERS' COMPENSATION MEDICAL BENEFITS LAST?

A. Medical benefits are available for your lifetime. Medical bills, to be paid, must be submitted within one year of treatment.

However, if your injury occurred between July 1, 1988 and May 1, 2007, you must receive treatment for your injury at least once every three (3) years with costs billed to your employer / carrier for you to remain eligible for medical benefits.

If your claim is closed and you need additional medical treatment, have your doctor send his treatment recommendations to your employer / carrier for approval.



CHANGE OF ADDRESS

Q 26. AM I ENTITLED TO BENEFITS IF I MOVE OUT OF UTAH?

A. You are entitled to workers' compensation benefits if you move out of the state. However, medical services outside Utah are not subject to the Utah medical fee schedule and the employer / carrier will only pay medical bills per the Utah fee schedule. You may be responsible for charges in excess of the fee schedule.

If you are moving out of state and want to continue to receive medical treatment, you need to complete the "Employee's Notification of Intent to Leave (Form 044), and have your doctor complete the "Attending Physician's Statement" (Form 043). Return or mail the completed forms to the Labor Commission before you leave. These forms are available at the Labor Commission or on our Web site at www.laborcommission.utah.gov

REEMPLOYMENT – REHABILITATION

Q 27. CAN MY EMPLOYER FIRE ME IF I CAN'T RETURN DUE TO MY JOB INJURY?

A. Yes. There is nothing in the Workers' Compensation Act that prohibits an employer from terminating an employee. However, if your employer has not returned you

to work due to permanent work restrictions, and if your injury has left you with a permanent disability that substantially limits one or more major life activities you may have a claim under the Americans with Disability Act (ADA).

If you feel you have an ADA claim, contact the Commission's Anti-Discrimination Division (801) 530-6801 or toll free (800) 222-1238.

Q 28. IF MY EMPLOYER OFFERS ME ANOTHER POSITION, ARE THEY REQUIRED TO PAY THE SAME WAGE I HAD WHEN INJURED?

A. No. Your employer is not required to pay you at your pre-injury wage. Your employer may pay you at the new position's wage rate.

Q 29. WHAT HAPPENS WHEN MY DOCTOR RELEASES ME TO WORK BUT I CAN'T DO THE JOB I WAS DOING WHEN I WAS INJURED? IS MY EMPLOYER RESPONSIBLE FOR PROVIDING A NEW JOB OR RETRAINING?

A. No. Your employer is not required by the Workers' Compensation Act to provide you a new job or retrain you. If your injury prevents you from returning to your job, you may be eligible for rehabilitation services through the Utah State Office of Rehabilitation.

Q 30. CAN I RECEIVE UNEMPLOYMENT BENEFITS WHILE ON WORKERS' COMPENSATION?

A. You cannot receive workers' compensation and unemployment benefits at the same time. However, you can receive permanent partial compensation benefits while receiving unemployment benefits. Once you reach a fixed state of recovery and are released to go back to work, you have a 90 day waiting period before you are eligible to apply for unemployment benefits.

If you have questions about unemployment insurance benefits, call the Department of Workforce Services at (801) 526-4400 or toll free at (888) 848-0688.

RESOLUTION OF DISPUTES



Q 31. WHAT DO I DO IF MY CLAIM IS DENIED?

A. First talk with the employer / carrier to find out why your claim has been denied. If your employer / carrier lacks information required to accept a claim, provide the missing information including the release of related medical records and resubmit the claim.

If the employer / carrier continues to deny your claim and you desire to appeal this action, call the Labor Commission, Division of Industrial Accidents at (801) 530-6800 or toll free at (800) 530-5090 and ask division staff to assist you in resolving your claim.

MEDIATION

The Utah Labor Commission offers mediation to resolve workers' compensation disputes. Approximately 85% of Commission workers' compensation mediations are successful.

If you are interested in mediating your dispute, please contact the Labor Commission's Division of Industrial Accidents at 530-6800 or toll free (800) 530-5090.

Q 32. CAN MY CLAIM BE DENIED BECAUSE I WAS AT FAULT FOR THE INJURY?

A. No. Your claim cannot be denied because the injury was your fault. Workers' compensation is a no-fault system. However, if a Labor Commission's law judge finds your injury is caused by your willful failure to use a safety

device when provided, or you fail to obey any order or rule adopted by the employer for your workplace safety, your compensation benefits may be reduced by 15%. If you intentionally self-inflict an injury you are not eligible for benefits.

If a Labor Commission's law judge finds that your employer willfully caused your injury, you may be entitled to a 15% increase in compensation.



DRUG & ALCOHOL

If you test positive for drugs or alcohol when you are injured, you are not eligible under the Workers' Compensation Act for wage benefits unless you can establish that your use of drugs or alcohol was not the major contributing cause of the accident. However, you are eligible for medical benefits.

Q 33. IF I AM TERMINATED WHILE ON LIGHT DUTY DO MY BENEFITS CONTINUE?

A. Yes. Effective July 1, 2008, an employer for good cause may petition the Commission to reduce or terminate your temporary total or temporary partial benefits for any of the following reasons:

- On-the-job criminal or violent conduct,
- Incarceration which prohibits an employee from performing light duty,
- Violation of workplace health, safety, licensure, or nondiscrimination rules,
- Positive drug and alcohol tests showing prohibited levels.

Q 34. CAN I HAVE MY PERMANENT TOTAL DISABILITY BENEFITS REDUCED OR TERMINATED?

A. Yes. When you receive Social Security retirement your employer / carrier will reduce your benefits by 50 percent.

Your employer may ask an administrative law judge to terminate your benefits if:

- You become incarcerated, or
- Your employer develops a position allowing you to return to employment within your work restrictions and you are found to be not legally eligible to be employed.

You would continue to receive medical benefits in any of the above mentioned situations.

Q 35. DO I NEED AN ATTORNEY TO FILE FOR A HEARING?

A. No. An attorney is not required to file for a hearing. The Labor Commission has staff available to explain your rights under the Workers' Compensation Act. However, if you choose an attorney, they must accept your case on a contingency basis. The attorney fee will come out of your compensation if you win.

COMPENSATION AGREEMENTS

Q 36. IF I SIGN A COMPENSATION AGREEMENT FOR A PERMANENT PARTIAL IMPAIRMENT, DO ALL OF MY FUTURE BENEFITS END?

A. No. You do not lose any future benefits by signing the workers' compensation agreement. However, there is a 6 year limit to the employer / carrier's liability for time lost from work for injuries. Medical benefits continue for life as long as the insurance carrier / employer is billed within one year from the date of each medical service. The prior three (3) years statute of limitations if no medical care was

incurred or billed within (3) years still applies to injuries occurring between July 1, 1988 and April 30, 2007.

Q 37. WHAT IF I DISAGREE WITH MY IMPAIRMENT RATING?

A. If you disagree with your impairment rating, ask your doctor to explain your rating to you. If you strongly disagree after the doctor's explanation, you may ask the employer / carrier for a second opinion. They are under no obligation to provide a second opinion.

If you obtain a higher impairment rating you may file for a hearing with the Labor Commission to resolve the difference if the difference is greater than 5 percent.

Q 38. CAN A CHIROPRACTOR GIVE AN IMPAIRMENT RATING?

A. Yes. Chiropractors can give impairment ratings on appropriate injuries.

LUMP SUM SETTLEMENT

Q 39. CAN I GET MY PERMANENT PARTIAL IMPAIRMENT BENEFIT PAID ALL AT ONCE?

A. Yes. Lump sum payments must be approved by the Labor Commission. The "Application for Lump Sum or Advanced Payment" (Form 134) can be obtained from the Labor Commission and the Labor Commission's Web site www.laborcommission.utah.gov. By requesting a lump sum amount, your workers' compensation agreement (or settlement) may be reduced by a fixed amount (that will not exceed 8%).

Q 40. AM I ALLOWED TO FULLY SETTLE MY WORKERS' COMPENSATION CLAIM?

A. Yes. As of May 1, 1995, all workers' compensation claims can be settled out with an employer / carrier upon the approval of the Labor Commission. NOTE: Full settlement means there will be no future benefits or only specific benefits as agreed upon in the settlement such as future medical expenses.

WORKERS' COMPENSATION FRAUD

Under Utah law, a fraudulent workers' compensation claim for compensation or medical benefits is a crime and any employee found guilty of fraudulently receiving these benefits is subject to fines and/or prison time.

FAMILY AND MEDICAL LEAVE ACT (FMLA)



FMLA is a federal law that requires employers to provide up to 12 weeks of unpaid job protected leave to "eligible" employees for certain family medical reasons. You may be FMLA eligible if you worked for a "covered employer" at least 1,250 hours over the previous 12 months.

CONCLUSION

If you have any additional questions or problems with your workers' compensation claim, ask your employer / carrier to address them. If you are not able to get your questions answered by your employer / carrier, call the Utah Labor Commission, Division of Industrial Accidents at:

(801) 530-6800

Toll Free Number: 1-800-530-5090

Additional copies of the "Employee's Guide to Workers' Compensation" may be obtained by phone or on the Internet at: <http://www.laborcommission.utah.gov>