

WORK INJURY GUIDE

WELLS LAW

WORKERS' COMPENSATION

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BY CALIFORNIA STATE BAR**

Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

INTRODUCTION

This pamphlet was created to assist people who are injured at work.

This pamphlet is especially important if you currently do not have an attorney representing you. If you do have an attorney, then we recommend you follow your attorney's advice.

Before you read this pamphlet, please read the first section:
“When To Call An Attorney Right Away”

When To Call An Attorney Right Away

This is not an exhaustive list, but here are the most common situations when you should contact an attorney immediately:

- Your **claim** has been denied or part of your claim has been denied (right shoulder is accepted as body part, but the neck is denied as a body part).
- You received a **QME Form 105**. Go to this link to see what it looks like: www.wellswellslaw.com/qmeform. If any of the forms in your paperwork look like that, **contact us right away**.
- You received a QME Panel List from the State of California. This form has three doctors you are supposed to pick from. **Don't pick a doctor until you talk to an attorney!** This link will give you an example of what the list would look like: www.wellswellslaw.com/qmeList.
- You are scheduled for a Qualified Medical Evaluation (QME) and you don't have an attorney. Call an attorney immediately before you go!

- You get a **call from an investigator** or a **person who wants to “interview” you**. You should not do this without contacting an attorney first. You do NOT have to do this if you don’t want to.
- You receive **notice from an attorney** who is representing the insurance company.
- You get a **medical release** and a form asking for all of your doctors in your past, and the insurance company is saying that they won’t pay benefits until you fill it out.
- You receive a **Notice of Deposition**.
- You receive an **Application for Adjudication of Claim**.
- Your doctor is frustrated, because treatment requested is denied by the insurance company. You will hear the term “Utilization Review or UR.”
- The insurance company sent you a letter **closing your claim**.

- A workers' compensation judge, the workers' compensation staff, or assistance officer gives you a list of attorneys.
- Your workers' compensation injury occurred as a result of an auto accident, a defective product, an OSHA violation, and/or a dangerous condition that was caused by another company / person / party other than your employer.
- Your employer fired you or failed to accommodate your injury/disability. If this happens, you should also immediately contact the Department of Fair Housing and Equal Employment Opportunity Commission to determine your rights.

If any **one of these** or a **combination of these events** occur, do not wait. **Call** an attorney **now** if you are not represented.

Understanding Work Injuries

There are **three** types of injuries that the California workers' compensation system recognizes:

- 1) Specific Injury - A specific injury is one which occurs as a consequence of a specific event or incident. A

specific injury can occur anytime, anywhere, and in multiple ways.

Examples: You fell off a ladder; you drove from one work location to another and got in an auto accident; you stepped into a hole and tore a ligament in your knee; you slipped / tripped and fell on your shoulder tearing your rotator cuff; you fell down the stairs injuring your neck, back, head, etc.; you were assaulted by a co-worker; you lifted a heavy item and felt immediate pain. We can list a thousand examples, but you get the idea. If an injury happened “on-the-job,” then it’s work-related.

- 2) Cumulative Injury - A cumulative trauma (CT) is one which occurs over a period of time: it can be years; it can be months, or less. A CT injury is a series of micro-traumas or repetitive activities. CT injuries cause physical injuries from performance of work activities, resulting in a body part deteriorating or breaking down. A CT injury can also result in an internal injury or a psychological injury.

Examples: You have worked in a heavy work environment over a period of time and your back, knee, shoulder, etc. starts hurting without any specific event or gets progressively worse over time;

you have been typing for years at work and now you have carpal tunnel; you have been looking at a computer screen and now you have neck problems, middle back problems or even low back problems; you lifted heavy items over a period of time (without an specific event), and your back eventually started to hurt and got worse as time wore on. Again, if work activities even contributed any way to your problem over time, it is caused by work according to workers' compensation law.

3) Compensable Consequence Injuries - A compensable consequence is an injury that arises out of or is caused by the original specific or cumulative injury.

Examples: You injured your right shoulder and have been using your left arm a lot more and now your left arm is giving you problems; you injured your right knee and put more pressure on your left knee as a result; you take medication for your back injury and now you have stomach problems.

Why does understanding these three types of injuries matter? It matters because many employers fill out the DWC-1 (the work comp claim form to start your claim) incorrectly. When you check the form before you sign it, how are you going to know if it is completed correctly?

(More on this in the section: “Claim Form: How To Fill It Out”)

You’re Injured at Work. What now?

You should immediately tell your supervisor that you were injured if it is a specific event. If your condition is getting worse over time without a specific event (cumulative), then you should still report this to your employer.

Once your employer is aware of an injury, they are required by law to give you a DWC-1 claim form. They should send you to their workers’ compensation physician.

If they don’t, you need to ask them for a Claim Form and fill it out, keep a copy for yourself and give them a copy. This is important, because if the employer can prove you knew you had an injury or should have known you had a work injury, you could be precluded by the Statute of Limitations, and your rights could be barred forever.

Claim Form: How To Fill It Out

Date of Injury

It is simple when filling out a claim form for a specific injury. You put the date you were injured. Make sure you are as specific as possible as to what happened.

If it is a cumulative claim, your employer or insurance company will require a “date” in the date of injury. If your injury happened over time, what date do you use? Often times, they put the date you reported the claim or the date you “couldn’t take the pain anymore.”

The claim form will ask you how the injury occurred, and you want to make it clear it happened over a period of time.

Body Part(s) Injured

Also, **one of the biggest mistakes** made by employers / employees (the injured party) is not putting all of the body parts on the claim form. **Make sure you add all body parts affected** in the accident even if you think it is “no big deal.” Many people wake up the next day (or weeks later) and realize that a body part

is much worse than they thought on the day of the injury.

Don't Be a "Team-Player" or a "Nice Employee"

When most people get hurt, there is a tendency to be a team player or a nice employee.

However, do not exclude body parts, understate your pain, or fill out the Claim Form in the way your employer wants you to do it; you need to do it in the way that reflects what happened, and what body parts were affected (whether pain or no pain in that moment.)

Now is not the time to be a "nice employee" or a "team player," because the insurance company could deny benefits for failure to fill out the form correctly.

My Claim is Denied. Now What?

If your claim is denied, then the insurance company has to send you a Notice of Denial letter notifying you of your rights.

It should include a QME Form 105 which looks like this:
www.wellswellslaw.com/qmeform

Here's what you do:

- 1) Call an attorney.
- 2) If you are not able to work or your employer does not have modified or light duty, go to EDD and pick up a State Disability Form and have a doctor “certify” that you are unable to work. That will get some money coming in while you wait for your case to be litigated by an attorney.
- 3) Use your personal insurance, MediCal or MediCare to pay for your treatment while you wait for your claim to be litigated. For instance, you may need an MRI, EMG, X-Rays or other diagnostic treatment and you might want to at least know what is wrong with you. Personal insurance can be a great way to at least “figure out” what is wrong while your workers’ compensation case gets “sorted out.”

My Claim is Accepted, So When Do I Need an Attorney?

There can be multiple reasons to contact an attorney even if your claim is an accepted claim. Aside from the reasons listed in the section, “*When To Call An Attorney Right Away*,” here is a list of reasons to contact an attorney:

- A doctor is saying you are going to have “permanent limitations” or “permanent restrictions” that you’re going to have to live with.
- If the medical part of your case includes: surgery, an MRI that is positive (torn ligaments, torn tendons, disc problems with spine, etc.), an EMG that is showing nerve damage in upper and/or lower extremities, etc. The point is that when the medical part of your case gets “complicated,” you should at least consult with an attorney.
- You receive a letter from the insurance company saying your “claim is accepted,” but they mention that certain body parts are denied.
- You get a letter from the insurance company talking about the “right to a QME or Qualified Medical Evaluator.” This letter should include the QME Form 105 (discussed above). If you haven’t noticed, the QME Form 105 has come up again. See it’s importance?
- You receive a Panel QME List with three doctors from the State of California. We mention the Panel QME List again, because it can be critical to your claim to contact an attorney at this point.

- The insurance company sends a letter discussing Permanent Disability.
- You receive a “Supplemental Job Displacement Benefit (SJDB)” Voucher from the insurance company.

Temporary Disability

Based on workers’ compensation law (Labor Code and case law), you are entitled to 2/3 of your average gross earnings. (There are max rates established by the state for people who are “high earners,” but generally these max weekly “caps” don’t apply in most cases.) Insurance companies often obtain “wage statements” that represent the last 52 weeks of employment. For many, this can be a fair representation of your average weekly earnings.

Sometimes a wage statement does not reflect wage increases, cost of living raises, increased hours as a result of the change in market, etc. Your real earnings are based on “earning capacity.”

Earning capacity is difficult concept that we’ll try to make simple with this statement: your average weekly earnings should be based on what you have made had you not been injured. Taking the last 52 weeks from a

wage statement (which is common) does not always reflect your true earnings.

If you think your earnings are not reflected accurately, then contact an attorney.

Medical Treatment

If you have an accepted claim and treatment is getting denied, there are a couple of reasons for this:

- Your claim is partly accepted meaning some body parts are denied. Let's say you injure your right shoulder and neck, but the insurance has denied the neck as a body part. They will not cover your neck until that is proved to be work-related. It's time to contact an attorney.
- Your doctor says that your treatment is being denied by Utilization Review.

If your treatment is denied by Utilization Review, then read the next section.

Utilization Review

Utilization Review (UR) is a new set of laws created to “reduce cost of medical treatment” in California workers’ compensation. The insurance industry will state that it’s necessary to reduce unnecessary or unneeded treatment. We as attorneys can understand that position, however, we are seeing it used as a means to delay or deny care that is obviously needed.

It is called an “evidence-based” medicine system; and if Utilization Review (UR) takes the position that there is not enough evidence to support authorizing care, they can deny it. This can be very frustrating for physicians who are trying to help you by requesting treatment that they know will assist you.

If you and your doctor are getting a lot of UR Denials, it’s not timely, or other procedurally flaw, you may want to consult with an attorney.

Safety Employees

If you are a State of California, city or county employee who works in the safety area, then your case in many ways can be different. Most safety employees are entitled to special rules regarding proof of injury including

presumptions, differing pay while off work, special retirement considerations and other considerations that are different than regular workers.

Conclusion

This guide does not begin to address all workers' compensation issues. However, we hope this guide has been helpful to you in at least understanding when it is critical to contact an attorney. There isn't a week that goes by that we speak to an injured worker who went "too far into the system" without an attorney. They call us frustrated with the claim and want us to "fix it." Sometimes, we can't fix the problem, because it's too late.