

Accidents At Work: Workers' Compensation 101

November 13, 2014 | by Thomas F. Dorn, Jr

Injuries at work can happen in factories where employees operate or work with machines or potentially dangerous equipment. They can also occur in offices, retail stores, warehouses, schools and just about any workplace environment where hazards can be found. Injuries may occur as a result of slip and fall accidents, lifting something heavy, working with broken or defective products and many more examples. Some injuries are minor and some are permanently disabling. It is important for employers and employees to understand the workers' compensation system.

If an injury does occur at work the injured employee should first report the injury to the employer. The employer then must report the injury to their workers' compensation insurance company and must also file a "First Report of Injury" with the state. The workers' compensation insurance company or the employer will then tell the injured employee what company doctor or hospital to visit. If the injury results in any degree of permanent residuals (that is, the injury is permanent), the employee has the right to hire a workers' compensation attorney to file a formal claim petition in workers' compensation court.

A claim petition must be filed within two years of the accident date or within two years of the last treatment date with a medical provider authorized by the insurance company, whichever date is later. The claim petition is filed in the county where the injured worker resides. The workers' compensation court for Morris County, Sussex County and north Warren County is in Mount Arlington, New Jersey.

If you are injured at work, New Jersey workers' compensation courts have exclusive jurisdiction over the claim. There is no jury system in workers' compensation court; the judge assigned to the claim makes any and all decisions. The employer's workers' compensation insurance company must pay the authorized medical bills in the case. It is important to note, the injured employee is not permitted to treat with his or her doctor of choice. The employee can only be treated by a medical provider authorized by the employer's workers' compensation insurance company. If the employee is treated by

his own doctor using his private health insurance, the employee may be responsible for any deductibles or co-pays. In addition, the workers' compensation insurance company must pay the employee's lost time from work, usually at the rate of 70% of their gross weekly pay if the employee is out of work for more than seven days.

If a permanent injury was sustained in the accident, the workers' compensation insurance company has to pay a disability award based upon weekly payments. A disability award in workers' compensation court does not include a payment for pain and suffering. Instead, a disability award is based upon a statutorily authorized schedule setting forth percentages of disability for the body part injured or condition resulting from the accident. If the employee receives a permanent disability award for an injured body part or condition, the attorney representing the employee is entitled to a 20% attorneys' fee, a portion of which is sometimes paid by the insurance company. Also, injured workers who receive a "percentage of disability award" retain the right to reopen their case for up to two years to request and receive additional authorized medical treatment or to request a higher disability award.

After a work related accident occurs, workers' compensation benefits are provided immediately without the need to establish the parties' fault; however, the trade off is that employees cannot sue their employer for negligence in order to obtain "pain and suffering" monies or future lost wages. Workers' compensation courts do not deal with whether the employer was negligent or at fault. The one exception is if the employer committed an intentional wrong, meaning it was substantially certain that a worker would be injured. For example, if an employer was aware of asbestos in the workplace and intentionally misrepresented the existence of asbestos to the employees, an employer could be sued in New Jersey Superior Court for an intentional wrong. If an employer is negligent, or even reckless, courts have held that this type of behavior is not an intentional wrong because the employer did not intend to injure its employee and it was not certain that an injury would occur. Due to this difficult standard, New Jersey Courts rarely find sufficient evidence of an intentional wrong.

An injured employee may have the right to pursue a personal injury lawsuit if someone other than a co-employee or the employer was negligent and that negligence caused the employee's injuries. A

personal injury lawsuit involving negligence issues is filed in New Jersey Superior Court. In Superior Court cases, there are jury trials and a jury can award pain and suffering damages, future lost wages or, in wrongful death cases, an award economic loss based upon life expectancy.

An injured employee may also have the right to pursue a personal injury lawsuit if someone other than a co-employee or the employer was negligent and that negligence caused the employee's injuries. For example, assume a driver for Joe's Delivery Company is stopped at a traffic light when his delivery truck is rear-ended by a truck owned and operated by Tom's Ice Cream Company. The Joe's employee would have the right to file a workers' compensation case against Joe's workers' compensation insurance company and the right to a personal injury lawsuit in Superior Court against the Tom's driver. However, unlike workers' compensation cases where fault does not generally prevent an injured worker from filing a claim petition in workers' compensation court, in New Jersey Superior Court, a case may not be able to be filed if the injured worker was at fault or partially at fault for the accident.

In addition to injuries that occur on a specific date, New Jersey Workers' Compensation courts permit the filing of occupational exposure claims; in other words, injuries that occur over time. An example of an occupational claim is an employee who uses a computer keyboard all day and develops hand/wrist problems due to the nature of his or her occupation. Another example is an employee who works with or near chemicals or fumes and there is proof that the exposure resulted in a permanent medical condition. In order to file and successfully prove an occupational case, the injured worker must demonstrate both a legal and a medical cause for the injury. To succeed on such a claim, there must be proof that the injury is connected or related to the employee's work and that there is medical evidence that the injury was actually caused by the work related event or exposure. The standard of proof is not the same as most people are familiar with; that is "beyond a reasonable doubt" as you find in a criminal case. Rather, in an occupational case, the standard of proof is whether the injury more likely developed due to the nature of the work as opposed to activities performed at home or in your spare time. An occupational claim petition must be filed within two years of when an employee knows that an injury is related to his or her job. Usually, this knowledge is learned from a treating doctor or from a medical test, such as an MRI, CT Scan or other medical test.

New Jersey workers' compensation laws are designed to compensate employees for accidental injuries arising out of and in the course of their employment. The laws are intended to provide coverage to as many workers as possible. Generally, the injured employee is entitled to recover workers' compensation benefits regardless of fault. However, there are limited circumstances in which a worker is prohibited from pursuing workers' compensation benefits. If, for example, an injury at work is intentionally self-inflicted or if the sole cause of the accident was due to an employee's intoxication or use of an illegal narcotic, then a worker will not be successful in a workers' compensation claim.

Employers should be aware of the fact that under New Jersey statutory law an employer may not fire or discriminate against a worker who gets injured or who files a claim in workers' compensation court.

Employers should also be aware that failing to maintain workers' compensation insurance can result in fines against the employer for up to \$5000.00 per day for a period of time. The employer may also be charged with a criminal offense. If an employer does not have workers' compensation insurance, the employer as well as the individual owner (in the case of a corporation) can still be sued in Workers' Compensation Court.