

# Instant Millionaire (Aka Can I Sue My Employer For My Injuries)?

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There is a breed of people practicing what I call “internet law”. This is your neighbor, friend, family member or co-worker who just found out you (a) have suffered a catastrophic injury at work or (b) have a family member who died as a result of a work place accident. Your friends and relatives tell you that they have read on the internet (or seen on TV) that you that you can sue the employer for millions due to negligence.

Unfortunately, this is not necessarily true.

If you are injured at work, the New Jersey workers’ compensation courts have exclusive jurisdiction over the case. An employee does not have to prove negligence to obtain [workers’ compensation](#) benefits. The company’s workers’ compensation insurance company has to pay the medical bills, the employee’s lost time from work and, if there is a permanent injury to a body part, a weekly disability award.

On the positive side, workers’ compensation benefits are provided immediately after an accident and without having to prove 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.

Negligence issues are handled 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 can award economic loss based upon life expectancy.

Workers' compensation courts do not have jury trials; there is one judge who decides the case. The judge can only award weekly benefits based upon a specific workers' compensation chart that they must follow, for the year that the injury took place. Workers' compensation judges are not permitted, by law, to award pain and suffering monies or future lost wages.

There is only one exception to the exclusive jurisdiction of the workers' compensation court which would allow someone to sue for pain and suffering in a workplace injury case—the “intentional wrong standard”. The intentional wrong standard says that an injured worker cannot sue their employer for negligence in Superior Court unless there is proof that the employer committed an intentional wrong, meaning it was substantially certain that a worker would be injured. Even 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.

### **Some Accident Examples to help you understand:**

Let's use four accident scenarios that could take place at work involving workplace injuries to discuss whether you can sue for pain and suffering under these circumstances:

*1. An employer has an old wooden ladder that has a missing rung that broke off due to the age of the ladder. The employee falls off the ladder due to the missing rung, injures his back and has to have several back surgeries.*

Even if the employer knew that there was a missing rung, the employer may have been negligent in not repairing or replacing the ladder. However, this type of conduct did not mean that the employer ***intended*** to injure one of its employees. Therefore, you can only bring suit in workers' compensation court.

*2. A student who had been suspended on several occasions gets in a fight and a teacher breaking up the fight is knocked down, injuring his knee and shoulder and has to have multiple surgeries.*

In this example, New Jersey courts have held that these types of incidents are part of school life and teachers injured by students to have known disciplinary issues can only file a case in workers'

compensation court. Even though the student may have been prone to violence **it was not substantially certain** that one of the school district's teachers could be injured by permitting the troubled student to return to school. Therefore, this would be a workers' compensation case, solely.

*3. A general contractor directs the employee of a subcontractor to clean out garbage from a building that is under construction but was not built to code because the general contractor cut corners. The makeshift building collapses and the employee is killed.*

In this example, even if the subcontractor knew that the building was not built to code, no one knew the building was going to collapse. Therefore the survivors of the deceased employee cannot sue his employer, the subcontractor, in Superior Court because there was no intentional wrong. The surviving dependents could sue the employee's boss – the subcontractor – in workers' compensation court for 70% of the gross weekly salary of the deceased employee every week, up to a maximum based on the chart for the year of the injury, for the rest of the dependents' life.

In addition, because there was a third party who was responsible for supervising the construction project – the general contractor – the survivors **can** sue the general contractor in Superior Court for negligence. A claim for wrongful death may be brought against the general contractor and the survivors can sue for the economic loss of the life expectancy of the deceased employee and for loss of companionship.

*4. An employer is aware that asbestos exists in the workplace but does not tell any of the employees or any building inspectors of the existence of the asbestos. Years later, an employee develops lung cancer which her treating doctor relates to asbestos exposure.*

In this last example, an intentional wrong can be demonstrated. If the employer **knowingly** had asbestos in their workplace building for many years, hid this information from inspectors and did nothing to warn its employees of its presence or to remove the conditions, the employer could be sued in Superior Court because it could be shown that the employer acted intentionally in failing to warn its employees of a known dangerous condition.

Although many cases are filed by employees who are injured at their workplace against their employer in Superior Court, the courts rarely find that an intentional wrong has occurred. The standard is extremely difficult to meet. The reason is because the workers' compensation court is considered the exclusive remedy for workplace injuries.

Further, without the strict intentional wrong standard, Superior Court would be tied up with numerous cases dealing with workplace injuries, putting a strain on the court system and causing insurance costs to rise. The unfairness, however, is that if a neighbor or friend was not working but suffers the same catastrophic injury as an employee, he or she gets all the benefits and potential damages in Superior court which has jurisdiction over non-work related personal injury cases.

So, when your neighbor says that he can sue for millions so you should be able to also, consult a personal injury or workers' compensation lawyer before you run to the bank.