

Teaching The Teacher: The ABCs And 123s Of Accidents At School

February 28, 2012 | by Thomas F. Dorn, Jr

Teachers, school administrators and other school employees play a vital role in society in educating our children. They spend many years in colleges and universities learning what to teach, how to teach, how to discipline and learning basic administrative skills. However, teachers are not taught what to do and what rights they have if they are injured at school.

In general the school environment is safe with little risk of injury. In fact, with proper precaution, many accidents can be prevented, such as slip and fall accidents on liquid spills or on slippery floors or students running through the hallways and knocking down a teacher. The prevention of accidents will keep school personnel upright and able to perform their important daily responsibilities.

However, sometimes accidents happen. This article teaches teachers, administrators and other school employees what to do if they are injured at school.

Accident location and manner of injury

Jurisdiction over school injuries or any workplace injury is with New Jersey's workers' compensation courts. There are many rules and procedures that have to be followed when a school employee is injured.

Under the workers' compensation Premises Rule, any injury that occurs on school property during school hours is considered a workers' compensation injury. If an employee is involved in a motor vehicle accident before reaching the school premises or on a road on the way home from school, a workers' compensation case cannot be filed because the injury has no connection to the school or school premises. In those cases, a case can be filed in New Jersey Superior Court if some type of

negligence was involved. However, a teacher who twists an ankle in the parking lot or who slips in the cafeteria has the right to file a workers' compensation case if his or her injury has a lasting effect. The next consideration is how the injury occurred. If a school employee is injured while performing a personal errand such as going to the Post Office during school hours, then this injury would not be compensable because it was not connected to the school. Any other injury, including one that takes place during a break is a valid workers' compensation injury. In fact even if the injury was your fault you can still file a workers' compensation claim. For example, if a school employee is on a cell phone and does not notice a stairway there is no percentage of fault taken from an award in workers' compensation court for not paying attention.

What do I do first?

If you are injured on school property as discussed above, the first thing you should do is to report it to your school office or to the administrator in charge. By law, every employer in New Jersey, including schools, has to have workers' compensation insurance to cover injuries. Many districts are self-insured and appoint administrative companies to handle their claims. The school official in charge of injuries has to take the injury information from the employee and report the injury in writing to the workers' compensation insurance company. That same individual will tell you what medical provider or hospital you must go to for treatment for your injury. In workers' compensation cases, because the workers' compensation insurance company pays for all of your medical bills, this company has the right to choose and direct your medical treatment. Although you can go to your own doctor for treatment, your private health insurance company will most likely deny payment because it will be considered a work related injury and thus compensable under the school's workers' compensation insurance. If, during your treatment with the authorized medical provider, you believe that you are not receiving proper or helpful medical care, you have the right to request a second opinion from the workers' compensation insurance company. You also have the right to hire a workers' compensation attorney to assist you in obtaining different medical care.

How do I get paid while I am out of work due to my injury?

If you are out of work for your injury for less than seven days, you have to use your sick days or vacation days. If you are out of work for more than seven days, some school districts will continue to pay your salary at 100%. In general, however, employees receive 70% of their gross weekly salary from the workers' compensation insurance company if they are out of work for more than seven days. The decision of how long the employee stays out of work is made by the authorized treating medical provider.

What are the benefits of filing a workers' compensation case?

The answer to the question above is dependent upon the type and severity of the injury. For permanent injuries, meaning those that will have lasting or residual effects, you have the right to hire a workers' compensation attorney to file a formal claim petition in the workers' compensation court that covers the county that you live in. If you have a minor finger or toe injury you can file an informal claim petition yourself, without an attorney, in the same court.

After a formal or informal case is filed, a judge assigned to your case will eventually award you a monetary award if the evidence shows that you have some type of permanent injury. In formal cases, the attorney receives a 20% fee, paid from the award. There is no fee to file a case in workers' compensation court and there is no fee to consult with a workers' compensation attorney to discuss your injury or your rights in general. Any monetary award that is received is tax free. In addition, in many instances, your case is left open for two additional years after it is finished in court and you receive your award. Therefore, if your injury worsens after your case is finished you may have the right to reopen your case within two years for additional medical treatment or to request a higher monetary award.

May I file a case for occupational injuries from my school job?

Workers' compensation courts in New Jersey permit the filing of two types of cases:

1. an accident case as discussed above in which a worker is injured on a specific date and time, and
2. occupational exposure cases in which a worker develops an injury over a period of time.

In the school setting, for example, a secretary, administrative assistant, teacher, or cafeteria worker could develop hand or wrist problems from repetitive use of a computer, filing, phone use or writing. In order to file an occupational exposure claim in workers' compensation court, there must be proof that the injury is connected or related to your school work; you must have medical evidence that the injury was actually caused by the work related exposure. The "legal" standard in an occupational case is whether the injury more likely developed due to the nature of your work as opposed to activities performed at home or in your spare time. Unfortunately, because most workers' compensation insurance companies will deny an occupational exposure case, you will probably have to use your private health insurance for initial treatment and diagnosis of an injury. Once it has been determined that there is an occupational injury you should work with an attorney to make sure that a workers' compensation claim is filed.

Could I get harassed or fired for getting injured at work or filing a case?

New Jersey workers' compensation law states that a worker who gets injured cannot get harassed or fired by his or her employer. Specifically, it is a violation of New Jersey Statute 34:15-39.1 to fire or discriminate against an employee for seeking workers' compensation benefits. If this Statute is violated, the employer is subject to a fine and is required to reinstate the employee with back pay.

Am I allowed to ever sue my school for negligence?

An injured worker cannot sue his or her employer for negligence in Superior Court unless there is proof that the employer intended to injure the employee. For example, if a school knowingly had asbestos in its buildings for many years and did nothing to warn its employees or remove the conditions, the school could be sued for negligence because it could be argued that the school acted intentionally in failing to warn its employees of a known dangerous condition.

In the school setting there are circumstances when a student with a troubled background might injure a teacher or school employee. New Jersey courts have held that this type of circumstance is not an intentional wrong but is part of school life. Therefore, a teacher injured by a student known to have discipline problems may only file a case in workers' compensation court but cannot sue the school for

negligence.

Accidents happen and sometimes they happen at work. As a teacher, administrator or other school employee, you have the right to make sure that you are made whole if you are injured while you are working. Should you get hurt, there is recourse both through your school and with a competent workers' compensation attorney.

You would not let your kindergarten pupils cross the street without holding someone's hand. Let someone give you a hand as well.