Workers' Compensation: A View From Both Sides

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Accidents happen. Many times these accidents happen at work.

Whether you are an employer or an employee, when injuries occur at work, the area of law that governs is called Workers' Compensation or "Workers' Comp". Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment. In general, the employer benefits under the workers' compensation system because the employer cannot be sued by the injured employee; instead the employer purchases workers' compensation insurance which covers the employee's medical bills and lost wages. The employee benefits because in most instances benefits are paid quickly.

In New Jersey workers' compensation matters, there are specific laws that govern the rights and responsibilities of the employer as well as the injured employee.

Employers Rights & Responsibilities:

Every employer in New Jersey is required to maintain workers' compensation insurance for their employees. Whether you have one employee or hundreds of people working for your company, if you own a business you must have workers' compensation insurance to cover your employees. The only exception to having workers' compensation insurance is a sole proprietorship in which there are no employees other than the owner.

If a company does not have workers' compensation insurance, the employer and the individual owner(s) may be sued in workers' compensation court. In addition, the Uninsured Employers' Fund, a State agency, can assess fines against the employer up to $5,000 for the initial violation, as well as $5,000 for each ten day time period after the initial ten day period of violation. Furthermore, the

employer can be charged with a criminal offense for failure to have workers' compensation insurance.

If an employee of your company is injured while working, as the employer, you must notify your workers' compensation insurance company and file a claim. Employers must also file a "First Report of Injury" form with the State of New Jersey within seven days of the accident. The insurance company will then appoint a claim representative to investigate the accident and arrange for medical treatment for the injured employee. The employer is required to cooperate with the claim representative and provide the employee's contact and salary information. The insurance company will choose an authorized physician specializing in the type of injury that your employee sustained, for treatment. The insurance company will also pay for all necessary medical treatment. . If an employee is out of work for more than seven days as a result of the injury, the insurance company must pay the employee 70% of the employee's gross weekly salary, subject to an annual minimum and a maximum amount for the year of the injury.

At the conclusion of medical treatment, if the employee's injury has permanent residuals, the insurance company will be ordered by a workers' compensation judge to pay the injured worker a permanent disability award. The award is based upon established percentages of disability for the body part that was injured. The employer does not have to go court in most instances and never has to pay money to the injured worker.

Employers should be aware that under New Jersey statutory law an employer may not fire or discriminate against an injured worker or an employee who files a claim in Workers' Compensation Court.

Rights of the Injured Employee

When an employee is injured in the workplace, he should immediately report the injury to the employer. The employer will direct the employee to an appropriate hospital or physician after considering the severity of the injury. If the injury results in any degree of permanent residuals, the employee has the right to hire a workers' compensation attorney to file a formal claim petition in Workers' Compensation Court. If the injury is a minor injury, the employee has the right to file an

informal claim petition without an attorney in Workers' Compensation Court.

The injured employee is not permitted to treat with any doctor of their choice. The employee must seek treatment for the injuries with a medical provider authorized by the workers' compensation insurance company. If the employee treats with his own doctor using his private health insurance, the employee may be personally responsible for any deductibles or co-pays.

If an employee has a permanent injury, he may file a claim petition in Workers' Compensation Court in the County of residence. For residents of some Morris, Sussex and North Warren counties, the Workers' Compensation Court is located in Mount Arlington, New Jersey.

If the employee is represented by an attorney in Workers' Compensation Court and the Court orders an award for permanent disability to an injured body part, the attorney representing the employee is entitled to a fee. The fee is twenty percent of the award, a portion of which is sometimes paid by the insurance company. Also, for injured workers who receive an award for a percentage of disability to an injured body part, workers retain the right to reopen the case for up to two years. If the injury worsens during the two year time period, the injured worker can request additional medical treatment and/or can request an award for a higher percentage of disability.

If someone other than a co-employee or the employer was negligent and that negligence caused the employee's injuries, then an injured employee may also have the right to pursue a personal injury lawsuit. This may apply when an individual or company, not connected to the employer, was negligent in some way. For example: An employee of UPS was stopped at a delivery location when a moving company truck rear ends the UPS vehicle. The UPS employee has the right to file a workers' compensation case with UPS and a third party negligence case against the moving company and the driver because someone other than his employer or co-employee was negligent.

A personal injury negligence lawsuit is filed in New Jersey Superior court. 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 partially at fault for the accident.

In addition to injuries that occur as the result of an isolated incident on a specific date, New Jersey Workers' Compensation Courts permit the filing of occupational exposure claims. An example of an occupational claim is a secretary or computer operator who develops hand/wrist problems due to constant use of their hands/wrists to perform their occupation. An employee, who works with or near chemicals or fumes, may also file occupational exposure claims if the work exposure substantially contributes to a medical condition or an aggravation of a pre-existing medical condition. An occupational claim petition must be filed within two years of the date when the employee knows that an injury is related to his or her job. Usually, this knowledge is learned from a doctor or from a medical test, such as an MRI or CT Scan.

Whether you are an employer or an injured employee, if you are injured at work, you should consider hiring someone well versed in this area of law. At Einhorn Barbarito, we can help you . . . *every step of the way.*