

INJURED ON THE JOB? HERE'S WHAT YOU SHOULD KNOW

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I. INTRODUCTION

Workers' compensation law in California has undergone huge changes due to legislation enacted in 2003, 2004 and 2013.

This article is intended to be a basic introduction to your rights and responsibilities under California law if you have any injury at work. However, California workers' compensation law is very complicated. Many of the recent changes in the law are still being interpreted by the courts. Our web site www.boxerlaw.com and workerscompzone.com are a resource for more information about workers' compensation law.

CAUTION: LEGISLATIVE CHANGES AND JUDICIAL INTERPRETATIONS MAY CONTINUE TO OCCUR WHICH MAY CHANGE BENEFITS AND PROCEDURES DESCRIBED IN THIS ARTICLE.

IF YOU HAVE A QUESTION CONCERNING YOUR PARTICULAR SITUATION, YOU ARE ADVISED TO CONTACT AN ATTORNEY. Sometimes the rights of an injured worker are determined by other laws beside California workers' compensation law and by the terms of union contracts. Other applicable California and Federal laws may include the California Family Medical Leave Act, the Americans With Disabilities Act and California laws requiring reasonable accommodation and prohibiting discrimination on the basis of race, sex, age, disability, etc. In certain cases, California law concerning products liability and premises liability may apply. For each of these laws, there is a specific time limit for filing a claim. Strict, shorter time limits apply if the case is against a government entity such as a City, Town, the State or other governmental entity. Contact your attorney ASAP in these situations. For example, if you believe that you have a discrimination claim or negligence claim in addition to a workers' compensation claim, you should consult a lawyer as soon as possible since there are strict time limitations to be observed. Failure to act promptly within the applicable time can cause you to lose all of your rights. You must also make sure that you file any appropriate grievances which you are entitled to file under your union contract.

II. WHAT IS AN INDUSTRIAL INJURY?

California workers' compensation is a no fault system. You are not entitled to a jury trial. You are eligible for certain benefits for any work connected injury or illness regardless of who was at fault.

A work injury may be the result of a **single incident** such as dropping an object on your foot or bending over to lift. Also, a work injury may be the result of work activities extending over a period of time. For example, a worker who has lifted heavy objects who eventually develops pain in his back may have suffered an industrial injury. This is known as a **cumulative injury** claim. Other examples of cumulative injury are carpal tunnel syndrome due to repetitive keyboarding, loss of hearing due to noise exposure and heart disease/heart attacks due in part to ongoing job stress.

An injury may be the result of **diseases and illnesses** that are produced, contributed to or aggravated by the employment. An example might include lung disease from smoke, chemicals or asbestos.

An injury may be an incident which **aggravates** a previous injury or condition. For example, if an employee has had prior back problems and re-injures his back while lifting on the job, he would be entitled to compensation benefits.

An employee may be entitled to workers' compensation benefits even though the injury did not occur while he was actually working. For example, an employee injured off work-site while on a special mission for the employer may be covered. Off the job heart attacks due to chronic job stress may be covered.

A secondary injury may also be covered under the original work injury as a compensated consequence. For example, a car accident on the way to a doctor from a work injury would be covered under the original claim.

III. WHAT TO DO IN CASE OF AN INJURY

A. REPORT THE INJURY

Immediately following an injury on the job, the accident should be **reported to someone in a position of authority** such as a leadman, foreman, etc. Failure or delay in reporting the injury may result in a denial of workers' compensation benefits. A late reported claim may delay benefits until the insurance company has had an opportunity to investigate the matter.

Within one working day of knowledge of the injury, the employer shall provide a claim form to the employee who is then required to file it with the employer. The state form is known as a **DWC-1 form**.

The employee should also report the accident to his union shop steward or business agent so that he may be advised of any steps necessary in the protection of his rights and benefits.

B. REQUEST MEDICAL CARE

If the accident is reported, and medical treatment requested, the employer will either tell the injured employee which doctor to see, advise him how to access the employer doctor network, or advise him to see his own doctor. If the injury is disputed, the employee may need to use group medical insurance or self procured treatment while the issue is resolved. However, an employer may be liable for up to \$10,000 in medical care if a claim has not been denied. If you are in a collective bargaining unit, you can pre-designate a treating physician in case of injury beforehand.

C. PREDESIGNATION

If you would like to avoid having to get your treatment from a company doctor, you can do so by predesignating a doctor before your injury. You can predesignate a doctor if you are covered by a non-occupational health plan. **You must put your predesignation in writing and the doctor you predesignate must be your primary care physician.** Also, the doctor must have previously directed your medical treatment, must have your medical records and must agree to be your predesignated doctor.

IV. TIME LIMITATIONS

When an injury has occurred, the employer is required within one working day after receiving notice or knowledge of the injury, to provide the worker with a State of California claim form, commonly known as a DWC-1. **Upon receiving the claim form, the worker should complete and file the claim with the employer as soon as possible.** The employee is to give the employer a signed written notice of the injury or claim within 30 days of the occurrence of an industrial injury.

To avoid any possible problems because of late filing, the worker should in all cases, file a DWC-1 form for any work injuries or occupational diseases. Once a claim form is filed, the employer has 14 days to accept or deny the claim. The employer can choose to put the claim on delay status, in which case the employer and carrier have up to 90 days to make a decision about whether the claimed injury is compensable. If the employer's carrier puts the claim on delay for 90 days, the worker may, as a practical matter, be required to apply for State Disability so as to have income during the 90-day investigation period allowed by law.

The statute of limitations for filing an application to collect workers' compensation benefits is one year from the date of injury in cases in which no benefits have been furnished or previously awarded. If benefits, compensation or medical treatments have been furnished by the employer or carrier, the application must be filed within one year after the date of the last payment, treatment or other benefit.

Be sure to check with a lawyer concerning the specific application of time limitations to your situation.

V. REPRESENTATION BY COUNSEL

An injured worker should consult with an attorney and has the right to be represented by one in connection with an industrial injury. All attorney fees in a workers' compensation case must be set and approved by the Workers' Compensation Appeals Board. No fee may be charged in advance.

A reasonable attorney's fee will be determined by a workers' compensation judge within specific guidelines.

In addition, medical/legal costs (court costs, medical evaluations, depositions, subpoenas and witness fees) are not paid for by the insurance carrier and not the injured worker.

You have a right to be represented even if your employer or insurance carrier tries to talk you out of having a lawyer.

VI. ABOUT BOXER & GERSON, LLP

Boxer & Gerson, LLP is one of the Bay Area's leading trial lawyer firms. We specialize in personal injury, workers' compensation law, products liability, wrongful death, major vehicular accidents and Social Security disability. Boxer & Gerson, LLP has lawyers specializing in workers' compensation and civil trial lawyers who try major accident and third party cases. The firm has been nationally recognized for its efforts in the field of trial work. Firm attorneys are active in the California Applicants' Attorneys Association (with four past Presidents) and the California Trial Lawyers Association. Lawyers from the firm have won some of the largest personal injury jury trial verdicts and out of court settlements in Bay Area history. The firm can be reached at (510) 835-8870 or found on the internet at <http://www.boxerlaw.com>.

About the author - Gary Lee is a partner with Boxer & Gerson, LLP, Oakland, California. Gary is certified as a Specialist in Workers' Compensation law by the State Bar of California. More information about Gary and his law firm can be found at <http://www.boxerlaw.com>.