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WORKERS' COMPENSATION SURVIVAL GUIDE

10

Important tips
for injured workers



The Workers' Compensation Institute
at
Smigel, Anderson & Sacks

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**The Workers' Compensation Institute
at
Smigel, Anderson & Sacks**

Providing free seminars
throughout the
midstate in an informal,
friendly setting.
Call us to check future
dates & locations.
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ABOUT OUR FEES

Just a short message about attorney's fees. It costs you nothing to retain our firm to advise you about your rights under the workers' compensation system. We only charge fees when we obtain benefits for you or prevent an employer from taking away those benefits. We do not charge fees on the benefits you are already receiving when you retain us. Many of our clients are advised that they are not good candidates for a lump sum settlement, and they owe us nothing in the way of fees. Clients who do retain us to obtain/retain benefits or negotiate a settlement are generally represented on a contingent fee basis and pay 20% of their benefits as a fee after the case is concluded. **IF THERE IS NO SETTLEMENT OR AWARD, THERE IS NO FEE.** Please call us first if you have any questions.

The Survival Guide was prepared to provide injured workers with important warnings regarding Pennsylvania workers' compensation law. It is not intended to replace the advice of an expert attorney. Pennsylvania workers' compensation law is a complex benefit system that is supposed to provide a safety net for an injured worker. The Workers' Compensation Institute at Smigel, Anderson & Sacks is available at any time to answer questions regarding your workers' compensation claim and to insure that the safety net created by Pennsylvania workers' compensation law, and upon which you are relying, provides you, the injured worker, with a safe landing and a successful return to a meaningful life.

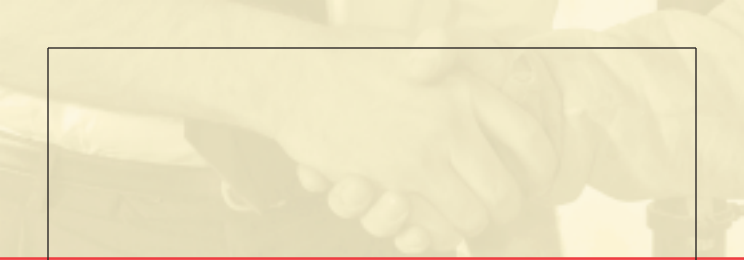
Workers' Compensation **SURVIVAL GUIDE**

10

Ways to survive the system

The Workers' Compensation Institute at Smigel, Anderson & Sacks has been presenting educational seminars to injured workers since 1996. We began hosting these seminars in response to the passage of Act 57, which amended Pennsylvania workers' compensation law. **Most of the changes effected by these amendments are favorable to workers' compensation insurance companies and employers and have reduced the rights and benefits available to injured workers.** Since its passage in 1996, Act 57 has dramatically altered the workers' compensation landscape, and decisions by Pennsylvania courts continue to dramatically change the rights of injured workers.

We have entitled this booklet the "**Survival Guide**" because, in a very real way, injured workers who are placed on workers' compensation **without the benefit of experienced lawyers** on their side are left to rely upon human resource managers, workers' compensation insurance adjusters, and others for advice and information regarding their workers' compensation rights. All too often, injured workers mistakenly believe that workers' compensation insurance is their insurance. **Nothing could be further from the truth!** Rather, workers' compensation insurance is insurance for the employer, and an injured worker is considered a "claimant." In fact, Pennsylvania laws are written in such a way that the workers' compensation benefit system has become a system of the **injured worker versus the employer and insurance company**, and the employer and insurance company are well informed regarding workers' compensation law and have experts,



such as rehab nurses and lawyers, on their side. In contrast, the average injured worker placed on workers' compensation has **no understanding of the system** and is left to trust the workers' compensation insurance company to protect his/her rights. At The Workers' Compensation Institute we believe that such trust is misplaced.

There are many crossroads that are reached during the life of a workers' compensation claim. Starting from the time that the injured worker is placed on workers' compensation and continuing until the time that the injured worker successfully returns to meaningful work, the choices made at each of these crossroads can and do change the outcome of a workers' compensation claim for better or for worse. **The Survival Guide** was prepared with the hope that it would help injured workers identify the red flags that should prompt them to call The Workers' Compensation Institute.

The Workers' Compensation Institute, through the presentation of our educational seminars and with the preparation of this Survival Guide, is committed to our mission of ensuring that injured workers receive valuable information regarding their workers' compensation rights before a costly mistake is made. **We are available to answer questions and will provide consultations at any time at no charge. Most workers' compensation claims are managed without a fee and with no charge on weekly benefits. We hope you find this Survival Guide helpful and encourage you to call us sooner rather than later.**

Tip

1

Be sure your injury description is correct.

When a worker is injured on the job, Pennsylvania law requires the workers' compensation insurance companies to issue a document called a **Notice of Compensation Payable**. This important document is to be filed with the Pennsylvania Department of Labor and Industry and represents the employer's and insurer's legal recognition of a work injury. It contains a description of the injury and sets forth the employee's **average weekly wage**. Typically, the Notice of Compensation Payable is prepared by the workers' compensation insurance company, and often the description of the employee's injury is **not accurate**. It is very common for the insurance company to describe the injury as **less severe** than it really is. For example, an employee might injure his/her wrist on the job and go to the hospital's emergency room or the company doctor for treatment. X-rays reveal that the wrist is fractured, but when the injured worker receives the Notice of Compensation Payable, the injury is described as a wrist sprain. Many employees do not even look at the injury description when they receive the document. However, an **inaccurate injury description** almost always **favors the insurance company** and hurts the injured worker. The Notice of Compensation Payable should have an accurate injury description. If the nature of the injury has changed, for instance, if a low back sprain is later determined to be a herniated lumbar disc after an MRI, the Notice of Compensation Payable should be changed to reflect the diagnosis of the more serious condition. If you have not received a Notice of Compensation Payable or if your injury description is not accurate, you should contact us immediately.

3

Tip

2

Be sure your wage rate is correct.

The **Notice of Compensation Payable** referred to in Survival Tip #1 also includes the injured worker's **average weekly wage**. The workers' compensation insurance company calculates the average weekly wage by using one of several possible formulas, which are selected depending on the injured worker's individual circumstances. The average weekly wage should include **salary and/or hourly wages, overtime, and bonuses**. It may be adjusted for seasonal employment and should include income from other employment.

However, as stated above, the average weekly wage is calculated by the workers' compensation insurance company, and mistakes in calculating the average weekly wage are often made. The injured worker should receive a document, filed with the Department of Labor and Industry by the workers' compensation insurance company, called a **Statement of Wages**.

This document shows how the workers' compensation insurance company calculated the injured worker's average weekly wage. The average weekly wage is very important because it is the basis from which the injured worker's weekly nontaxable workers' compensation benefit is calculated. In most instances, **an injured worker should receive 66 2/3 % of his average weekly wage**. Therefore, the Statement of Wages form and the calculations made by the workers' compensation insurance company should be **double-checked!** Failure to review the calculations may result in an underpayment to an injured worker that goes undiscovered. We at The Workers' Compensation Institute routinely review these calculations to ensure that you receive your maximum benefit.

4

Document receipt of late checks.

Late checks are a common complaint of workers receiving workers' compensation benefits. There are many ways to address late checks. The Workers' Compensation Institute provides services to correct this problem, without charge, as part of our regular case management.

Pennsylvania law requires workers' compensation insurance companies issue **wage loss benefit checks** in the **same pay period** that the injured worker would have received his/her regular paycheck. For example, if you were paid weekly before the injury, you should receive your workers' compensation check weekly. Enforcing this legal requirement often entails taking the workers' compensation insurance company to court.

If you are experiencing a problem with late checks, you should contact us immediately and take the following steps:

1. **Make a copy** of the check when it is received.
2. **Attach the copy** of the check and any check stub that accompanied the check to the envelope in which the check came.
3. **Write the date** that you received the check on the envelope.

Our office can then use this documentary evidence to prove that the workers' compensation insurance company is not sending the checks in a timely or consistent manner. Regardless of whether your checks are late, we recommend that all injured workers **keep a log of when they receive the checks** and what period they covered. They should also keep postmarked envelopes.

Tip

4

Beware of offsets to your benefits.

The 1996 amendments to Pennsylvania workers' compensation law provide for the reduction of an injured worker's weekly wage loss benefits if the injured worker receives **severance payments, pension payments, or Social Security retirement benefits**. Under Pennsylvania law there is no requirement that an injured worker be notified that the insurer will be entitled to reductions if he or she selects these benefits. However, the injured worker is required to report the receipt of any of these benefits to the insurance company. There are a number of legal challenges currently before Pennsylvania courts regarding the workers' compensation insurance companies' entitlement to take these offsets, and the law in this area is still changing. There are also some strategies that can be employed on behalf of injured workers to avoid or reduce the impact of these offsets. **If you are receiving workers' compensation benefits** and may in the future have the right to receive **severance, pension or Social Security retirement**, you should consult with our office immediately.

6

Tip

5

Know the significance of an independent medical exam.

An **Independent Medical Examination (IME)** is a tool used by the workers' compensation insurance company to have **its own doctor** review the physical condition of an injured worker. The Independent Medical Examiner, usually a **doctor chosen and paid by the workers' compensation insurance company**, will review an injured worker's medical records and examine the injured worker. The IME doctor will then issue a written report to the workers' compensation insurance company. A copy of that written report is **usually not provided** to the injured worker. The law requires an injured worker to attend an IME requested by the insurance company, but the injured worker does have rights! The problem with the current workers' compensation system is that the injured worker has no way of knowing what his rights are.

An IME costs the workers' compensation insurance company money. Therefore, it is usually only requested when the insurance company feels it may disagree with the injured worker's treating doctor, and wants to interfere with that treatment or **refuse to pay for it**. The other reason that an insurance company will request an IME is that it disagrees with the treating doctor's **restrictions on the injured worker**. In those instances, the insurance company requests an IME to force an injured worker to **do more work than is recommended by his/her treating physician**. In either event, **AN IME SPELLS TROUBLE!** If you have been asked to attend an IME, you should call our office immediately.

7

Know whose side the rehab nurse is on.

The workers' compensation insurance company will sometimes assign a "nurse" to an injured worker's case. **If a nurse has been assigned to your case, beware!** The nurse will call an injured worker before and after doctors' appointments and sometimes will attend the doctors' appointments. The nurse will **report to the insurance company** on the treating doctor's recommendations and will often guide an injured worker to other doctors or specialists. The injured worker should be aware of the fact that while everyone, including the insurance company, has an interest in seeing that the injured worker gets better, there is a great advantage to the workers' compensation insurance company if it is able to **control medical treatment**. **You do not have to talk to the rehab nurse. You do not have to allow the rehab nurse into the examination room with you.** You can tell your doctor **not to talk to the rehab nurse** out of your presence.

Injured workers have the right to **choose their own doctors** after they have been treated for their work injury for **90 days**. The injured worker's right to select his/her own doctors includes the right to select specialists outside of the area when appropriate. If an injured worker is treated outside of the area, the workers' compensation insurance company may be required to **reimburse the injured worker for travel expenses**. Workers' compensation law provides the injured worker with the right to **control his or her own medical treatment**, and if you are having trouble in this area, we can help.

Watch out for labor market surveys.

The 1996 amendments to Pennsylvania workers' compensation law ended the requirement of the workers' compensation insurance company to find **light duty work** for an injured worker who is unable to return to his/her pre-injury job. The law now permits the workers' compensation insurance company to **conduct a Labor Market Survey**. The Labor Market Survey allows the insurance company to identify light duty jobs that are advertised through newspapers, temporary employment agencies, or Commonwealth job placement services **without providing notice of these jobs to the injured worker**. Once jobs are identified, a vocational expert **hired by the insurance company** compiles them into a Labor Market Report, and the insurance company's lawyers will introduce that report at a hearing before a **workers' compensation judge** and request that an injured worker's weekly wage loss benefits **be reduced or stopped altogether**. There are many tools that The Workers' Compensation Institute has available to fight this unfair procedure, and the sooner we employ those tools, the **better the outcome for you**.

The Labor Market Survey typically begins when an injured worker is contacted by a representative of the insurance company for an initial interview. **This contact will often come by phone or letter** and may include a representation that the insurance representative has been asked to help **find the injured worker a job**. **You should not wait for this initial contact to occur**. If you have been injured at work and it appears that you may be unable to return to your pre-injury job, you should contact us immediately.

Be sure your medical bills are paid properly.

If you are already receiving workers' compensation benefits, you should be aware of the fact that your **medical treatment can be subject to utilization review**. This is a process in which the insurance company **challenges whether your medical treatment is reasonable and necessary**, not whether the treatment is related to the injury. Once the insurance company receives the medical provider's bill and notes, it can file for utilization review, which allows the insurance company to **avoid paying for the treatment**. When the insurance company does this, a medical provider with the same specialty as your medical provider reviews the treatment.

You should know that **there are specific time limits** for invoking utilization review, and even if the treatment is found not to be reasonable and necessary, **you still have rights**. You cannot be held responsible for paying the medical bill and you can take an appeal of that decision. In fact, utilization review is not only available to the insurance company—you, too, can **file for utilization review** if necessary. If you receive a **Request for Utilization Review Determination** or think the insurance company is refusing to pay for treatment recommended by your doctor, call The Workers' Compensation Institute to find out your rights.

Often an insurance company will not pay for a medical bill because it believes the treatment is **not related to the work injury**. You should not let these bills sit around even though you know they are related to the work injury. By not dealing with the issue, the bill could be reported to a collection agency and the doctor could even refuse to treat you. You need to address these issues and should call The Workers' Compensation Institute. There are ways to force the insurance company to **pay these bills**.

Prepare for the impairment rating exam.

The 1996 amendments to the Pennsylvania workers' compensation law provided insurance companies with the right to request **Impairment Rating Evaluations (IRE's)**. IRE's are very different from the Independent Medical Examinations (IME's) discussed previously in this Survival Guide. Impairment Rating Evaluations are a tool used by the workers' compensation insurance company to start a **500-week eligibility clock** on a seriously injured worker. Starting this clock **places a limit** on how long and, therefore, how much the workers' compensation insurance company will have to pay to the injured worker. The workers' compensation insurance company gets to start the Impairment Rating process and **controls the records** which are reviewed by this physician.

Pennsylvania law sets out specific requirements regarding when an Impairment Rating Evaluation may be requested. Pennsylvania law also provides a way to **challenge an Impairment Rating Evaluation** and gives the injured worker the **right to select his/her own doctor** to perform a **separate Impairment Rating Evaluation**. All of these rights are important. The Impairment Rating Evaluation cannot be requested by the insurance company until an injured worker has been receiving full workers' compensation benefits for **two years**. However, if you have been out on workers' compensation for more than 6 months, you should call us so that we can develop strategies to prepare for an Impairment Rating Evaluation.

The 1996 amendments to Pennsylvania workers' compensation law allow **workers' compensation settlements** for the first time. This has opened the door for workers' compensation insurance companies to attempt to close claims by offering **lump sum payments** to injured workers. Needless to say, there is typically a very large difference of opinion as to what a workers' compensation insurance company wants to pay and **what an injured worker should accept**. It is important to remember that the **workers' compensation insurance company cannot make an injured worker accept a settlement**. Many times, a settlement, even when it provides for a large payment, is not in the injured worker's best interest. At The Workers' Compensation Institute, we have developed detailed standards for workers' compensation settlements and provide our clients with the insight necessary to know when it is in their best interest to walk away from the settlement table. Likewise, in cases where a settlement is achieved, we guide our clients through the process to insure that The Workers' Compensation Institute clients are significantly **better off after a settlement** than they would have been had they remained in the workers' compensation safety net.

Settlements are not easy. They involve complex issues of law including **integration with Federal Social Security Disability Benefits** as well as **offset issues** which were previously described in this Survival Guide. In addition, workers' compensation insurance companies will often want to settle your claim for medical benefits, and there are serious legal dangers involved in this aspect of settlements.

Generally speaking, **you should consult our office** if any of the following is true:

1. You have been on workers' compensation for more than **6 months**;
2. You suffered a **serious work injury**; or
3. You think there may be a chance that you **cannot return to your pre-injury job**.