

EMPLOYMENT LAW SUMMARY

Michigan: Workers' Compensation - Claims Process



Because You're Different

Michigan's Worker's Disability Compensation Act (WDCA) governs the claims process for individuals who sustain work-related injuries and illnesses. The Michigan Workers' Compensation Agency (WCA), part of the Michigan Department of Licensing and Regulatory Affairs (LARA), investigates and handles workers' compensation claims in the state.

EMPLOYEE'S NOTICE OF INJURY AND CLAIM

Employees must report any work-related accidents and resulting injuries to their employers within 90 days. Failing to report an injury can result in a delay in the claims process or a denial of the claim altogether. However, the WDCA allows exceptions to the notice requirement as long as the employer was not prejudiced by the lack of notice. Also, inaccuracies in a notice of injury do not invalidate a claim unless the employer can show that the inaccuracies were intentional and aimed to mislead and that the employer (or its insurance carrier) was, in fact, misled. Employees must also file a formal claim for benefits with the WCA within two years after the later of:

- The date of injury;
- The date disability manifests itself; or
- The last day of employment with the employer against which the claim is being made.

If the employer paid any benefits or provided work within any restrictions caused by a work-related condition, the employee may file a claim within two years after the employer's last payment or the employee's last day of work. In cases involving an employee's death, survivors must file a claim for benefits within two years of the death.

DISPUTED CLAIMS

Employees are encouraged to try to resolve any claim disputes directly with their employers and, if applicable, their employers' insurance carriers. While a claim for benefits remains unresolved, any undisputed benefit must be paid. The parties can submit an application to the WCA to resolve the remaining balance through:

- Small claims;
- Mediation;
- Arbitration; or
- Administrative hearings.

If an employee prevails through these proceedings, he or she is entitled to receive any awarded compensation, damages and interest, unless an appeal is subsequently filed.

SMALL CLAIMS

The WCA will refer a dispute for workers' compensation benefits to a small claims court if the dispute is for \$2,000 or less and:

- Concerns a definite period of time and the employee has returned to work;
- Is for medical benefits only; or

- The WCA determines the claim amount covers the entire dispute or controversy.

The parties to a small claims case may represent themselves or can be represented by an authorized agent, but may not be represented by an attorney. The WCA will not refer a case to small claims and will instead schedule the matter for an administrative hearing with a workers' compensation magistrate if:

- A party is represented by an attorney;
- The claim does not meet the criteria mentioned above; or
- A party requests that the claim be removed from the small claims court.

MEDIATION

The WCA assigns contested compensation claims to mediation for cases involving:

- Unrepresented claimants;
- Health care services rules hearings;
- Disputes regarding only medical benefits;
- No record of insurance coverage; or
- Vocational rehabilitation hearings.

A mediator, also referred to as the facilitator, has 12 weeks from the application date to settle a dispute or to transfer the case to the WCA for an administrative hearing.

ARBITRATION

Employers, employees and insurance carriers can submit a claim dispute to arbitration if all interested parties agree on one arbitrator to review the dispute. The arbitrator must be a member in good standing of the State Bar of Michigan or of the American Arbitration Association. Participation in arbitration proceedings is voluntary, but once rendered, an arbitrator's decision is final and binding. Parties to an arbitration proceeding can appeal by filing a request within 30 days of when the decision is sent to the parties. However, the arbitrator's finding of facts is conclusive. Any appellate review is limited to the arbitrator's legal interpretation and application of the law.

ADMINISTRATIVE HEARING

If a claim dispute is not resolved through small claims court, mediation or arbitration, the WCA will schedule it for trial before a workers' compensation magistrate. The magistrate will hold a pre-trial hearing to review the validity of the claim before the actual trial takes place. During trial, the parties may present depositions, records and testimonies to support their cases, but may not bring witnesses. To prevail, a claimant must show that the majority of the evidence proves that he or she is entitled to receive benefits.

After the trial is over, the magistrate will take the case under advisement, which means that he or she will consider and study all the evidence presented by each party before making a decision. Once the magistrate has reached a decision, he or she will prepare an order, a description of the reasoning that justifies the order and a finding of facts. Unless a party contests a magistrate's decision within 30 days of when it is filed, the decision will be final and binding. While the order is subject to appeal, the finding of facts is final and is not subject to review.

APPELLATE REVIEW

Any party to a disputed claim may apply for review of a magistrate's or arbitrator's decision within 30 days of when the decision is sent to the disputing parties. The 30-day time limit may be extended for good cause. The first appeal must be made to the Workers' Compensation Appellate Commission. Subsequent appeals go to Michigan's appellate courts, and possibly as far as the Michigan Supreme Court. During these reviews, the magistrate's (or arbitrator's) finding of facts is conclusive in the absence of fraud, and appellate review is limited to the proper application of the law.

A petition for review does not relieve an employer from its obligation to pay at least 70 percent of the benefits that the magistrate or arbitrator ordered it to pay. However, if the final determination by the appellate system is for fewer benefits to the employee, the employer may recover any overpayments from its employee or adjust future compensation to make up for the loss.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the Workers' Compensation Agency website for more information on workers' compensation laws in Michigan.

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