

EMPLOYMENT LAW SUMMARY

New York: Workers' Compensation - Claim Process



Because You're Different

Workers' compensation is a system of no-fault insurance that provides medical benefits and compensation for lost wages and permanent physical impairments to employees who sustain work-related injuries. New York's Workers' Compensation Law (WCL) governs the claims process for individuals who sustain work-related injuries. The Worker's Compensation Board (WCB) investigates and handles workers' compensation claims.

NOTICE OF INJURY

An employee must take the first step in the claims process by reporting a work-related injury to his or her employer within 30 days of when the injury takes place. The notice must be in writing, must contain the employee's name and address and must state in plain language the time, place, nature and cause of the injury. The employee or a representative must sign the notice before delivering it to the employer.

Failing to report an injury can result in a delay in the process or a denial of the claim altogether. The WCB will allow for an exception to this rule if the employer had knowledge of the injury or death, if it was unreasonable for the employee to give notice or if the employer is not adversely affected by a lack of notice.

DISPUTED CLAIMS

Employers must pay benefits to an injured employee within 30 days, unless they seek a review or an appeal of the claim. Employees are encouraged to try to resolve any claim disputes directly with their employers and, if available, the employers' insurance carriers. If matters involving insurance coverage remain unresolved, the parties must generally go through a hierarchical system of review. This system includes review by a WCB judge, review by a WCB panel, review by the entire WCB and judicial appeal.

Employees have a right to be represented by an attorney or licensed representative during the review process. The WCB judge or the WCB will determine the amount of compensation an attorney or representative may receive for his or her representation. Employers and their carriers are not required to pay weekly compensation benefits while a claim is in the review process. However, employers must cover any physician bills as well as any uncontested benefits during the review process.

WCB JUDGE

A workers' compensation law judge may conduct hearings to determine the validity of benefit claims. The judge determines the amount and duration of the compensation award. Either party may appeal the decision of a judge to the WCB within 30 days of when the decision is filed.

WCB REVIEW

The WCB has the discretion to accept or deny applications for appeal. If the application is granted, the WCB appoints a panel of three board members to review the claim. If the panel renders a unanimous decision or there is a dissent recommending to refer the case to an impartial specialist, the entire board (in its sole discretion) may review, affirm, modify or rescind the panel's decision. If the dissent within the review panel was for any other reason, the WCB will review the decision.

JUDICIAL REVIEW

Either party to a disputed claim may ask a New York appellate court to review a WCB decision. Judicial decisions can subsequently be reviewed by higher courts in the appeal system.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

The parties to a disputed claim in a unionized labor environment may resolve their dispute through arbitration. During arbitration, no offers or recommendations made during prior attempts to solve the dispute are admissible. Any settlement and decision resulting from arbitration must be filed with the WCB within 30 days of the decision. The WCB will enforce the arbitration award. The WCB does not offer any review of arbitration awards. A party wishing to appeal an arbitrator's decision must appeal directly to the appropriate appellate court. Every year, employers in unionized labor environments are required to report the following to the WCB:

- The number of employees within the ADR program;
- The number of claims filed;
- The total amount of lost wage benefits paid as a result of ADR;
- The total amount of medical expenses paid within the ADR; and
- The number decisions rendered, settlements made and appeals taken through ADR.

MORE INFORMATION

For more information on workers' compensation laws in New York, visit the Workers' Compensation Board website or contact your official Heffernan Insurance Brokers representative.

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