

INJURED AT WORK IN NEW YORK?

Your Guide To Navigating Your Compensation Case



MARY ELLEN O'CONNOR, ESQ.

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TESTIMONIALS

“My experience with the O'Connor Law Firm has been excellent. All the attorneys I have worked with have been very helpful. They also have the best paralegals who are also very professional and helpful. I would definitely highly recommend this firm. Any issues I may have had with workers comp were always taken care of quickly. These attorneys and paralegals truly care for their clients. You will always receive a speedy response to any questions you may have. 5star services.”

– Nikki Torres

“Omg, the best experience I have had with a firm. From the first time, I called very friendly staff. Vanessa Noel was the best... Always called me to remind me what I had to do, always seemed, and seems; truly concerned about me, and my case. Kept, me prepared and knowledgeable of what to expect. I am very satisfied with my experience with Vanessa, she always listened, and I could go on and on. Give them a call and experience the professionalism for yourself.”

– Don

“This Law firm is amazing!! When I called with concerns and issues Jenika Douglas would always make me feel that they would get resolved. She would give Vanessa Noel my concerns and Vanessa would get back to me, and make me feel better about my concerns. I would definitely recommend The O'Connor Law to family and friends. Which I have done in the past with coworkers. Thank you so much for relieving my stress. I am so happy with the outcome of my case!!!”

– Theresa Dukes

“The legal services of O'Connor Law PLLC exceeded my expectations. Vanessa Noel and John Talbot were very professional and kept in daily contact with me while my court appearance approached. There were no surprises or delays, and I highly recommended them for their legal services.”

– Songsuk Kim

“This is one of the best law offices I have ever worked with. They pick up the phone they answer your questions they put your mind at ease they know who you are when you're speaking to them they make you feel like you're part of a family hands-down the best law firm I've ever worked with!!!”

– Chris Cataldo

“The O'Connor law firm provides high quality legal representation for workers who are injured throughout New York. Mary Ellen and her team are fantastic to work with and really care about their clients. If you got hurt on the job in NY, give them a call.”

– Kevin McManus

“I have had a ridiculous amount of questions regarding my case, and EVERY time I have been met with professionalism, courtesy, and kindness. My previous lawyer firm stopped responding and did not return my calls or emails for months at a time, so I found O'Connor and have nothing but positive experiences. The accessibility and courtesy I have seen from O'Connor are far greater than previous firms I have had experience with.”

– Jeffrey Thomas

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ABOUT THE AUTHOR



Why am I an expert? For over a decade I was an in-house counsel for an insurance company in the state of New York. In that position, I was handling up to 100 hearings a week. I've also done thousands of insurance company appeals. This first job gave me an insider's knowledge of workers' compensation claims. I learned what the position of insurance companies is and how they deal with claims. For the last eight years, I was the insurance company attorney trainer.

In addition, my husband worked for the federal government and he was injured on the job. Through him, I saw how the federal government deals with workers' compensation, how frustrating

the system is, and how difficult it is for the injured employee to get treatment.

I know the enemy and I'm on your side.

Who Is This Book Written For?

As a part of the leadership team of the board of directors of the Workers' Compensation Alliance that lobbies for workers in the state of New York, I speak with New York assembly members and senators. Many of them think workers' compensation is, "You get hurt at work. You get paid. You get medical treatment, and everything is good."

No. Not quite.

This book is written for anybody who is dealing with workers' compensation in the state of New York. It's not only for the person who has been hurt at work and then blindsided by the complexities of the system and the tactics of the insurance companies but also for the injured person's doctors and the doctor's staff. And of course, this book is for the attorneys working with those who have been hurt because workers'

compensation is complicated and difficult to navigate through. It's a very particular type of law that even many lawyers don't know much about.

To begin, it does help to understand a little about the history of workers' compensation in New York.

CHAPTER 1

THE GREAT COMPROMISE, THE GRAND BARGAIN



On March 24, 1911, the New York Court of Appeals struck down the newly created workers' compensation system as being unconstitutional. The very next day, the Triangle Shirtwaist Factory in Manhattan burned down killing 146 workers and injuring 78. Although fire stairs and sprinklers had been available at that time, the building did not have them. And the fire hose would not turn on. The

injured employees and families of the dead were not able to sue because the employer went bankrupt.

The tragedy motivated the legislature to rewrite the constitution to include workers' compensation.

The legislation is called the Grand Bargain, the Great Compromise. If you have an accident on the job that's your employer's fault, you cannot sue your employer. New York State is a no-fault system, which means it doesn't make a difference whose fault it is. You are, however, entitled to receive workers' compensation benefits.

Workers' compensation benefits provide medical treatment in accordance with the medical treatment guidelines for the particular body part that was injured. In addition, you're entitled to indemnity benefits while you miss time from work. The indemnity benefits would be wage replacement benefits. If you have a permanent injury there are permanency benefits.

CHAPTER 2

REASONS NEW YORK WORKERS' COMPENSATION IS COMPLICATED



In New York State, workers' compensation is complicated. An example is the guidelines for medical treatment are 100 pages for EACH body part. These guidelines state what medical treatment you are authorized to get without getting authorization to treat the injury beforehand. The guidelines also state the kinds of injuries that need permission before treatment.

There are a lot of rules and regulations that are in place that make it very confusing how to apply for workers' compensation and get compensated. Administrative decisions may come from insurance companies saying, "We deny it." Lawyers have the ability to ask for a review, but the insurance companies deny the claim even if it was something that should be found compensable. If you are not well-versed in the medical care and treatment guidelines, if you're not an attorney who is dealing with such compensation claims day-in and day-out, and if you don't know the tactics of the insurance companies, you do not know what claims are compensable. Also, in order for a treatment that requires permission, the doctors filling out the complex forms must word them correctly to get you permission for a treatment that is not explicitly stated in the guidelines. If the insurance company denies it the doctor must seek 3 levels of review justifying the need for the treatment. The doctors are not paid anything additional for the extra paperwork (a.k.a RED TAPE).

Not even the judges on the workers' compensation board making these treatment decisions are well-versed in the guidelines. For example, say you injured your knee and a certain injection is allowable per the guidelines. Some of the judges, ruling on your claim, are unaware of the types of allowable injections. But treatment is only one part of workers' compensation claims.

While many people think you are paid your full salary while at home healing, in New York State you are only entitled to two-thirds of your income, not to exceed the state maximum. For example, your average weekly wage is \$900 per week. If you are totally disabled and out of work, you'd be entitled to \$600 a week. However, if you're found to have a 50% disability, you only get \$300 per week. And if you don't have a total disability, you also have to look for work in the way that they want you to look for it.

Ten Percent Of Workers' Compensation Claims Are Fraudulent

You might think that workers' compensation has to be complex and difficult to reduce fraud. This is a misconception.

New York State, depending on the year, files somewhere between 200,000 and 300,000 workers' compensation cases. Only 1-2 percent of Workers' Compensation cases are fraudulent.

The reality is that insurance companies are good at controlling the narrative. In 2018, they profited over one billion dollars in New York State just on workers' compensation coverage alone. So, insurance companies have a vested interest in denying workers' claims and making workers feel embarrassed to submit a claim, that the injury was their fault, or even that the company will do the right thing based on a good working relationship.

Even if you think, "My employer would never do that to me," because you have an excellent working

relationship with your employer, you DO NOT have one with their insurance company. Your employer pays the insurance company the premiums. If the insurance company can pay out less, they make more in profits.

You also might think that workers' compensation is extremely expensive and thus contributes to the failure of small businesses. But 75% of businesses in New York State pay less than \$5,000 a year for workers' compensation benefits.

The Majority Of New York State Companies Purchase Worker' Compensation Insurance

In the state of New York, 99.9% of employees are covered by workers' compensation law.

While New York State employers may be self-insured, few small companies are self-insured. A company that wants to be self-insured has to provide certain criteria to the state of New York to be approved. Many municipalities and some larger companies are self-insured, but most companies are covered by an insurance policy.

In-Place Protections For Employees Who File A Workers' Compensation Claim

Under Section 120 of the Workers' Compensation Law, an employee cannot be fired for filing a workers' compensation case. However, because New York State is an employment-at-will state, employers have no obligation to hold your position open. It's difficult to win a case unless you have a smoking gun, such as an email that says something like, "I can't believe you filed for workers' compensation. You're fired!"

CHAPTER 3

COMPENSABLE INJURIES UNDER NEW YORK'S WORKERS' COMPENSATION LAWS



Generally, any accident that happens on the job is compensable. A slip-and-fall, a car accident, or tripping downstairs are all generally covered. Most accidents in an office are going to be compensable. Work-from-home injuries are evaluated by a stricter standard. For example, if you trip and fall while walking to your cubicle in the office, that would be compensable. However, if you leave your desk to use

your home bathroom and trip and fall on the way, that may not be compensable. Accidents that happen at home will have to be specifically working on actual work: if you're sitting in the chair typing and you fall out of your chair.

There are also what are referred to as repetitive stress claims. A common example is having to type all day. An injury happens because you do the same thing over and over, and your body starts to wear out. Construction workers who are constantly on their knees can have knee injuries. Certified nurses and nursing assistants who are constantly moving and lifting patients will often have back and/or shoulder problems. A medical doctor must properly document any repetitive stress or overuse injuries.

Also, the injury is compensable if someone dies as a result of a work-related injury, or if somebody has a verified compensable injury and passes away because of that work-related injury, which is called a consequential death: injuries related to death because the death occurred on the job or is a result of the workers' compensation case already found to be compensable. It

could be someone having surgery on their knee, and they die on the operating table, or someone has an injury that's put them into a wheelchair, and they die prematurely because they've gotten diabetes and hypertension by being in the wheelchair.

If You Are At Fault

New York State is a no-fault state. That means the fault is not taken into consideration except if the person is drunk or on drugs. Insurance companies would look at the specific or particular circumstances surrounding the injury. Also, if someone has what we consider an idiopathic condition, a disease or condition with no known cause. For example, if someone happens to faint on the job and the fainting is not related to environmental circumstances like the room being hot and having no air. If, however, someone faints for a non-work-related reason and when they pass out, they fall and hit their head on a work desk, the injuries that stem from hitting the head, the head injury could be considered a workers' compensation case. If they had fainted at home, they wouldn't have had a work desk to hit their head on.

Workers' Compensation Claims Do Not Depend On Location

A workers' compensation claim does not need to be at the physical place of employment to qualify, especially during SARS-CoV-2 outbreaks. Since March 2020, many people worked from home. Thus, work-from-home injuries may be covered although there are stricter standards.

If you are on a business trip and get injured sometime during the trip, you can be entitled to workers' compensation benefits. Salespeople on sales calls are covered. If injured, even attorneys traveling to and from the court would be covered.

CHAPTER 4

DIFFERENCE BETWEEN A WORKERS' COMPENSATION DEATH CLAIM AND A WRONGFUL DEATH CLAIM



In New York State, a workers' compensation death claim and a wrongful death claim are not the same. You can have a death claim that is both a workers' compensation death and a wrongful death. You can also have both claims in New York State based on the same death or the same incident. You are entitled to your workers' compensation benefits. Also, your estate and your family are entitled to make

a claim for workers' compensation if your death is work-related, and your estate and family are allowed to sue the person that was at fault for your death.

The Beneficiaries Who Can File The Workers' Compensation Death Claim

Understanding the terms **decedent** and **claimant** is helpful. If someone dies as a result of an incident at work, the person is called the decedent in workers' compensation. The term claimant refers to the surviving family: spouse, children, estate. The claimant would be able to make the claim against the workers' compensation case. Medical payments up until the date of the accident are paid as well as any medical costs due to the death. Depending on where the decedent lived in New York, funeral costs of \$8,000 to \$12,000 are also an entitlement.

The spouse and the children would be the people who would be entitled to benefits. A spouse is entitled to receive ongoing benefits for their lifetime. If they remarry, the benefits stop two years after they remarry. If they do not remarry, then they can receive benefits for a lifetime.

Any children under the age of 18 can receive benefits. Children between the ages of 18 to 23 would be entitled as long as they are attending school full-time. Once the child in school turns 24, they are no longer entitled to benefits. An adult disabled child would have to be totally disabled to be entitled to a lifetime of benefits from the insurance company. If there is no spouse or children, then the estate can make the claim.

The weekly benefits are based upon the wages of the decedent at the time of the person's death.

Decedent	Benefits	Example of \$900 weekly income
Spouse, no child(ren)	2/3	\$600
Spouse with child(ren)	1/3	\$300
One Child	1/3	\$300
Two Children	1/3	\$150 each
Three Children	1/3	\$100 each

As each child ages out, then the benefits for the younger children increase. When one child ages out, the benefit would increase to \$150 for the two remaining children. When the second oldest child ages out, the benefit for the youngest child would be \$300. After all the children age out, then the spouse, if not remarried, receives the full benefit of \$600. If there are no spouse and no children and the parents of the deceased child can show that they were financially dependent on that child, they can receive benefits. There is a \$50,000 death benefit to an estate where there are no beneficiaries.

CHAPTER 5

STEPS TO TAKE IF YOU HAVE A VALID WORKERS' COMPENSATION CLAIM

COMPLAINT OF PAIN	DRIVER	PASS.	PED.	BICYCLIST	OTHER
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

In New York State, there are two different time frames that have to be met. The first time frame is that an injured worker has to provide written notice to their employer that they had an accident on the job. The injured worker can fill out an employer-based incident form, but it does not have to be a formal incident report. This notification can be as simple as a text to the boss saying, “Today, I hurt my hands

because I tripped on the entrance mat while walking from the office to the bathroom.” Giving written notice to the employer within 30 days is extremely important. Failure to provide written notice can prevent an injured worker from receiving workers’ compensation benefits.

The second time frame is that you must notify the New York State workers’ compensation board by completing the C3 form stating there was an injury on the job. Submitting this form has a two-year statute of limitations. If you do not submit the C3 form, it can be fatal to the claim.

The C3 form is tricky. It asks the same questions in different ways, which can be confusing. If you don’t know what the question is really asking, you can answer incorrectly. If you answer incorrectly, then the insurance company might raise the issue of fraud. Because several questions use double negatives you may have answered incorrectly. Double negative questions are difficult for people to understand, especially if English is not your first language.

There are several questions on the state form that try to disqualify you from receiving benefits. While the questions on the form cannot be changed, if you file the form and then meet with an attorney that catches the mistake, the attorney will quickly submit an amended form showing the incorrect answer was not on purpose. The amendment also shows full disclosure and that the questions are now answered correctly.

The Crucial Evidence To Prove Your Compensation Claim And Injury?

If an accident happened at work, the presumption under Section 21 of the Workers' Compensation Law is it happened. However, in the state of New York, workers' compensation has become much more difficult and complicated.

Part of the reasoning for establishing workers' compensation benefits was for workers to get immediate medical treatment. Today, lawsuits can take months and even years to provide the funds to pay for the care the injured needs immediately. What you can

do is to get and hold onto any photographic or video evidence. If there are witnesses that can corroborate that the accident happened make sure you have the person's contact information. While the pictures, videos, and witness statements may not be used, it's in your best interest to get them and securely store them.

In the state of New York, there are a lot of undocumented workers. Undocumented workers have a right to workers' compensation benefits. Often a workers' supervisor will tell the worker that because they are not documented or paid in cash which proves they work at the company, they are not entitled to the benefits. Undocumented workers should keep copies of transportation records. For example, if the worker is driven to a job site in New York in a van or by people. Take pictures of the van, including the license plate. Get the name and phone number of the employer for that job. Also, the worker should keep a record of any money they receive for the day on a small calendar and bring it with them to court. The injured worker will be more persuasive if they can say, "Listen, according to my calendar, the accident happened on Monday,

October 10. I've also noted each location I worked at, how much money I earned each day, and the supervisor's name and telephone number."

Many undocumented workers use WhatsApp. It only requires the worker to have a phone number. It keeps screenshots of any communications between the supervisor and the worker. WhatsApp works for anyone, regardless of documentation status, who receives cash payments.

The Common Reasons Workers' Compensation Claims Are Denied, Disputed, Or Delayed

The main reasons for your workers' compensation claim being denied, disputed, or delayed are:

- The employer says the employee didn't work there
- The employer said the accident didn't happen
- The insurance company cannot get in touch with the employer. The employer will not call the insurance company back to find out what happened.

CHAPTER 6

EFFECTS OF MEDICAL HISTORY ON A WORKERS' COMPENSATION CLAIM



In order to understand whether your medical history can be used against you, it is helpful to understand the term **eggshell claimant**. In other words, you come as if you are in good health or not so good.

The way that your medical history can be used against you in New York State is if you do not disclose it. If you injured your back in the past and now you

have a new back injury, and you say that you've never had a back injury, then the lie can be used against you. You need to disclose the injury and provide the insurance company with a HIPAA release. But only authorize the HIPAA release for the affected body part. If your work injury is to your back, and you've never had a back injury, you are under no obligation to tell them about your foot fracture that you had two years earlier. You only have to disclose your prior medical history related to the same body parts that you're claiming in the workers' compensation case.

Warning: If you are asked to sign a HIPAA release, make sure that you limit it to the injured body parts. Do not give them a blank HIPAA release.

If you give them a blank HIPAA, they'll get your entire medical history, and they will try to use that history against you even though it has no bearing on your workers' compensation case involving a fractured ankle. The insurance company might delay or deny your compensation because they found that you couldn't work because of an ankle injury two years ago. They may try to make your injury about the

previous injury. “He’s not working because of his previous ankle injury.” Insurance companies will look for any reason not to pay an injured worker.

The Effect Of Past Or Present Medications You Might Be Taking On Your Workmen’s Compensation Claim

Unless the employer has cause to believe you were on drugs at the time of the accident, the list of medications you are on or were on in the past is generally not disclosable.

Returning To Work Will Not Hurt You

It’s always best to go back to work even if you can’t go back full-time, full-duty. If your average weekly wage was set at \$900 and you are able to go back to a light-duty part-time position making \$450 a week, you are eligible to receive reduced earnings. You’re entitled to two-thirds of the difference of your full-time wage ($\$900 - \$450 = \$450$) which would entitle you to about \$300.

In New York State, if you have an injury to a limb and you have permanent damage you may be

entitled to what's called a Schedule Loss of Use award, which is an award that is made for a permanent injury to a limb, i.e. an arm, hand or leg. Once you return to work full time, full duty, any payments that you received while you're not working due to the injury are deducted from your schedule loss of use award. If you are entitled to a \$10,000 scheduled loss of use for an arm injury, and the insurance company paid you \$5,000 by the time you return to work on full-time, full duty, you would receive the difference of \$5,000. If your employer paid you a salary of \$7,500 while out your employer would be reimbursed and you would receive the balance of \$2,500. If you return to work on part-time, light duty, which results in no decrease in your normal income, thus not losing any time from work, you would receive the \$10,000.

Injuries that do not involve a schedule loss of use (i.e. arms, hands, legs et.) are evaluated for a Loss of Wage Earning Capacity (LWEC). The medical permanency guidelines set forth the criteria and factors the medical practitioners use to set forth the medical impairment rating. The Judge will also take

into consideration age, education, and prior work and life experiences.

If an injured worker is found to have less than a total disability either by his or her own doctor or by the Judge the injured worker is obligated to demonstrate "labor market attachment." In order for an injured worker to prove they are attached to the labor market if he or she must be making reasonable efforts to obtain gainful employment that is consistent with his or her medical restrictions. If an injured worker fails to make reasonable efforts to obtain gainful employment consistent with his or her partial disability, the weekly benefits that the injured worker has been receiving will be stopped. Once the benefits are stopped it is extremely difficult to get them again.

CHAPTER 7

TACTICS INSURANCE COMPANIES USE TO DELAY THE WORKERS' COMPENSATION CLAIM PROCESS



While there are many tactics insurance companies can use to delay an injured worker's compensation claim, the more routine tactics are:

- Death by starvation
- Accepting a case without prejudice
- Sending you to an IME doctor
- Raising frivolous issues
- Taking appeals

Insurance companies have multiple tactics to draw out a case called death by starvation. They know that injured people need to pay the rent, buy food, and care for their families. If they can starve out the injured worker, the worker will be forced to return to work if they have little to no money coming in.

In New York State, an insurance company can accept a case without prejudice, which was meant to allow the employer to accept the case and get a little bit more time to investigate it. However, they use it as a sword because that acceptance gives them up to one year to make a final decision. Until your employer decides to accept or not accept your case, the Workers Compensation Board will not give you a hearing to make a decision, even though there is nothing in the law that states a case accepted without prejudice cannot have a hearing. Unfortunately, the workers' compensation board doesn't always follow the law. The injured worker may have to wait six to seven months without getting paid or getting paid the minimum of \$150 per week. The state will leave insurance companies alone if they at least pay you the state minimum rate of \$150.

Another delay tactic is to send you to an Independent Medical Examination (IME) doctor. The insurance company hires the doctors knowing they will say there's nothing wrong or only something minimally wrong with the injured worker whether or not it is true. Once the insurance company receives a no-disability report from one of their doctors, they can stop payments as long as a judge had not directed them. The average time it takes for an injured worker to get a hearing before a judge is a minimum of eight weeks and it can be as long as twenty weeks.

Insurance companies will also raise frivolous issues if the claimant has had a prior injury. Maybe you, the claimant, state, "Yes, I did have a prior injury. But I was working full-time, full duty for 10 years since that motor vehicle accident that injured my ankle." The insurance company will still claim your injury was due to that decade-old car accident.

The insurance company will also take appeals, which can take 12 to 18 months to be decided. When they take your appeal of a judge's decision, they don't

have any responsibility to pay you, the injured worker. If they lose, it's only a \$50 penalty. During the 12 to 18 months, the insurance company does not have to make any payments to you. They're able to earn interest on the money that should be paid to you, the injured worker, which means they do not suffer any loss if they take the appeal.

Calculation Of Workers' Compensation Benefits

In the state of New York, workers' compensation benefits are calculated based upon the injured workers' payroll for the 52 weeks prior to the date of the accident. If the injured worker gets a big raise two weeks before the accident, the worker does not get paid based on that new rate but on the average of the 52-weeks prior. There are many different ways that the average weekly wage can be calculated.

While it may seem like it's a simple calculation, it is not. If an injured worker only worked 12 weeks, not 52, before the injury, oftentimes insurance companies will base the average on the 12 weeks. However, you are entitled to have the calculation based on the payroll of a similar worker for 52 weeks.

Setting an average weekly wage is complex but one of the most important things that is done in a workers' compensation case. Once the average weekly wage is set, that is how they decide the injured workers' benefits.

The multiples depend on the workers' schedule:

- 260 multiple: Full-time, 5-day worker
- 300 multiple: Full-time, 6-day worker
- 200 multiple: Part-time worker

For example, say you have worked 230 days. The judge can decide to use the 200 multiple for 230 days. This means you'll get less benefits than using the 260 multiple. If you worked for 235 days, the multiple increases to 260.

Multiple	Weekly Income	100% Disability	50% Disability	25% Disability
260	\$900	\$600	\$300	\$150
200	\$600	\$400	\$200	\$150*

***In New York State, disability wages cannot be less than \$150.**

In the state of New York, the threshold for total disability is set high. If you're not a paraplegic or quadriplegic, you're not going to be found to have a total disability for long. Insurance companies will look to cut your benefits as soon as they can.

CHAPTER 8

FACTORS TO CONSIDER BEFORE SETTLING YOUR WORKERS' COMPENSATION CASE



Not all workers' compensation cases are subject to settlement. This means you and the insurance company agree on a dollar amount and the case is closed. In the state of New York, there is no obligation on either side to settle the case. If you do decide to settle, the most important consideration is your future medical care and treatment. This is a conversation that

you should have with your doctor. What type of future medical care and treatment might I need in the future based on my injury? Once you settle, you will be responsible to use the funds to pay for your future medical care and treatment related to the injury. Medicare and healthcare insurance will not pay for care and treatment for injuries included in a workers' compensation case.

The next fact to face is you will not receive workers' compensation benefits for life. You may be entitled to receive up to 130 weeks of temporary disability benefits. After that time, the state workers' compensation board will have assessed your permanent disability benefits, which assessment can happen as soon as six months after the accident but more likely take between one- to two years after your injury, depending on your care and treatment. There are permanent caps, which go anywhere from 2.5 years to 10 years of benefits. Even if you are not found to have a permanent disability until after the 130 weeks the insurance company can take credit for any payments after the 130 weeks against your permanent cap.

Another item to realize is that million-dollar awards are fictional. Because of realistic caps, you'll need to consider whether the indemnity benefit that's being offered is a fair settlement. What will I use this money for? Will it help me get to the next stage of my life? Most people end up receiving a cap of approximately five years. The injured worker might look at that cap and figure out that five years at a \$400 rate is \$104,000. The cap will not be paid upfront as a lump sum payment of \$104,000. It will be discounted based upon the value of today's dollar. The value of a dollar today is worth more than the value of a dollar in the future. The future value of a sum of money today is calculated by multiplying the amount of cash by a function of the expected rate of return over the expected time period.

In plain English, this means the insurance company will not settle the full \$104,000 value. They may offer \$72,800 or around 70%, which would be considered a fair value. You also want to make sure the indemnity benefit is accounted for in the settlement. If the insurance company states \$75,000 full and final

settlement, you will only be receiving an additional \$3,200 to pay for future treatment.

Workers' Compensation Benefits Impact On Other Benefits

While other benefits you receive do not affect your workers' compensation benefits, workers' compensation benefits can impact the other benefits you receive such as social security disability. The effect on your other benefits is not consistent. Some workers' social security disability will be affected and others will not.

Remember that insurance companies and Medicare are not going to pay for care and treatment of injuries covered by your workers' compensation benefits.

CHAPTER 9

WHEN TO HIRE A WORKERS' COMPENSATION ATTORNEY



Everyone should hire an attorney right away.

Many people wait until there is a denial or until something goes wrong. Unfortunately, for those people, waiting delays their cases even longer. The insurance companies have in-house attorneys as well as a host of different law firms that work for them. That means the insurance companies never go without an attorney even attorneys. Why should any injured worker go without an attorney?

Insurance companies try to pretend to be friends with the claimant by saying, “You don’t need an attorney. We’re going to do the right thing by you.” Until they don’t.

If an injured worker chooses to go without an attorney, the worker should not allow the nurse case manager in on their case. The nurse case manager is there to reduce the cost for the insurance company. The nurse is not there for the benefit of the injured worker.

A nurse case manager might say they are working to benefit your case. But then they start going to your medical exams with you, harassing your doctor to send you back to work even if it is against your doctor's wishes. They might tell you, “Don’t worry. You’ll go back to work on light duty,” but you go back to work and there is no light duty. Because you are still recovering from your work-related injury, you are unable to do full-time, full-duty work, which gets you fired.

The Risks Or Pitfalls When Someone Tries To Handle A Workers' Compensation Claim Or Case Without An Attorney

The percentage of injured workers who seek an attorney right away and those who wait is about 50/50. The risk for those who wait is their speaking to a claim examiner on a recorded phone call where a lot of questions are asked in different and confusing ways. (For more about tricky and confusing questions, refer to the section on The Reasons New York State's Workers' Compensation Is Complicated.)

The "friendly" claim examiner aims to get them to say something on record that, when taken out of context, can be used against them.

Once the average weekly wage is set, it cannot be reset. If it is not correctly set, you could be losing out on a lot of money. An insurance company can work to lower the set amount. A workers' compensation attorney, who is representing you, can argue to increase that set amount. But without such legal representation, the layperson would not know about being able to adjust the set wage.

A workers' compensation lawyer would have the ability to take the deposition and know the question they'll be asking you. If you go to an IME doctor without representation, you don't know all your rights, such as whether the insurance company followed the rules by properly serving the workers' compensation report to all required parties. A knowledgeable and experienced workers' compensation lawyer is able to get the set wage thrown out that was based on your answers to intentionally confusing questions.

Attorney fees for an injured worker is paid based upon the injured worker's recovery. It is a contingency fee and therefore the injured worker does not have to pay out of pocket. Also unlike personal injury attorneys who receive 1/3 of everything that the person receives Workers' Compensation attorneys only receive 15% of indemnity awards.

O'Connor Law's Expertise In Handling Your Workers' Compensation Cases

Returning to my introduction, my past experience was working for the other side. I began my

legal career working for insurance companies, even training the lawyers of insurance companies. I was a high-volume insurance company defense attorney. Thus, I can anticipate problems and deal with them before they happen. Also, through my husband working for the federal government, I saw how the government treats workers' compensation cases.

In addition, two of our attorneys have had family members injured at work and have had to go through the workers' compensation process. Thus, workers' compensation cases hit close to home, and we fight for our clients, as they are family.

APPENDIX

Loss of Use of Body Part:

Maximum Number of Weeks Allowable for
Compensation

Body Part	Maximum Number of Weeks
Arm	312 weeks
Leg	288 weeks
Hand	244 weeks
Thumb	75 weeks
First Finger	46 weeks
Second Finger	30 weeks
Third Finger	25 weeks
Fourth Finger	15 weeks
Foot	205 weeks
Great Toe	38 weeks
Other Toes	16 weeks
Eye	160 weeks

Loss of Wage-Earning Capacity:

Loss of wage-earning capacity (LWEC) is the reduction in an injured worker's earning capacity due to a work-related injury or disease. The determination of LWEC establishes the maximum number of benefit weeks available.

LWEC and Maximum PPD Benefit

Loss of Wage-Earning Capacity	Maximum Weeks of PPD Benefits
15% or less	225 Weeks
16% - 30%	250 Weeks
31% - 40%	275 Weeks
41% - 50%	300 Weeks
51% - 60%	350 Weeks
61% - 70%	375 Weeks
71% - 75%	400 Weeks
76% - 80%	425 Weeks
81% - 85%	450 Weeks
86% - 90%	475 Weeks
91% - 96%	500 Weeks
96% or more	525 Weeks

The benefit rate is calculated under WCL § 15(5) and is based on wage earning capacity (WEC) per WCL § 15(5-a). For a working claimant, the earnings represent the claimant's wage earning capacity, and the compensation rate is two-thirds of the difference between the claimant's average weekly wage and earnings. For a non-working claimant with a non-scheduled permanent partial disability, WEC is based on the Board's assessment of impairment plus vocational factors. In such cases, the rate is reflective of the diminished WEC.

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NOTES

Injured at Work in New York?

Your Guide To Navigating Your Compensation Case

"My experience with the O'Connor Law Firm has been excellent. All the attorneys I have worked with have been very helpful. They also have the best paralegals who are also very professional and helpful. I would definitely highly recommend this firm. Any issues I may have had with workers comp were always taken care of quickly. These attorneys and paralegals truly care for their clients. You will always receive a speedy response to any questions you may have. 5star services."

— **Nikki Torres**

"The O'Connor law firm provides high quality legal representation for workers who are injured throughout New York. Mary Ellen and her team are fantastic to work with and really care about their clients. If you got hurt on the job in NY, give them a call."

— **Kevin McManus**



Mary Ellen O'Connor, Esq.

Why am I an expert? For over a decade I was an in-house counsel for an insurance company in the state of New York. In that position, I was handling up to 100 hearings a week. I've also done thousands of insurance company appeals. This first job gave me an insider's knowledge of workers' compensation claims. I learned what the position of insurance companies is and how they deal with claims. For the last eight years, I was the insurance company attorney trainer.

In addition, my husband worked for the federal government and he was injured on the job. Through him, I saw how the federal government deals with workers' compensation, how frustrating the system is, and how difficult it is for the injured employee to get treatment.

I know the enemy and I'm on your side.

To begin, it does help to understand a little about the history of workers' compensation in the United States.

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