

The Law Firm of



Morrison, Webster & Carlton

# WORKERS' COMPENSATION IN MISSOURI

A Brief Explanation

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## MISSION STATEMENT

Morrison, Webster and Carlton is a law firm dedicated to the representation of injured Southwest Missourians. We promise to provide aggressive and compassionate legal services to individuals and families who choose our representation.

If you would like more information about who we are and what we do, please contact our office in your area or visit our website at [www.morrisonwebster.com](http://www.morrisonwebster.com).

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## FREQUENTLY ASKED QUESTIONS

If you are injured while working for your employer in Missouri, you probably have several questions for which you cannot readily find answers. You may not have received medical care provided by your employer. You may or may not have received weekly benefits for time you missed from work due to your injury. Your employer may be refusing to acknowledge your injury because it is due to repetition or overuse, i.e. the injury did not occur “suddenly”. Perhaps you have had problems with the same part of your body before your work injury and are unsure of your employer’s responsibility for your current physical condition.

This booklet will try to answer some of your questions. However, if you have been injured, we urge you to contact our office and schedule an appointment with an attorney so that we can answer any questions you have that are unique to your case. This booklet is only a basic outline of some common situations and problems that occur in the course of a workers’ compensation case, and should **NEVER** be used in the place of an actual consultation with an attorney. The law changes constantly, and no booklet can take the place of advice from an attorney.



## THE INJURY

On the job injuries are a fact of life for many of today's workers, and the types of injuries vary as widely as the types of employment. Many injuries are "sudden onset" injuries, occurring in the blink of an eye. Other types of injuries are "cumulative", occurring over a period of time. Still other types of injuries are "occupational diseases", including certain respiratory conditions, infectious diseases, etc.

If you have been injured on the job, regardless of the type of injury, you should report the injury to your employers as soon as possible. If you require medical treatment, you should request it from your employer. If your employer is not providing medical treatment, or refuses to acknowledge your injury, your attorney can help.



## MEDICAL CARE FOR YOUR INJURY

When an employee is injured on the job, if the injury “arises out of and in the course of” the employee’s job, the employers (or insurer) is supposed to provide medical treatment (Missouri statutory and case law governs which injuries “arise out of and in the course of” employment.). The employers or insurer selects the treating doctor or other health care provider, and pays the medical bills. If the employee wishes to treat with his own doctor, he may do so at his own expense.

If the employee is required to go “out of town” to treat with a doctor of the employer or insurer’s choosing, the employer must pay his mileage and reasonable expense in advance, or reimburse him after the trip. If a dispute arises as to whether an expense is “reasonable”, and administrative law judge or legal advisor may decide the amount to be paid.

When the employer or insurer is providing treatment in a way that endangers the employee’s life, health, or recovery, the division of Workers’ Compensation, or the Labor and Industrial relations Commission, may order a change in the physician or health care provider.

Many times, the employer or insurer stops treating the employee as quickly as possible, and other treatment may still be required. The employee may seek an award for further medical treatment if the employee feels such treatment is necessary to “cure and relieve him from the effects of the injury”.

The injury may also necessitate medical treatment for the remainder of the employee’s life; the employee may seek an award of future medical treatment if he can show with a “reasonable degree of medical probability” that such treatment is necessary.

If an employee feels that he needs further or future medical treatment, he should consult a physician regarding the treatment before he seeks an award from the Division of Workers’ Compensation for that treatment. The employee who fails to secure the opinion of a qualified health care provider regarding his further or future medical needs will probably not be successful. Your attorney can refer you to a physician for an opinion regarding your medical care needs.

## TEMPORARY TOTAL DISABILITY BENEFITS

Injured workers who are advised by a physician to be off work due to their work injury for a period of more than three days are entitled to temporary total disability (TTD) benefits. TTD benefits are payable weekly at a rate equal to two-thirds (2/3) of the injured worker's gross average weekly wage at the time of the injury, up to a maximum. The maximum TTD benefit depends on the date of injury.

Whether a worker is temporarily totally disabled is often the subject of dispute between the employer, or the employer's workers' compensation insurer, and the employee. For example, the employer's physician may release the worker to regular duty immediately following the injury, while the worker's personal physician recommends the worker not work. Occasionally, the only remedy for such a dispute is a "hardship hearing", in which an administrative law judge (ALJ) decides whether an employee is owed TTD benefits based on the evidence available at the time of the hearing.

The employer also must prove "light" or "restricted" duty if the doctor recommends it, provided such duty is necessary because of the work injury. Recent case law also suggests that if no light duty is available, TTD benefits must be paid. If light duty is available but the employee has been terminated or "laid off", TTD may also be ordered by the ALJ if not voluntarily paid by the employer or its workers' compensation insurer.

A second medical opinion is sometimes necessary regarding whether a worker needs further treatment and/or is temporarily totally disabled. Your attorney can help you secure a second opinion with a doctor who can testify on your behalf.



## PERMANENT PARTIAL DISABILITY BENEFITS

Permanent partial disability benefits (PPD) are paid to injured workers who have permanent limitations or restrictions due to their work injury. PPD is usually paid in a lump sum, and is usually based on a disability rating from a doctor. Many times your attorney can negotiate a settlement without obtaining a rating from a doctor, however, depending on the type and severity of the injury.

A worker need not show total disability to obtain PPD Benefits, but instead must show some type of limitation, restriction, or loss of function or use due to the injury. For example, a worker with a back injury might be able to return to work, but may have lifting restrictions, bending restrictions, or some other type of limitation. In such a case, the worker probably can show a degree of permanent partial disability and is entitled to a sum of money for permanent partial disability.

Confusion regarding PPD often occurs when a worker sustains injury to a part of the body that has been injured in the past. Employers often refuse to treat such injuries as work-related, and claim that the problems the worker now has are "pre-existing". Your attorney can advise you regarding your options if you have "pre-existing" medical conditions, including possible Second Injury Fund liability, and can help you secure an independent medical evaluation to separate the disabilities caused by each medical condition.

Your employer and/or its workers' compensation insurer is responsible for the injury caused by your work accident, even if you have had problems with the same part of your body in the past. Your employer is also responsible for any medical treatment that you require as a result of your work injury.

The amount of PPD owed to a worker depends on the part of the body injured, the severity of the injury, and the gross average weekly wage of the worker at the time of the injury. PPD benefits are also subject to a maximum amount, which varies according to the date of the injury.

## PERMANENT TOTAL DISABILITY

Permanent total disability (PTD) benefits are paid to workers who are unable to work for the remainder of their lives as a result of their work injury. PTD is also paid to workers who are totally disabled as a result of the combination of any pre-existing conditions (medical conditions they suffered from before their last work injury) with their last work injury.

PTD is paid in an amount equal to two-thirds ( $2/3$ ) of the employee's gross average weekly wage at the time of the injury, up to a maximum (the maximum amount payable depends on the date of the injury). PTD can be paid weekly for the remainder of the injured worker's life, or can sometimes be commuted to a lump sum. Settlements or awards for PTD (and also permanent partial disability) may affect the amount of Social Security Disability benefits a worker receives. Your attorney can advise you regarding the effect a workers' compensation disability settlement has on your Social Security Disability income.

Your attorney can also advise you regarding the expert testimony that will be required to prove permanent total disability, including medical and vocational testimony.



## SCARRING AND DISFIGUREMENT

An injured worker may also receive an award of up to 40 weeks for scarring and disfigurement caused by the work injury, or by surgery necessitated by the work injury. The payment for scarring and disfigurement is usually paid in a lump sum.

It is usually necessary for the injured worker to be seen by an administrative law judge (ALJ) for an assessment of the degree of scarring and disfigurement. Each "week" of scarring and disfigurement is equal to two thirds ( $2/3$ ) of the employee's average weekly wage at the time of the injury, up to a maximum. The maximum amount payable depends on the date of the injury.

Whether scarring and disfigurement is owed depends on the location of the scar on the body. Your attorney can advise you regarding the payment for scarring and disfigurement in your case.



## THE SECOND INJURY FUND

The Second Injury Fund is a fund created by the legislature to encourage employers to hire people with pre-existing disabilities. The Second Injury Fund pays for the combination effect of any pre-existing disability with the disability resulting from the last work-related injury. The pre-existing disability need not be work-related; it only needs to have hindered the employee's work in the past.

For example, an employee with a pre-existing condition affecting his or her left arm may be able to work using only his/her right arm. If the right arm is then injured in a work injury, the employee may be rendered totally disabled. The Second Injury Fund would owe the employee permanent total disability benefits, less any permanent partial and temporary total disability benefits paid by the employer for the work injury. In most cases, however, the employee is not totally disabled because of the combination effect of his pre-existing disability with the disability resulting from his work injury; when the employee can still work, but has some increased disability because of the combination, the Second Injury Fund owes less than permanent total disability benefits. The exact amount owed varies widely, and you should discuss potential Second Injury Fund liability with your attorney.

In cases when an employee works two jobs and is injured on one of those jobs, the Second Injury Fund may owe temporary total disability benefits. The Second Injury Fund may also pay an employee's medical bills in cases where the employer should have carried workers' compensation insurance but failed to do so.

Second Injury Fund issues are rather complicated, so it is important that you discuss pre-existing medical conditions or injuries with your attorney, so that Second Injury Fund liability can be thoroughly explored. You should also tell your attorney if you have multiple employments.



## SETTLEMENT OR HEARING?

An overwhelming majority of workers' compensation cases settle before a hearing, which is a trial based on the evidence. Your attorney will advise you regarding the risks and benefits of settlement versus the risks and benefits of a hearing. Your attorney will consider many factors in this evaluation, including the medical and factual evidence, the cost of further litigation, and the possible outcomes of a hearing.

If your case is tried, an administrative law judge (ALJ) or a legal advisor will hear the evidence and make a decision. A written award will usually be issued within ninety (90) days after the hearing. If any party wished to appeal the award, the party may do so by filing an appeal with the Labor and Industrial Relations Commission. Your attorney will advise you regarding the applicable time limitation for filing the appeal, as well as whether an appeal is advisable.



## CONCLUSION

If you have been injured on the job, you are confronted with many issues involving your health and your livelihood. Such important issues should be handled with the advice and support of a law firm experienced in the field of workers' compensation.

We look forward to hearing from you.

All the best,

*Darren, Matt and Tom*

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