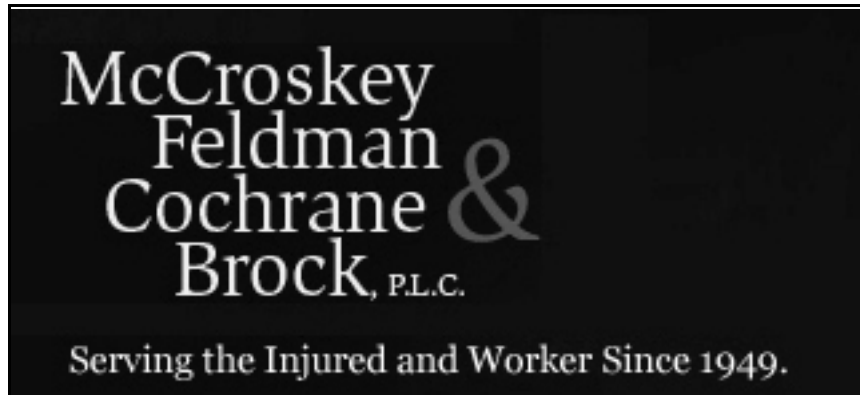


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**DISCLAIMER:**

This information is general in nature and may not apply to each particular individual case. Please call this firm or another attorney of your choice for information that is specific to you individually.

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## Firm Overview

McCroskey, Feldman, Cochrane & Brock, P.L.C., is proud to have served West Michigan since 1949. We are committed to the cause of the worker, whether it is for the injured worker or the unions that represent them.

We specialize in helping workers and the injured in the following areas:

- **Automobile Accidents**
- **Serious Personal Injuries**
- **Workers' Compensation**
- **Social Security Disability**
- **Employment Law**
- **Labor Law**
- **Defective Products**
- **Environmental Law**
- **Divorce and Family Law**
- **Criminal Defense**

If you are injured or have a labor-related issue, the attorneys of the McCroskey law firm are readily available to serve your legal needs at any of our four offices in western Michigan. The initial consultations are always free.

See us on our website at [www.mccroskeylaw.com](http://www.mccroskeylaw.com).

# **Workers' Compensation Overview**

## **Why is it important to understand workers' compensation law?**

Understanding the workers' comp system is the first step to recovery. Even in the safest workplace, accidents still happen. When a worker is injured, he has very specific rights under Michigan law. Knowledge is power. It is vital that injured workers understand their rights and responsibilities under the law.

## **What is workers' compensation?**

The Worker's Disability Compensation Act of 1969 addresses the legal rights of Michigan injured workers. The Act covers workers injured on the job regardless of whether the injury was their fault or the fault of their employer.

When a worker is injured due to the negligence of his employer, the worker's only remedy against his employer is workers' compensation. The worker cannot sue his employer for negligence to recover damages such as pain and suffering or loss of enjoyment of life. Workers' compensation benefits are the only recovery available to a worker against his negligent employers regardless of how severe or debilitating an injury may be.

Likewise, the injured worker is entitled to full workers' compensation benefits even if the injury is the result of his own negligence. An injured worker can sue his employer for damages greater than workers' compensation in cases when the employer intentionally inflicts injury on the worker.

Workers' compensation provides injured workers with three main benefits:

- Wage loss during the time the worker is off due to his injury;
- Reasonable and necessary medical care for the work injury; and
- Vocational rehabilitation benefits.

The scope of these benefits will be addressed in more detail later on.

## **What is a work injury?**

A work injury can be a physical injury, mental injury, or an occupational illness or disease. A work injury does not have to be from a single traumatic event such as a fall, but may be due to the accumulation of work over time, environmental exposures in the work place, or even mental stress at work. The work injury need not be the sole cause of a medical condition to be considered work-related.

## **How should an injured worker report an injury and make a claim?**

A worker injured on the job should report the injury to his supervisor immediately. An injured worker is not required by law to give notice of the injury in writing, however, it is certainly to his advantage to have a written record that the injury was reported. The law says that an injured worker is to give notice of the injury within 90 days after the employee knew or should have known of the injury. Failure to give such notice to the employer shall be excused unless the employer can show it was prejudiced by the lack of notice.

After giving notice of injury, the employee must also make a claim for workers' compensation benefits. Again, such a claim can be either oral or in writing but it is best if it is done in writing. An injured worker has two years from the date of injury to make a claim for benefits. Failure to make a timely claim for benefits will likely preclude the injured worker from receiving benefits.

# **Medical Benefits**

## **What medical benefits are covered by workers' compensation?**

The Worker's Disability Compensation Act provides that a worker is entitled to all reasonable and necessary medical care for his work injury. This includes medical, surgical, and hospital services, dental services, crutches, hearing apparatus, chiropractic treatment and nursing care. The responsibility to provide medical care continues indefinitely so long as the need for the care is related to the industrial injury. Mileage to and from all medically related appointments and pharmacies is also covered.

## **Does an injured worker have to treat with the company doctor or can he see his own doctor?**

During the first 10 days of treatment, the employer has the right to choose the doctor. After that the worker is free to change doctors if he desires. The worker, however, must notify the employer of the change. If the company fails to offer medical treatment during the first 10 days following the injury, the employee can treat with the doctor of his choice. The employer or its insurance company must pay for treatment by the employee's doctor for the work injury.

## **How does an injured worker get his medical bills paid for his work injury?**

Doctors and medical providers will typically send their bills directly to the employer or its insurance carrier. If the injured worker pays the doctor directly, he is entitled to be reimbursed by the employer or insurance company for that payment. Medical bills and travel allowance that remain unpaid should be submitted directly to the workers' compensation insurance carrier by certified mail. If the employer is not disputing the claim, and if medical bills and travel allowance are not paid within thirty days after the insurance carrier or employer receives the bill by certified mail, \$50.00 or the amount of the bill, whichever is less, shall be added and paid to the worker for each day over 30 days in which the medical bills or travel allowance are not paid. The maximum penalty payment is \$1,500.00.

**How long does an injured worker get medical coverage for his work injury?**

The injured employee is entitled to medical benefit coverage for the length of the work-related injury. There is no cap on the dollar amount to be paid and no cap on the number of years for which the employer or insurance company will be responsible. The employer or insurance company is responsible for reasonable and necessary medical care and treatment of a work-related injury so long as the injury exists. When the employee fully recovers, the right to medical benefits ends.

# **Vocational Rehabilitation**

## **What are workers' compensation vocational rehabilitation benefits?**

Michigan Workers' Disability Compensation Act provides injured workers with the right to vocational rehabilitation services. The goal of vocational rehabilitation is to get injured workers back to suitable work as soon as possible. To be eligible an employee must have a work injury, be unable to do his or her regular job, and must be currently receiving workers' compensation benefits.

Vocational rehabilitation typically involves a professional vocational counselor assisting an injured worker with finding suitable employment within the worker's qualifications, training, and work restrictions. This often includes assistance with job search efforts at the place of employment where the worker was injured or finding work at other places of employment. If job search efforts are unsuccessful, the injured worker may be entitled to 52 weeks of training for a new trade at a college, vocational school or other training facility. In some situations, the workers' compensation agency will order an additional 52 weeks of schooling. The cost of retraining is paid for by the workers' compensation insurance company including tuition, books, and supplies.

## **Must an injured worker participate with vocational rehabilitation?**

An injured worker must cooperate with vocational rehabilitation or risk losing his wage benefits. If a dispute arises between the employer and the injured worker about whether a vocational rehabilitation plan is appropriate or whether the employee is cooperating with vocational rehabilitation, either party may request a vocational rehabilitation hearing before a hearing officer.

# **Wage Loss Benefits**

## **How long does an injured worker have to be disabled before receiving wage loss benefits?**

An injured worker must be disabled for seven consecutive days before benefits are due and owing. If a worker is off work for less than seven days, then no wage loss benefits are owing, however, the worker is entitled to medical benefits for the work injury.

## **How are wage loss benefits calculated?**

An injured worker receives 80 percent of the after-tax value of his or her wage loss. To calculate the weekly benefit rate, we must first determine the injured worker's average weekly wage (AWW). The AWW is based on the average of the highest 39 of the last 52 weeks of wages before the date injury. If the employee worked for each of the 52 weeks before the injury but earned a different rate for each of those weeks, we would look at the 39 highest weeks. We would then determine the average by taking the total wages for those 39 highest weeks and dividing them by 39. Finally, to determine the amount of the benefit rate, we calculate 80% of the after-tax value of the AWW.

The workers' compensation agency annually publishes tables that calculate 80% of the after-tax value. The law provides that the determinations made by this table are conclusive and binding upon the parties.

## **Are fringe benefits included?**

Under certain circumstances, the value of fringe benefits that are discontinued is added to the value of the cash wages to determine the worker's average weekly wage. Discontinued fringe benefits include, but are not limited to, health insurance, vacation pay, holiday pay, pension contributions or 401k. There is a limit to when discontinued fringe benefits can be added.

## **Are workers' compensation benefits taxable?**

Workers' compensation benefits are not subject to either state or federal income tax.

### **What if an injured worker is employed at more than one job?**

If a worker is employed by more than one employer at the time of the injury, the earnings from both employers are added together to calculate the average weekly wage. The worker's benefits are based on the total wages from all employments.

### **What if an injured worker finds light work that pays less than the job on which he was injured?**

If the job offered is a lower paying job, the worker will continue to receive workers' compensation benefits based upon the difference in wages.

### **Does an injured worker have to accept light work offered by his employer?**

If the injured worker is offered a job he can do within restrictions, then the worker must do the job or risk losing wage loss benefits. The work offer must be reasonable. This means that it must be work the employee can perform, poses no clear threat to the worker's health, and is within a reasonable distance from the employee's residence.

### **Must the employer offer light work?**

The employer is not required to offer an injured worker employment within his restrictions. However, if no light work is offered, the employer or its insurance company must continue to pay the worker his full workers' compensation benefits.

### **What if an injured worker tries to return to work but is unsuccessful?**

If the injured worker returns to work, either light duty or his regular work, and is unable to continue because of the work injury, he is entitled to reinstatement of his workers' compensation benefits. If this occurs, the injured worker should report his difficulties to his employer and should see his doctor to modify work restrictions.

# **Retirement and Receipt of Other Benefits**

### **What if an injured worker retires before making a claim for workers' compensation?**

If an injured worker terminates active employment and is receiving non-disability pension or retirement benefits, including old age social security benefits, paid by or on behalf of the employer, it shall be presumed that the injured worker's loss of earnings is not the result of the work injury. If an employee is suffering from a work injury, it is critical that he gives notice to his employer and makes a claim for workers' compensation benefits before taking a retirement.

### **What if the injured worker receives other benefits while off work due to a work injury?**

If a worker receives sick and accident benefits, short-term disability benefits or pension benefits provided by his employer, workers' compensation benefits will be reduced dollar for dollar with an adjustment for taxes paid on the other benefit. The employer or its insurance company can only take credit for the portion of the other benefit paid by the employer. Some disability policies require repayment in the event workers' compensation is received. In such cases the employer or its workers' compensation insurance company must reimburse the other insurance company if workers' compensation benefits were reduced because of the receipt of the other benefit.

### **What if an injured worker receives workers' compensation and social security benefits?**

When an injured worker receives social security old-age benefits, his workers' compensation benefits are reduced by fifty percent of the amount of social security old-age benefits received.

If the injured worker receives social security disability benefits, there is no reduction of the workers' compensation benefit. However, social security disability benefits are often reduced if the injured worker receives both social security disability and workers' compensation.

# **Threats and Workers' Compensation**

**What if an injured worker is threatened or discriminated against by his employer because of a workers' compensation claim?**

Some companies, either overtly or vaguely, threaten workers with discipline for asserting workers' compensation rights. However, it is illegal for a company to discharge an employee, or in any manner discriminate against an employee, because the employee exercised his rights under the Worker's Disability Compensation Act. In such cases, an employee can sue his employer for damages beyond workers' compensation.

In addition, it would be a violation of the just cause provision of the union contract to be disciplined for asserting a right to workers' compensation benefits. A grievance should be filed for such a contract violation.

# **When Should I Call an Attorney?**

## ***“Do I need a lawyer?”***

The easiest answer to this question is, “When you are denied workers’ compensation benefits.” However, every person, and every case is different. Here are some situations when it may be a good idea to speak to a lawyer.

### **1. You’ve been denied workers’ compensation.**

If you have a work-related injury, and have been denied workers’ compensation benefits, you should call a lawyer. An experienced workers’ comp lawyer will file a petition for benefits for you, develop your case, and try to resolve your case in your best interests. There are different ways of resolving a workers’ compensation case— by trial, through a voluntary payment agreement, or through a settlement. Your lawyer will be able to give you expert advice about your options. Your lawyer will not charge you a fee unless he makes a recovery for you.

### **2. You’re afraid your workers’ compensation benefits will be terminated.**

Even if you are receiving your workers’ comp benefits, you can meet with a lawyer. An experienced workers’ compensation lawyer will answer any questions you have. A lawyer can explain the law to you, and advise you of your rights. A lawyer may also have you sign all the paperwork necessary to start a workers’ compensation case, and keep it in his file. If your benefits are terminated, the lawyer can immediately jump to action, filing a case on your behalf.

### **3. You just got injured at work, and you have questions.**

Information is power. Remember, the insurance companies have lawyers giving them advice. An experienced lawyer can explain your legal rights to you. From the start, you will know your rights and obligations under the Workers’ Compensation Act.

### **4. You want to settle your workers’ compensation case.**

Sometimes, an injured person may want to settle their case, even if they are receiving workers’ compensation benefits. A lawyer can help get this person the best settlement possible.

**NOTES:**