



# TOUSSAINT LAW FIRM

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## Top 10 Things You Should Know About Workers Compensation

1. Worker's Compensation Law is designed to provide an injured worker (who may be an owner of a business as well as a paid employee) State mandated benefits consisting of Temporary Disability Benefits (payment for time missed due to an injury or compensable illness), medical benefits and permanent disability benefits (those benefits which an injured worker is entitled to for an injury which causes a functional impairment).
2. Worker's Compensation law does not address the actions of an employer and does not specifically mandate a return to employment or the maintaining of a position for an injured employee. These are items that may be the subject of an employment pamphlet (promises made by an employer separate from that mandated by law) or a Union-Management Agreement but are not covered by worker's compensation law. The employer/employee relationship is regulated by employment law and not the worker's compensation system. The worker's compensation system is designed to compensate an injured employee for the lost time he/she may have incurred, medical benefits and any permanent disability he/she may have incurred.
3. Worker's Compensation law covers all injuries that occur "in the course and scope of employment." That is to say that there is a no-fault element to the law in that an employee (known as a "Petitioner") may cause an accident totally of his own doing and still be entitled to a recovery of the benefits previously described. In fact, an accident may not even occur - an employee may be injured due to a repetitive occurrence or an exposure to chemicals or other irritants that cause an illness or injury to occur.
4. It is a State law that all employers have Workers Compensation Insurance coverage in effect in order to do business within the State of New Jersey. Some larger companies and even the State itself may be self-insured and, therefore, in compliance with the law. Premium rates generally go up in connection with the occurrence of an accident and have long since been adjusted by the time a claim for "Permanent Disability" appears. In other words the claim for benefits has little to no effect on the rates of the "insured" once a claim or accident has previously occurred.
5. Assuming a claim has been admitted by the insurance company for the employer (known as the "Respondent"), the insurance company has the right and responsibility to choose the medical treatment that the "Petitioner" receives and to monitor such care. This right to control the medical treatment is the centerpiece of New Jersey's Workers' Compensation system and allows the companies to control the medical costs associated with the workers' compensation system. If a Petitioner should venture out of the workers' compensation system and seek other opinions, he/she generally does so at his/her own peril - that is they may well have to pay for

this privilege themselves(though some company's will voluntarily pay for second opinions).

6. Temporary disability is paid to a Petitioner at the maximum rate of 70% of his/her wages up to a maximum rate of \$794 per week for the year 2010. That is, assuming a Petitioner is declared unable to work by a doctor and is under active medical care, a Petitioner will be entitled to 70% of his/her wages for the period he/she is unable to work. If an employer has "light duty" work and Petitioner is able to do such work per doctor's orders then he/she must do so.
7. Permanent disability is determined by consult with a chart of disability which is determined and disbursed by the Department of Labor and Workforce and is updated annually and adjusted for inflation with annual pay increases. Disability is usually contested and is determined by a Judge of Compensation after a filed Petition known as a "Claim Petition". Those cases that are settled by the parties before a trial are still overseen and approved by a Worker's Compensation Judge whose responsibility is to approve only those settlements that are fair and appropriate to all parties. In order to arrive at a fair determination of disability each side will send Petitioner to an evaluating doctor of his own choosing in order to obtain a permanency evaluation which will include a numeric rating of the Petitioner's disability. The ultimate finding of disability is usually a compromise somewhere between the two doctors' opinions.
8. A person who is determined to be totally disabled may be entitled to make a claim with the "Second Injury Fund." This is a State fund that enables a Petitioner to obtain lifelong benefits when he/she is injured and totally disabled (100%) due to a combination of pre-existing disabilities along with the compensable accident which presumably put Petitioner over the edge. This Fund is available in theory to encourage employers to hire those that may have some level of pre-existing disability in order that the employer not bear the full brunt of a small injury making the employee 100% disabled.
9. As previously indicated a self employed person or ANY employee of a corporation can be entitled to worker's compensation benefits- even the owner of the corporation or the sole employee of a small business. These people pay for coverage and are generally entitled to this coverage and may, in fact, need the coverage more than others yet they are hesitant to make the claim for those benefits. Interestingly, insurance companies rarely advise small business owners of their rights to compensation and business owners are hesitant to question the companies due to fears about their rates and premiums. Anecdotally, I recently represented a small business owner who tripped and fell at a client's home and suffered shoulder and foot injuries. Her annual workers' compensation rates increased as a result of the claim in a nominal amount and she recovered over \$80,000 as a result of the injuries.
10. Under the table workers are a major problem and the workers compensation laws strongly encourage the reporting of employees by the employer. There are fines and penalties for failing to report employees and they are not pretty.

**Source:** *"Top 10 Things You Should Know About Workers Compensation"*  
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