

Law Help New Mexico

Advancing Fairness and Justice for All

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Worker's Compensation

What is workers' compensation?

Workers' compensation is a system of insurance that the state administers. The Worker's Compensation Administration handles the claims. The insurance is paid for by most employers. It is supposed to cover certain costs when an employee becomes sick as a result of his or her work, is injured at work, or dies as a result of illness or injury caused at work.

The costs the insurance covers include: health care, regular payments to the worker to make up for some of the wages the employee loses if he or she is unable to work, medical and funeral expenses, and survivor benefits to the family of a worker who dies as a result of illness or injury caused at work.

Which employers have to provide workers' compensation?

In most cases, employers with three or more employees must provide coverage. There are three exceptions: farm and ranch work is exempt, no matter how many employees there are, domestic work in a private home is exempt, construction work is almost always covered, even if there is only one employee.

When is an employee eligible for workers' compensation?

A worker must be injured or killed or made ill on the job. The injury can be something like a broken or severely cut hand, a back or shoulder injury caused by repetitive lifting or turning, or other problems, so long as the injury is directly related to the job. An employee is eligible for workers' compensation if he or she develops a health condition as a result of exposure to things like chemicals, radioactive material, or particles (such as coal, or asbestos, flour, or textile particles) in the air at work.

Are there situations when an injury at work would not be covered?

A worker's intentional misconduct (including being drunk or under the influence of drugs) or failure to use safety equipment the employer made available can mean that the employee can lose all or part of the benefits he or she would otherwise receive as workers' compensation.

Do I have to be a citizen to qualify for workers' compensation?

No. You do not even need to have a Social Security number. If you do not have a Social Security number, however, you do need to have a valid state identification card to show to the Workers' Compensation Administration. The agency will give you a number to use for your claim.

Caution: Do not tell the agency or anyone else, other than your lawyer, what your immigration status is.

How do I start a claim for workers' compensation?

In an emergency, don't wait to get medical care. Get medical help wherever you can, as soon as you can. Tell the provider and all other doctors who treat you that the problem is work-related. If an emergency room doctor tells you to see a specific doctor for follow-up care, do not go to the other doctor unless the employer approves in advance.

Whether or not the problem is an emergency, notify your employer as soon as possible that you have an injury or illness that is job-related.

If the problem is not an emergency, find out from work what you are supposed to do in order to get help. The employer may require you to see a certain doctor. If so, see that doctor. If you don't, the compensation program probably will not pay for your visits to other doctors.

From the time you become aware of the work-related injury or illness, you have only 15 days in which to file a Notice of Accident form (even if you have an illness rather than an accident). Your employer should have the forms available. Or you can get a claim form from the Workers' Compensation Administration local office. Both you and the employer must sign the form. Do not lose your copy of this form, as you may need it later to prove that you reported the problem.

You should seek legal advice right away if an employer tries to talk you out of filing a notice of accident or refuses to sign your notice form.

If you were injured in an accident, make notes of what happened and who witnessed it. If the employer did not provide necessary safety equipment, make a note of that problem. If you received written instructions from your employer about what steps to follow in filing your claim, keep those instructions. If the employer simply told you what to do, write down as soon as possible who told you, when and where they told you, and what they told you. As you undergo treatment, save receipts and records of everything. Keep old pay stubs, letters, and personnel policy information in case you need it to defend your claim.

What happens after a worker files a notice of accident?

Based on the information in the claim and on statements of witnesses and doctors, the employer and the insurer will decide whether to accept the claim as a worker's compensation claim. If they do, then they will make payments to health care providers, and, if the worker must be out of work for a period of time, some "lost wages" compensation.

If the employer denies the claim, you should immediately contact the ombudsman for the Workers' Compensation Administration, who provides free help to resolve the problem, without taking sides. For more information, you can reach the Workers' Compensation Administration Help Hotline at (866) 967-5667. You also may want to contact an attorney about appealing the denial. Whatever you decide to do, do not delay. The time limit to appeal is very short.

What happens to the employee's job after the worker is once again able to work?

If the worker has a medical release allowing him or her to return to the former position, the employer should make it available. If the worker is released to do other kinds of work that would not worsen the injury, and the worker is qualified to do those kinds of work, the worker should be offered one of those positions. The employer does not have a duty to pay the same wage for a different position.

Printed: January 18, 2019

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