

Know Your Rights

The Law of Workers Compensation



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I. Questions About Workers Compensation

1. Is the Workers' Compensation Act (Act) the Exclusive Remedy?

Acceptance of the Act as the exclusive remedy by the employee and its dependents is mandatory. This means that the only remedy available to the employee and its dependents to collect any form of compensation for injuries on the job is through the Act. This mandatory coverage, however, does not apply if the employer does not carry workers' compensation insurance, the injury resulted from the intentional acts of a co-employee or was self-inflicted, the injury did not occur during the course of employment, or the injuries resulted from the illegal use of drugs or intoxication. Actions against the employer for discrimination based on sex, age or race can proceed outside of the Act, although not for the damages aspect which would be covered under the Act. A wrongful discharge lawsuit can proceed outside the Act for all aspects, i.e. liability and damages.

2. How can a right to compensation be established?

It is necessary to prove that an employment relationship existed between the employer and employee during which an accident or injury arises in the course of employment and is related to the employment. The Act applies to all injuries which happened within Pennsylvania, regardless of where the

employment contract was entered into. Even if the injury occurred outside Pennsylvania, the Act might apply if the work mostly occurs in Pennsylvania, or an employment contract was made in Pennsylvania for work not mostly occurring in any state.

3. When does an employment relationship occur?

Four essential tests must be met by the employee to establish an employment relationship. These tests include the right to choose, remove, direct the manner of performance, and control the employee by the employer. The employer can be a person, partnership, company, corporation (non-profit or profit), or government.

4. What is an injury?

An injury has been defined by the Act as a harm to an employee while working for his employer regardless of a person's previous physical condition. Injury under the Act includes aggravation, reactivation, acceleration, or death caused by the injury. The importance of this definition is that an accident need not occur to have a compensable injury. Rather, an old injury can recur without new trauma for which the employee can collect benefits.

5. What does "arises in the course of employment" mean?

There are two different situations which answer this question. The first is where the employee, whether on or

off the premises of the employer, furthers the employer's business. The second is when the employee is on the employer's premises and is recognized to be there but is not furthering the employer's business. Either one will qualify.

6. What are the time deadlines required under the Act?

Notice of the injury by the employee to the employer is required within 120 days from the date of injury. A claim petition (the document filed with the Bureau to start the claim) must be filed with the Bureau within three years of the injury. This three year statute applies to a claim for payment of medical as well as disability benefits.

7. What benefits are available?

The amount of money paid to an employee for a work-related injury is based on a loss of earning power. Thus, it is not just a physical limitation to the employee that determines earning loss benefits, but also includes the employee's age, mental outlook, employment history and education. In order to determine any loss of earning power, it is necessary to determine the employee's average weekly wage (AWW). The AWW most favorable to the employee is used, as there are a number of ways AWW can be calculated. All wage from all employers are used to calculate the AWW, irrespective

of whether the defendant-employer had knowledge of other employment. There is a statewide maximum weekly compensation rate which is adjusted periodically. This amount is the most that can be paid for disability benefits on a weekly basis. The benefit rate for total disability is two-thirds of gross wages up to the maximum statewide average weekly wage. No compensation is paid when the employee is being paid wages equal to or greater than the employee's prior earnings. No compensation is paid during the first 7 days after the disability begins, unless the disability lasts more than 14 days.

8. What is total disability?

This is a determination made by a certified doctor after examination that the employee's impairment is equal to or greater than 50% according to AMA guidelines. After 104 weeks of total disability benefits being paid, the employee is required to undergo an exam by the employer's insurance carrier to determine if he is still totally disabled.

9. What is partial disability?

Any disability that is less than total is considered partial. The amount of partial disability is determined by the loss of earning power. Loss of earning power is two-thirds of the difference between what the employee had been earning when he was injured and what he could be earning as established by expert testimony. To change the rate of compensation, an expert must present

evidence on behalf of the employer to establish what the rate of compensation is for partial disability. The evidence should include whether the employee can perform his prior work or whether the employee can do other work near the employee's place of residence. The defense expert must take into consideration the employee's residual productive skill, education, age and work experience. Actual job availability does not have to be shown by the employer to establish loss or earning power. The employer's vocational expert need only show general job availability.

II. LAWYER BIOGRAPHY

Jules Zacher has practiced law since 1974 in state and federal court in Pennsylvania. He has represented plaintiffs in personal injury lawsuits which have included damages because of children being poisoned by lead paint, workers being injured on construction sites, persons injured in motor vehicle accidents, people falling or being injured on someone's premises, and medical providers not being paid by insurance companies.

Mr. Zacher received his law degree at Temple University in 1974, as well as a masters degree in economics from Temple in 1970. Mr. Zacher has taken non-degree course work at Princeton University, Woodrow Wilson School of Public and International Affairs. He received his undergraduate degree from the University of Pittsburgh in 1964.

Mr. Zacher's legal career has included working as a trial lawyer in one of the premier personal injury law firms in the nation prior to starting his own firm in 1982. He has litigated automobile accident cases since 1974. He has been active in community affairs in the Grays Ferry area of Philadelphia. Many of the cases he has tried have involved numerous defendants and complex issues of facts and law.

Mr. Zacher is a member of the Philadelphia Bar Association, and the Philadelphia Trial Lawyers

Association. He is admitted to practice law in Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

III. HOW TO CONTACT THE FIRM

Jules Zacher, P.C. is a law firm incorporated as a professional corporation with offices located at Suite 707, Medical Arts Building, 1601 Walnut Street, Philadelphia, PA, 19102. Its phone number is 215-988-0160; its fax number is 215- 988-0169; and its e-mail address is Zacherlaw@aol.com. Its website is www.juleszacher.com.

IV. CASE QUESTIONNAIRE

Do I Have A Case?

Provide the details and we will make a free, preliminary determination.

Your Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

E- Mail: _____

Phone Number: _____

Enter your question or case details here: _____

I understand that my request and my response thereto does not form an attorney-client relationship