# Questions and Answers Concerning a Workers' Compensation Claim

*The following are the general questions most frequently asked by our clients about the Industrial Insurance Act. The answers provided are brief and are obviously intended for general information only. If you have further questions on any of these topics, as they pertain to your case, we'll be happy to discuss them in greater detail with you.*

**How can an experienced workers' compensation law firm assist in handling my claim?**

There are literally hundreds of laws and thousands of cases interpreting those laws, which may impact your entitlement to benefits. A law firm knowledgeable about those laws, and the system in general, can help to ensure your rights are protected. Because of the complexity of the medical-legal issues in these claims, an unrepresented worker may well fail to receive appropriate benefits in times when the administration of the Industrial Insurance Act has become increasingly conservative, and when so many employers are represented by legal counsel in the process. Large agencies and employers can also simply make administrative mistakes, resulting in the denial of benefits that may rightfully be yours. Regrettably, if claims decisions are not challenged within the short time periods prescribed by law, they are final and binding even if later shown to be based on error of fact or law.

In some cases, such as those not involving serious injuries or extensive time loss from work, and with no employer intervention in the claim, legal representation may not be necessary. Our experience has shown, however, that the old adage -- "an ounce of prevention is worth a pound of cure" -- is increasingly applicable to a worker's legal rights under the Industrial Insurance Act. Having an experienced attorney or paralegal review your claim, even if only during an initial telephone call, may assist in identifying and attempting to eliminate future problems or, in the best case scenario, may at least confirm that you are, in fact, receiving all of the benefits to which you are entitled.

Personnel at **CAUSEY WRIGHT** have handled literally thousands of cases such as yours, from initial administrative levels through the appellate courts of the State of Washington. We have decades of combined experience in handling the claims of injured workers. We have been actively involved in major legislative battles involving the rights of injured workers for years. We also limit our practice to medical-legal matters -- in other words, injury and disability claims. We are therefore in a position to coordinate an industrial insurance claim with, for example, a personal injury, a "third-party" claim, or other insurance-related matter.

**What is the difference between a "self-insured" claim and other industrial insurance claims?**

Larger employers are allowed to self-insure -- that is, set aside funds to pay claims directly rather than pay premiums to the Department. Most employers who self-insure utilize service agencies to administer their industrial injury claims. While strictly speaking, these agencies are not insurance companies, they often deal with claims much like a private insurance company would. However, the identical laws cover both self-insured claims and those directly administered by the Department.

**What determines the amount of compensation I receive in my claim?**

The amount of time loss compensation you receive is established by statute, and is determined by your wages at the *time of injury*. You are paid a percentage of those wages (60%, with additional percentages for spouse and dependents, up to a maximum set by law) all subject to a maximum rate equal to 100% of the average monthly wage of all employment in this state. An adjustment to the time loss compensation rate is made to include the cost of employer-provided healthcare benefits if those benefits are terminated after an injury event. The rate of compensation for permanent physical or mental impairment is paid pursuant to a statutory schedule of benefits in effect on the date of your injury or when your occupational condition arises.

**How long am I entitled to receive treatment for my injuries?**

The law provides that medical treatment is covered until the conditions resulting from your injuries are judged by medical opinion to have become stable. The Department or employer is entitled to submit you to periodic medical evaluations to determine whether or not further treatment will likely improve your condition. Disputes frequently arise over treatment issues because of conflicting medical opinions, and legal representation in the claim can often help to resolve such conflicts.

**What can I expect in the way of vocational rehabilitation if I can't return to my former line of work?**

Unfortunately, not much. In 1985, the legislature abolished most of the laws and regulations that authorized -- and in some cases mandated -- meaningful vocational rehabilitation. For example, prior to 1985 Washington State had a "comparable wage" statute, mandating that vocational services were to be provided to return a claimant to work at a wage comparable to the wage that worker was earning at the time of injury. Now, it must merely be demonstrated that you have the physical capacity, education, training and aptitude to return to some form of employment available in the general area where you live. This can include minimum wage work. Moreover, the Department or employer is not obligated to place you in a job, but only to show that employment opportunities are available.

If a worker is not able to return to work due to their injury, vocational services can be provided to assist the worker in a return to employment, including retraining benefits. When retraining is offered, the worker has the option to participate in the offered plan or opt out. If the worker opts out of the

offered plan, they can receive funding for schooling for an independent, self-managed plan, referred to as Option 2 benefits. The worker is given 5 years within which to spend the funds on authorized retraining expenses. An attorney can assist you in maximizing the vocational benefits available to you under the current system.

**Can I just cash out my claim?**

Generally, no. The workers' compensation system in Washington State provides for injured workers to receive benefits under their claim until their medical condition has stabilized, they have return to some form of gainful employment, and then obtained a rating of any remaining permanent impairment upon which an impairment award is paid at the time the claim is closed. However, not every claim is resolved in this linear fashion and, under very specific circumstances, the Department of Labor and Industries may agree to resolve the remaining issues in a claim through a cash settlement, referred to as a Compromise and Release Structured Settlement Agreement (CRSSA). We strongly encourage workers to seek legal advice prior to entering into a CRSSA agreement. For more detailed information, refer to our CRSSA download document.

**What causes the lengthy delays in paying time loss and treatment costs, and awarding permanent disability compensation?**

The law states that workers are entitled to "sure and certain relief", but this is often not the case with many of the nearly 200,000 claims received by the Department each year. The sheer volume of claims leads to some delay and confusion, and the frequent reorganizations and transfers of personnel within the Department often present additional obstacles to the speedy resolution of claims. Some claims simply become lost in the system. In many cases, legal representation will focus additional attention on a claim being processed by an examiner who may have a caseload of several hundred claims, and will thereby aid in moving the claim along to a decision which, if not acceptable, can at least be appealed.

**If permanent partial disabilities are paid strictly according to a statutory schedule of benefits, how can there be any dispute over the amount I am entitled to receive?**

Physicians, who must interpret some rather ambiguous regulations, make these determinations. The opinions of different physicians frequently differ greatly. This is particularly the case when the Department or self-insured employer has you examined by an "independent" panel of physicians, who often are conservative, semi-retired doctors performing many such evaluations every month. Their assessment of your degree of impairment may be significantly different than your own or another doctor's. An attorney can assist in obtaining a further evaluation of your disability and in securing a more fair rating of impairment, which may result in more adequate compensation for your injuries.

**Once I receive an award for permanent disability, do I have any right to further benefits in my claim?**

Yes. Under the Industrial Insurance Act, you have up to seven years from the date your claim was first closed to apply to reopen it for further treatment or other benefits. It is therefore important to know if your claim has previously been closed, and when. In order to reopen your claim, you must have medical proof that your condition has worsened or has become "aggravated". You must also demonstrate that it is the same condition arising from your injury, and that the worsening is not due to some unrelated cause, such as another injury. The procedure involves filing an *Application to Reopen* through your physician's office. Attempts to reopen frequently lead to medical/legal disputes over whether the condition has, in fact, worsened. A great many applications to reopen are denied on the first review by the Department, and legal representation in appealing those denials is usually helpful.

**What if I am permanently unable to return to any type of work?**

You may then possibly qualify for total permanent disability -- a "pension" -- under the Industrial Insurance laws. You must prove there is no form of employment that you can obtain and perform on a continuous basis. Self-insured employers usually strenuously contest such claims, and the Department has also grown increasingly conservative in its approach to pension claims. Most of these cases almost inevitably wind up in litigation at the Board of Industrial Insurance appeals, requiring the careful presentation of medical and vocational proof, almost always best accomplished by a lawyer experienced in industrial insurance law.

**How do I contest an action by the Department or self-insured employer I feel is wrong?**

Any final order of the Department -- one which contains protest or appeal language -- can be protested at the Department or appealed to the Board of Industrial Insurance Appeals. Any protest or appeal must be supported by medical or vocational evidence, and in the appeal process the Department or self-insurer is represented by legal counsel. For either a protest or appeal, a worker is well advised to have the advice of legal counsel and/or legal representation.

**How long will it take to resolve my claim?**

If an adverse decision is protested to the Department, the process of resolving the issues presented can take from a few weeks to several months, depending upon a variety of factors, including individual claim adjudicators and the complexity of the claim. If an appeal is taken to the Board, the claim may be resolved within a few months in the Board's "mediation" process, but if hearings are necessary, the case will usually take a year or more before a final decision is rendered. Even after such a decision, either party can appeal to Superior Court. Depending upon the county in which such an appeal is filed, another one to two years may elapse before the case is tried and finally decided.

**If I am off work, can I receive both workers' compensation and Social Security disability benefits?**

Yes, under certain circumstances. To qualify for Social Security benefits, you must be unable to work for 12 continuous months before benefits are payable. Also, the standards of proof for Social Security disability are different from workers' compensation in that the Social Security Administration will consider any and all disabling conditions instead of only those found to be related to your industrial injury. If you qualify for both benefits, there is a maximum amount you can receive in total benefits under both systems. That limitation is 80% of your highest average monthly wage in the five years prior to the onset of your disability.

**If my employer or co-workers were at fault for my injuries, can I sue them?**

No. Under our workers' compensation system, employers and co-workers have immunity from legal action based on their fault or negligence. On the other hand, your own fault or negligence, if any, will also not affect your right to recover workers' compensation benefits. This "no fault" system is supposed to allow the worker to receive benefits quickly and without any initial dispute over who was to blame for your accident.

**If someone other than my employer or co-worker was responsible for my injuries, can I sue them?**

Quite possibly. If a party other than your employer or a co-worker -- in other words, a "third party" -- causes your injuries, you may be able to file a civil suit for damages in addition to recovering workers' compensation benefits. Such a "third party" might be, for example, the driver of the other vehicle in an on-the-job auto accident, or the manufacturer or supplier of a defective product or machine.

**What's the benefit of suing such a "third party"?**

Your recovery of damages in a civil suit is potentially much greater than your entitlement under the workers' compensation system, in which benefits are limited by statute. You can continue to receive workers' compensation benefits while pursuing a third-party lawsuit. You will, however, have to repay a portion of those benefits to the Department of Labor and Industries or self-insured employer if a third-party recovery is obtained. It is important to have legal counsel when entering into a third party case, as the presence of the workers' compensation claim can complicate the civil action, and vice versa.

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