

# **POLICE OFFICERS' WORKERS' COMPENSATION RIGHTS**

## **INTRODUCTION**

The intent of this article is to give police officers and other public safety employees a general explanation of their rights under the Michigan Workers' Disability Compensation Act and to answer the most common questions. It is not intended to be a substitute for competent legal advice. This article gives only a general description of the law and cannot explain all its complexities. Therefore, injured officers should always seek advice as to their specific rights. If you know your legal rights in workers compensation, you may better protect yourself in the event you're injured on the job. Your benefits when injured may include eligibility under group insurance plans, retirement plans, sickness and accident plans, the Social Security Act. The circumstances of your injury may also implicate legal rights under employment, negligence, product liability and medical malpractice laws.

If you are denied or cut off of workers' compensation benefits, your local union representative can explain your rights to sick pay, medical leaves, and other matters governed by the union's collective bargaining agreement with your employer. But if you have questions about workers' compensation, Social Security, short-term and long-term disability, Andrea Hamm of Miller Cohen and I can be a resource in explaining your rights and answering your questions without charge. In the event you need to file a workers compensation claim in the Michigan Workers' Compensation Agency, we offer contingency fee agreements that mean you don't pay us unless and until we recover money for you.

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## **WHAT IS WORKERS' COMPENSATION?**

Since 1912, the Michigan Workers' Disability Compensation Act (Michigan Compiled Laws 418.101 and the sections following) requires all employers provide employees who suffer job-related injuries or diseases with prompt medical treatment, weekly wage loss benefits and vocational rehabilitation services necessary to restore employees to useful employment.

When the injury or disease results in the employee's death, burial expenses and wage loss benefits are payable to the victim's dependents.

All benefits are payable without regard to whether or not the employer or employee is at “fault” or responsible for the injury.

Most private employers meet their legal obligations by purchasing insurance coverage. However, most public employers, including law enforcement agencies, are self-insured for workers’ compensation. While the police or sheriff’s departments are technically self-insured, governmental agencies usually hire an independent company, called a third party administrator, to administer the workers’ compensation plan for the governmental agency. This is an important fact to remember, because third party administrators often aggressively manage the accounts to try to save as much money as possible for the governmental agency. Depending on your employer’s contract with the third-party administrator, they may be able to dispute your claim, despite your employer’s wish to see the claim paid.

## **WHO IS COVERED BY THE ACT?**

All public employers, regardless of the number of employees; or

All employees who work for an employer who regularly employs three (3) or more people at one time; or

All employees whose employer has employed at least one worker for 35 hours or more per week for 13 weeks or longer during the preceding year; or

Any employee injured outside Michigan who was working for an employer subject to Michigan law and was either a Michigan resident or was hired in Michigan.

Federal employees, railroad workers, longshoremen or persons engaged in the maritime industry are covered by federal laws and separate federal workers’ compensation systems.

## **WHAT INJURIES ARE COVERED?**

All injuries and diseases “arising out of and in the course of employment” are covered. If the injury or disease results in being off work for more than seven days, wage loss benefits become due. Reasonable and necessary medical treatment must be provided whether or not any work time is missed.

Employees going to and from work while on the premises where the work is performed, and within a reasonable time before and after work hours are presumed to be in the course of their employment. Generally, if you are injured after parking your car or on the way to your car, you will be covered by worker’ comp. Patrol officers and firefighters on the roads while on the clock are also covered by workers’ compensation.

Employees driving on work-related business are covered under workers’ compensation laws as well as their employer’s auto insurance coverage. Employees injured at gatherings for which the primary purpose is social or recreational are **not** covered under workers’ compensation.

Heart conditions, degenerative arthritis, and other “conditions of the aging process” may be compensable, if they are contributed to or aggravated in a significant manner by the employment. Police officers and firefighters are entitled to a rebuttable presumption that any respiratory or heart diseases were caused by their employment. However, before this presumption can be applied, the injured worker must apply and be turned down for any pension benefits that they may be entitled to. In 2015, the Michigan Legislature added a presumption of compensability for certain cancers suffered by firefighters.

Mental disabilities may be compensable if they were caused, contributed to, or aggravated in a significant manner by actual employment events. The employee must show that his or her perception of the employment events causing the disability were reasonably grounded in reality.

Hernias are compensable if clearly recent in origin, arise from a strain or lifting incident at work, and are promptly reported to the employer.

Pre-existing conditions may be compensable if aggravated or accelerated in a significant manner by the employment and result in a medically distinguishable new condition.

Occupational diseases are medical conditions that usually develop over time and do not result from a single injury. They include conditions such as carpal tunnel syndrome, epicondylitis (tennis elbow), or other cumulative trauma disorders. Other occupational diseases include lung diseases caused by asbestos exposure, occupational asthma, and other diseases, including cancer, that can be caused by chemical or airborne exposures at work.

Each of these general rules is subject to a great number of exceptions. If you are injured under circumstances that are in any way connected to your work, you should immediately report the injury to the employer and consult an attorney specializing in workers compensation law.

## **HOW DO I PROTECT MY RIGHTS?**

**Report all injuries immediately.** The employee must give notice of an injury to the employer no later than 90 days after the employee knows or should know of the injury. Failing to give timely notice can result in a loss of your rights, so report all injuries immediately. Employers will often deny claims for injuries that are not reported immediately, or the following day, or after days off. Therefore, even injuries that do not appear significant at the time should always be reported immediately or at least by the end of the day. The dilemma is that if you report every injury, your employer may criticize you for being a crybaby, but on the other hand, what may seem to be a minor injury at the time can later become a more serious problem that evening or over the weekend, so play it safe and report every injury. Most employers require preparation of written injury reports. Make sure you fill out an injury report as soon as you report the injury. If your employer refuses to make a report, download, fill out, and file the Employee Report of Claim form from the Workers' Compensation Agency website. <http://www.michigan.gov/documents/wca>.

Verbal notice to your supervisor can suffice, but written notice will help prove your claim if the consequences of your injury take months or even years to develop. Sometimes repeated minor injuries can result in a disabling injury or disease. Don't take any chances. If you have written proof of the injury and keep a copy at home, you will be protected if your supervisor leaves or conveniently "forgets." If your injury requires medical attention, you should insist the employer send you to their clinic or to a local hospital. Many claims are denied later by the insurance company if the employer doesn't prepare a written report and fails to send the injury worker for medical care, thereby depriving the employee of the documentation of the injury by the medical provider. If the employer tells you to see your own doctor, ask them to put that request in writing, so not only your doctor will agree to treat you, but also document that you were treating a work-related condition.

Employers are not required to report injuries to the State of Michigan that do not result in at least seven days (including weekends or holidays) off work. Therefore, you cannot assume the employer will retain records of every injury. Protect yourself by making sure a written record of every injury exists and by keeping a copy. Many medical providers, including hospitals, only keep medical records for seven years and then destroy them. Under the Bullard-Plawecki Employee Right-To-Know Act, you have the right to have copies of all of your personnel records, including any medical records kept by the employer.

Keep the name, address, and phone number of co-workers who witnessed the injury or have knowledge of the particular hazard that caused your injury. Michigan's Chemical Right-to-Know law requires employers to provide employees with material data safety sheets of any chemicals used in the workplace. If you're injured by a chemical exposure, ask for the material safety data sheets. Keep the names and addresses of all company clinics or other health care providers for later reference. Well-documented records of past injuries can be very helpful in proving occupational diseases or other disabilities that arise from a series of injuries over time.

It is illegal for an employer to discharge or discriminate against an employee for reporting an injury, filing a workers' compensation claim, or exercising any rights under the workers' compensation laws.

The law provides that no compensation shall be paid for an occupational disease if the employee falsely represents in writing that he or she has not previously suffered from the disease that is the cause of disability. This means that an employee must truthfully disclose all medical information on a medical history form when applying for employment. However, it is a violation of the federal Americans with Disabilities Act (ADA) for an employer to refuse to hire a person with a disability, if that disability does not prevent the person from performing the essential functions of the job.

## **WHAT TIME LIMITS APPLY?**

In addition to the **90-day notice** requirement, any **claim** for workers' compensation **must be filed within 2 years** of the latest of:

- The date of injury; or
- The date the disability began; or
- The last date of employment with the employer against whom the claim is made.

The two year time limitation does not begin to run while the injured workers receives sick pay or any other wage replacement benefits or is offered restricted work by the employer. In cases of death or disability from an occupational disease, the two years begin to run from the time the occupational disease was diagnosed or should have been known to be work-related.

For employees who are already receiving any type of workers' compensation benefits, a one-year back rule applies. This means in order to claim for some other benefit you should have received, you can only go back one year from the date you file your claim for the benefit. Similarly, if the employer claims you were overpaid benefits, the employer can only seek repayment going back one year.

## **WHAT MEDICAL BENEFITS AM I ENTITLED TO?**

Employers must promptly provide medical care for every work-related injury, whether the injury results in time off work or not. Insist on getting medical treatment on the date of injury, as that will document the injury. If the employer suggests you go to your own doctor, insist that you be sent to the company clinic used by the employer for work-related injuries or request something in writing indicating the employer is sending you to your own doctor for treatment of your injury. **The right to medical care for work-related injuries and diseases continues as long as necessary to treat the injury or disease. If the injury is permanent, it could last for the rest of your life.** For the first 28 days after an injury, the employer or their workers' comp third party administrator can require the worker to treat with a doctor or clinic of the employer's choice. **After 28 days, injured employees have the right to treat with doctors of their own choice. Ask your primary care physician for the name of an appropriate specialist when you are approaching the 28-day limit, or if you are going to require surgery. Most clinics used by employers try to get away with as little treatment as possible and are not acting in the best interests of the injured employee.** To exercise your right to a physician of your own choice, send a letter to the third party administrator, notifying it of the name and address of the doctor and your intention to treat with that doctor. Most physicians will not see you until they receive written authorization from the third party administrator. If the third party administrator refuses to authorize treatment with the physician of your choice, contact an attorney.

The third party administrator must pay for office visits, surgery, hospital and outpatient services, prescriptions, medical supplies, and any type of equipment, treatment, or service necessary to treat the injury. You should not have to pay for any of these services, but if you do, you should send copies of the bills to the third party administrator for reimbursement. You are also entitled to payment of round trip mileage to and from any visits to a medical provider for treatment. Current mileage rates are found on the Workers' Compensation Agency website. <http://www.michigan.gov/documents/wca>.

The third party administrator has the right to have an injured worker *examined* from time to time by a so-called "independent" medical doctor, but after 28 days they cannot force you to *treat* with any particular doctor. If your employer sends you to an "independent" examination, you are entitled to a check for round-trip mileage *before* the examination. If you request a copy of the doctor's report, it must be sent to you within 15 days of your request. When you go to an IME doctor, you do not have to collect all your treating medical records and tests for them, despite what the citation letter may say. You should wear a watch and note how many minutes the doctor actually spends examining you, as opposed to just talking to you. While you should be polite and cooperative, remember that IME doctors are not truly "independent", and are working for the employers and insurance companies that pay their fees.

Medical expenses for workers' compensation injuries are regulated by cost containment rules. A medical provider dissatisfied with the amount paid under these rules cannot bill the injured worker for the balance. If a claim is disputed, the insurance carrier is supposed to file a written notice with the state, called a "Notice of Dispute." You should receive a copy of this notice. If your medical care is disputed, make a copy for your own medical provider or your own medical insurance company. Michigan law requires private medical insurance companies to pay for medical treatment disputed by the employer. If your health insurance pays for treatment of your work-related condition while the case is disputed, the health insurance company is entitled to reimbursement if the dispute is resolved in your favor.

For more serious injuries, third party administrators may hire medical "case managers." Case managers are usually registered nurses who are hired to try to get the injured worker back to work as soon as possible at the lowest cost. Sometimes case managers try to persuade treating doctors to avoid more expensive tests or treatments, or attempt to steer the employee to other doctors more susceptible to suggestion by the insurance company. If you have a nurse case manager, insist that she or he meet with the doctor *after* your office visit with the doctor. For a brochure by the Agency entitled "Medical Case Management Do's and Don'ts go to their website: <http://www.michigan.gov/wca/0,4682,7-191-26929-101122--,00.html>

## **WHEN DO I GET WAGE LOSS BENEFITS?**

Unlike medical benefits, which must be provided for all work-related injuries and diseases, wage loss benefits are only payable under certain conditions. To be entitled to wage loss benefits, you must be off work at least seven consecutive days. If your employer returns you to any work before the seven days has expired, you are not entitled to any wage loss benefits for that period of time. After spending seven days off work because of your disability, you are entitled to wage loss benefits for the period beginning with the eighth day off work. If you remain off work 14 days or more, you are entitled to wage loss benefits for the entire two weeks.

In general, disability is defined as a *limitation of wage earning capacity, in work suitable to his or her qualifications and training, caused by an injury or occupational disease*. In order to be eligible for wage loss benefits, the injury must cause an inability to earn wages in all jobs that pay "maximum wages" in any jobs suitable to the employee's qualifications and training, including any jobs that the employee has the transferable skills to perform. The amount of wage loss benefits may depend on whether you are considered totally or partially disabled.

"Disability" is defined as *a limitation in the employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease*. "Total disability" is defined as the inability to earn in any job paying maximum wages in work suitable to the employee's qualifications and training. An employee is "partially disabled" if he or she has a wage earning capacity at a pay level less than his or her maximum wages after an injury.

Partially disabled workers who are NOT police and fire employees can be required to look for work within their restrictions in order to receive full wage loss benefits. But the Legislature, thanks to your union lobbyists, inserted a provision in the 2011 amendments to the Workers Compensation Act that appears to exempt police and fire employees from having to look for work outside of their departments. This new section of the law, Section 302, M.C.L 418.302, provides that only the wages they earn or can earn as a police officer, firefighter, or other enumerated public safety official are considered a potential offset against the full wage loss benefit. However, this provision was poorly written and hastily added to the 2011 amendments, and there is currently no definitive case law interpreting this provision. So police and fire workers may be subject to deduction of their residual earning capacity when partially disabled.

However, any employer can avoid paying wage loss benefits by offering to provide any work within the your medical restrictions. If your employer places you in a lower paying job as a result of your medical restrictions, they must pay partial disability wage loss benefits, 80% of the difference between your wages before and after the injury. If you refuse to accept a reasonable offer of work within your medical restrictions, you lose your right to wage loss benefits. Therefore, it is generally advisable to return to work or at least attempt to do any work offered by the employer. If the work aggravates your injury, ask to go to their occupational clinic or go see your treating doctor. However, if you return to your employer with restrictions after an injury, you must make sure that you are never late, absent without excuse, or do anything that could result in termination of your employment. If you are terminated from your restricted job after an injury for any "fault" of your own, you will forfeit your right to any further wage loss benefits *forever*. If you are fired from your restricted job after an injury, you should consult with an attorney who is familiar with both workers' compensation law and employment law.

- SPECIFIC LOSSES SCHEDULE

Another type of disability benefit under Michigan law involves injuries that result in the loss of a body part or the loss of industrial use of a body part. The law provides a scheduled number of weeks of wage loss benefits for this type of disability, with the number of weeks determined by the specific body part amputated or functionally destroyed. The number of weeks of wage loss specified must be paid to the employee even if the employee returns to work before the specified loss period has run. After expiration of the specified weeks, continuing wage loss benefits can be paid if the worker remains disabled. The following schedule shows the minimum number of weeks of wage loss for each body part:

Thumb .....	65 weeks
1st finger .....	38 weeks
2nd finger .....	33 weeks
3rd finger .....	22 weeks
4th finger .....	16 weeks

Loss of only the first joint of any finger is compensated at one-half of the above-specified amounts. Loss of any portion beyond the outer joint is considered total loss of the finger.

Great toe .....	33 weeks
Any other toe .....	11 weeks

Again, loss of the first joint is one-half of the above-specified amounts.

Hand .....	215 weeks
Arm .....	269 weeks

Loss of 6 inches or more below the elbow is considered loss of the hand, and any greater loss constituting loss of the arm.

Foot .....	162 weeks
Leg .....	215 weeks

Loss of the leg 7 inches or more below the knee is considered loss of the foot, with any greater loss constituting loss of the leg.

Eye .....	162 weeks
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80% loss of the uncorrected vision in an eye constitutes total loss of that eye.

The scheduled losses listed above do not create a maximum period of wage loss, only a minimum period. In other words, if you remain disabled and off work after the minimum specific loss period, you remain entitled to continuing wage loss benefits.

- TOTAL AND PERMANENT DISABILITY

Under the law, total and permanent disability means:

(a) Total and permanent loss of sight of both eyes.

- (b) Loss of both legs or both feet at or above the ankle.
- (c) Loss of both arms or hands at or above the wrist.
- (d) Loss of any two of the members or faculties in (a), (b), or (c).
- (e) Permanent and complete paralysis of both legs or both arms or of one leg and one arm.
- (f) Incurable insanity.
- (g) Permanent and total loss of industrial use of both legs or both hands or both arms or one leg and one arm.

Should an employee suffer a total and permanent disability, benefits are paid for a minimum period of 800 weeks from the date of injury. Payment continues during the 800 weeks (over 15-1/2 years) even though the victim may be employed and earning wages.

In addition, should the employee meet one of the standards for total and permanent disability, benefits may be available in addition to the wage loss benefits paid by the employer. These benefits are called "differential benefits" and are paid by a special fund administered by the State, the Second Injury Fund. Differential benefits are an attempt to allow for increases in benefits as wage rates generally increase. Should an employee suffer an injury that constitutes total and permanent disability, he or she should always check with a competent attorney to explore the availability of differential benefits.

At the conclusion of the 800-week period, the employer, its insurer, or the Second Injury Fund may seek to establish that circumstances have changed and that the employee is no longer totally and permanently disabled. After 800 weeks, if the employee is working and earning wages equal to or greater than those earned on the date of injury, no benefits will be paid while such earnings continue. The minimum wage loss benefit for totally and permanently disabled workers is 25% of the state average weekly wage for the year in which the injury occurred.

## **HOW MUCH IS MY WEEKLY BENEFIT?**

Total disability wage loss rates are intended to approximate 80% of the employee's average after-tax weekly wage. This means it will be about 60% of your gross pay before taxes and deductions. The rate is calculated by first reviewing a list of the last 52 weeks of wages earned by the employee. The highest 39 weeks are added up and divided by 39, resulting in the "average weekly wage". If the employee worked less than 39 weeks in the year before the injury, the total wages earned are divided by the number of weeks worked.

Once the average weekly wage is calculated, the rate is determined by referring to tables published by the Workers' Compensation Agency, taking into account the tax filing status (single, married, filing joint, or head of household) and the number of dependents. The maximum wage loss rate is set each year at 90% of the state average weekly wage. If the worker is considered to be "partially disabled," the worker's remaining wage earning capacity after the injury may be deducted from the wage loss rate unless the worker makes a good-faith effort to find work and is unable to do so. Wage rate tables are available on the Workers' Compensation Agency website, under "Publications" heading and "Other Information". [www.michigan.gov/wca/0,4682,7-191-26920---,00.html](http://www.michigan.gov/wca/0,4682,7-191-26920---,00.html)

Many union contracts provide that a police officer injured in the line of duty is entitled to their full salary during a workers' compensation disability. However, most of these contracts also specify a limited period of time for the full pay supplement.

Michigan's workers' compensation law does not require any employer to continue fringe benefits, such as health insurance while you are off work. However, most union contracts in the public sector require an employer to continue to provide medical insurance for a specific period of time during a workers' compensation leave. Check with your union representative, human resources department, or review your collective bargaining agreement to determine how long that period is. If fringe benefits are discontinued, the employer's cost of those benefits must be added to the employee's average weekly wage. If your employer is subject to the federal COBRA law, the employer must offer continuation of the fringe benefits at 102% of the employer's cost. Regardless whether you can afford to buy the continuing coverage or not, the cost must be added to the average weekly wage. However, the highest the wage loss rate can be increased by adding the cost of the discontinued fringe benefits is 2/3rds of the state average weekly wage for the year of injury.

Historically, ALL WORKERS' COMPENSATION WAGE LOSS BENEFITS ARE TAX FREE. However, if you receive your full pay from your employer, that pay remains taxable.

## **DO OTHER TYPES OF BENEFITS AFFECT MY WAGE LOSS BENEFITS?**

An injured worker may also become eligible for sick pay, short term and long-term disability, unemployment, pension, and social security disability benefits, especially if the workers' compensation case is disputed by the employer. If your employer disputes your right to workers' compensation benefits, you may apply for any short-term or long-term disability benefits or use sick and/or personal time that may be available. Except for social security disability benefits, any other wage replacement benefit will reduce the amount of workers' compensation wage loss benefits owed. If the short term or long term disability policy includes a credit for workers' compensation benefits, you may have to reimburse the disability insurance company if you later win or settle a disputed workers' compensation case. Any wage replacement benefits not purchased by the employer will not reduce the workers' compensation wage loss amount. If the benefit was purchased by both the employee and employer, the workers' compensation wage loss benefits may be reduced by the proportion of the premiums paid by the employer. The effect of each type of benefit on workers' compensation wage loss benefits is explored below.

- SICK PAY, SHORT TERM AND LONG TERM DISABILITY AND OTHER WAGE REPLACEMENT PLANS

Many employers have private insurance or self-funded plans which provide wage replacement benefits for disabled employees. The terms and amounts vary according to the plan or insurance policy. If the employer disputes your workers' compensation case or is unable to make a prompt determination, these plans may be your only source of income while your workers' compensation claim is pending. Most plans require the employee to repay the benefits if you obtain workers' compensation later, while others allow the employer to take a credit against the workers' compensation owed. Many insurance companies will deny claims where the worker indicates on the application form that the disability is the result of a work injury. If you have to fill out such a form because your workers' comp case was disputed, write on the form next to the answer that your workers' comp case was disputed and attach a copy of the Notice of Dispute. If your workers' compensation case has been disputed, the sick pay plan should still pay the benefit while it remains disputed, as long as you otherwise meet the requirements of the plan. If both workers' comp and short term or long-term disability benefits are denied, you need to speak to any attorney.

- UNEMPLOYMENT BENEFITS

If an injured worker is laid off or terminated, the person may be eligible for unemployment benefits through the Michigan Unemployment Insurance Agency (UIA). If an employer lays off or terminates a totally or partially disabled worker, the employer should pay workers' compensation wage loss benefits as long as the worker remains disabled. However, if the employer fails to do so, the worker may file an UIA claim while a workers' compensation claim is pending. If you believe it is possible that you may be laid off when you return to work after an injury, you should apply to the UIA to freeze your credit weeks, so if you are laid off when you are released to return to work, you will still have full eligibility for unemployment benefits.

In order to qualify for unemployment benefits, you must certify each week that you are able to work, available for work, and seeking suitable full-time work. If you're unable to perform any work you are not eligible for unemployment. If you're partially disabled and have done some work in the past that you're still able to perform, then you are eligible for unemployment benefits.

Any workers' compensation wage loss owed will be reduced, dollar for dollar, by the total amount of unemployment benefits received. Because unemployment is taxable income, and workers' compensation is not, this means that the injured worker forced to take unemployment while waiting for workers' compensation is losing the amount of taxes paid on the unemployment.

- SOCIAL SECURITY

Injured workers age 62 or older may be eligible for old-age retirement benefit from the Social Security Administration (SSA). Fifty percent of the monthly amount of old-age retirement benefits can be a credit against the workers' compensation wage loss benefit. If you're receiving workers' compensation wage loss benefits, it may not be in your financial interest to take your old-age social security benefits before the age when you become eligible for full social security old-age benefits. The age for full old-age retirement benefits used to be age 65, but it has been increasing to 66 and will eventually rise to age 67. Once you take your old-age social security benefits, the employer can take a credit against ½ of the initial monthly social security benefit. If you were already on old-age Social Security before the injury, your wage loss rate cannot be reduced to less than 50% of the full wage loss rate. Once the credit is taken, the employer cannot take an increasing credit for any subsequent social security cost of living increases. If you're receiving workers' compensation benefits and are thinking about applying for your old-age social security benefits, first seek the advice of a workers' compensation attorney.

Under the Social Security Act, a worker is considered totally disabled if he or she is unable to work in any job that the worker is qualified to perform which exists in substantial numbers in the local or national economy. This is a different standard of total disability than Michigan workers' compensation law. Receipt of social security disability benefits has no effect on workers' compensation benefits.



However, receipt of workers' compensation can reduce your social security disability benefits. The monthly total amount of workers' compensation wage loss plus the monthly social security disability benefits cannot exceed 80% of the highest average monthly average of earned income in one of the last 5 years. To the extent your total exceeds this amount, your social security disability benefits will be reduced. Obtaining social security disability benefits may be advantageous even if you are receiving workers' compensation benefits. One advantage is that social security disability recipients qualify for Medicare after 2 1/2 years of disability. We also handle social security disability claims.

- **PENSION BENEFITS**

In general, workers' compensation wage loss benefits are reduced by employer funded pension benefits. In the case of police and fire employees, taking a pension is considered an "election of remedies" which forecloses any further wage loss claim under workers compensation. Section 161(1)(c) provides that police and fire employees in municipalities and villages may waive their right to workers' compensation wage loss benefits by accepting "like kind" benefits, such as a disability pension. Note that this section of the law only covers employees of cities and villages, not county or state employees. Also, if the employer involuntarily places the employee on a disability pension, that is not an election of remedies that forecloses the right to choose workers' compensation benefits instead. In all cases, accepting a disability pension does not end the employer's obligation to pay all medical expenses and mileage for the work-related injury.

## **VOCATIONAL REHABILITATION**

If a job injury or occupational disease prevents the injured worker from returning to work, vocational rehabilitation services are available. Retraining, schooling and job placement, if not voluntarily offered by the employer or its insurance carrier, can be ordered by the Workers' Compensation Agency. The cost of these services, as well as associated costs such as travel, tuition, and books are paid by the employer.

For Agency guidelines on vocational rehabilitation, go to their website: [www.michigan.gov/wca/0,4682,7-191-26929-41198--,00.html](http://www.michigan.gov/wca/0,4682,7-191-26929-41198--,00.html)

If you act first in selecting a vocational rehabilitation counselor, you are more likely to find a counselor who will actually try to help you acquire the training and skills you need to find a new career and will be more interested in trying to find you the best job possible. Therefore, as soon as the employer or third party administrator starts talking about vocational rehabilitation, or it becomes clear that you will never be able to return to your former employer, you should seek out your own vocational rehabilitation counselor. Ask your attorney for names of reputable vocational rehabilitation counselors who are not in the insurance companies' back pocket. If the employer refuses to accept your choice of vocational rehabilitation counselor, your attorney can file a petition and ask that your choice be ordered by the Agency.

Vocational rehabilitation services, including schooling, may be ordered by the Bureau for up to two years. Michigan Rehabilitation Services, a branch of the Michigan Department of Education, provides vocational services statewide. However, most employers use private vocational rehabilitation firms. A worker contacted by a rehabilitation counselor should make sure that the counselor is from a state approved agency. If there is a dispute over vocational rehabilitation, the employee or employer can request a hearing from the Bureau.

## **WHAT BENEFITS EXIST FOR JOB-RELATED DEATHS?**

If death results from an injury or occupational disease, the employer or its insurer must pay the expenses of the workers' last sickness. Burial expenses are limited to \$6,000.00.

Persons dependent upon the deceased worker are entitled to weekly wage loss benefits for 500 weeks from the date of death. Wage loss benefits are calculated in the same manner as injuries. Should a dependent child be under the age of 18 years of age at the end of this 500-week period, benefits continue until the child reaches 18. If, at the expiration of the 500-week period, a dependent remains wholly or partially dependent, the dependent can petition a workers' compensation Magistrate to order payment of full or partial benefits until he or she reaches the age of 21. Should a dependent spouse remarry, his or her entitlement to benefits ends with a final payment of \$500.00.

The Workers' Compensation Act provides that the minimum weekly benefit for death shall be 50% of the state average weekly wage for that year.

## **CAN I BRING A LAWSUIT TO RECOVER FOR LOSSES NOT COVERED BY WORKERS COMPENSATION?**

The law provides that workers' compensation benefits are the exclusive remedy an employee has for accidental work-related injuries. A worker cannot sue the employer or fellow workers for negligence that resulted in injury. However, if the employer knew that an injury was certain to occur, and still ordered the employee to perform the unsafe activity, the employer may be sued for an intentional tort. Employers may also be responsible for any discrimination prohibited by federal and state laws. For more information about these types of lawsuits, see my pamphlet entitled, an "*Employees' Guide To Employment Law.*"



Where the injury, disease or death results from the negligence of someone other than the employer or co-workers, a lawsuit may be filed against the persons who caused the injury or accident. Motor vehicle accidents in the course of employment, defective products and machinery, chemical exposure and injuries caused by outside contractors may give rise to a lawsuit for damages. Recovery may be sought for economic and non-economic damages, but the employer has a right to be reimbursed for the cost of workers' compensation benefits paid to the injured worker. However, police and fire employees may be limited in filing third party lawsuits due to a judicial doctrine known as the "fireman's rule".

Whenever a worker suffers a serious injury or death, competent legal advice of an attorney who specializes in this type of work is recommended.

### **WILL MY EMPLOYER OR ITS INSURER TRY TO SETTLE MY CLAIM?**

Unlike many other legal rights, the entitlement to workers' compensation benefits cannot be settled or waived without the final approval of the Workers' Compensation Agency. No lump sum settlement (called a redemption) is valid without the approval of a workers' compensation magistrate. Six months must elapse from the date of injury before redemption can be approved.

Redemptions or settlements should never be entered into without a full understanding of the nature of the disability and the potential need for future medical care. By redeeming a claim, workers are giving up the potential for lifetime medical care for their work-related condition. Medicare may refuse to cover medical expenses for work-related injuries, so giving up the right to future medical benefits without a fully funded Medicare Set Aside fund for future medical care is an important factor in deciding whether and under what terms to settle. Employers always require settlement of *all* injuries that occurred during the workers' entire employment. Employers usually require a resignation of employment and a release of all other legal claims as part of the settlement.

A waiver and release signed as part of workers' compensation redemption may eliminate possible claims under the federal Americans With Disabilities Act, the Michigan Persons with Disabilities' Civil Rights Act, the Elliott-Larsen Civil Rights Act, or other Michigan and federal civil rights laws. Any employee who terminates his employment under these circumstances may be giving significant rights and should seek legal advice before doing so.

Redemption is a full and final settlement of the employee's rights and should only be considered with complete knowledge of all of the consequences. Workers should NEVER redeem a claim without consulting an attorney. This writer offers reduced fee agreements for only negotiating a redemption settlement.

### **WORKERS' COMPENSATION AGENCY HEARING LOCATIONS**

The county where the injury took place determines the hearing location. The Agency has a clickable map that will provide the address, phone number, and map of the hearing office location. See <http://www.dleg.state.mi.us/bwuc/wkrcomp/map.htm>

### **THE WORKERS' COMPENSATION AGENCY WEBSITE**

The Workers' Compensation Agency, part of the Department of Licensing and Regulatory Affairs (LARA), maintains a website with lots of information and pdf files available for downloading.

See <http://www.michigan.gov/wca>

### **OTHER HELFUL AGENCIES**

#### **Michigan Rehabilitation Services**

P.O. Box 30010

Lansing, MI 48909

(800) 605-6722

[www.michigan.gov/lara/0,4601,7-154-25392\\_41191---,00.html](http://www.michigan.gov/lara/0,4601,7-154-25392_41191---,00.html)

#### **Michigan Occupational Safety & Health Administration (MIOSHA)**

P.O. Box 30644

Lansing, MI 48909

(517) 322-1825

[www.michigan.gov/lara/0,4601,7-154-11407---,00.html](http://www.michigan.gov/lara/0,4601,7-154-11407---,00.html)

#### **Michigan Department of Licensing and Regulatory Affairs (LARA) Wage & Hour Division**

7150 Harris Drive

P.O. Box 30476

Lansing, MI 48909

(517) 322-1825

[http://www.michigan.gov/lara/0,4601,7-154-11407\\_27856---,00.html](http://www.michigan.gov/lara/0,4601,7-154-11407_27856---,00.html)

**Michigan Works! Association**  
2500 Kerry Street, Suite 210  
Lansing, MI 48912  
(517) 371-1100  
<http://michiganworks.org/>

## **CONCLUSION**

This information is intended to reflect your rights under the Michigan workers' compensation laws as they exist in 2018. Workers' compensation, however, is a politically sensitive area of the law, and in the past years many changes have been made to "improve the business climate" of the State. Unfortunately, these "reforms" have reduced benefits to injured workers. You can be sure that your elected representatives in Lansing are constantly lobbied by insurance and business interests. You should see to it that they also hear from those adversely affected by the workers' compensation laws and of the many hardships and uncompensated losses they suffer.

The magistrates who initially decide workers' compensation cases and the appellate commissioners who decide the appeals are all appointed by the governor. If you care about the orientation and philosophy of these appointed officials, you should vote in the Michigan governor's race for the candidate who will best serve the interests of injured workers, not employers and their insurance companies.

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