



Workers' Compensation in Oklahoma Employee's Rights & Responsibilities

**Workers' Compensation Court Counselor Program
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What Is Workers' Compensation?

Workers' compensation is an insurance program that provides compensation for disability, and medical and rehabilitation benefits, for employees injured on the job. In the case of accidental death of an employee, it includes benefits to the employee's dependents. Under workers' compensation, both workers and employers are protected. Each covered worker has a right to benefits for a compensable injury. In return, employers are protected from liability lawsuits outside the workers' compensation system.

How Long Do I Have To Work To Be Covered By Workers' Compensation?

There is no waiting period. You are covered by workers' compensation as soon as you begin your employment.

Who is Covered By The Workers' Compensation Code?

Generally, every employee hired in Oklahoma or who is injured in Oklahoma is covered by the workers' compensation laws of the state. Independent contractors are not employees and are therefore not covered.

Other exceptions to coverage include persons covered for job-related injuries under the federal law; certain agricultural workers; licensed real estate brokers paid on a commission basis; certain persons providing services administered by the Oklahoma Department of Human Services; any person employed by an employer with 5 or fewer employees, all of whom are related by blood or marriage to the employer; any person employed by a tax-exempt youth sports league; sole proprietors, members of a partnership, certain persons who are a party to a franchise agreement, certain members of a limited liability company and certain stockholders of a corporation; any person that provides voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitation therapy, transportation, lodging or reimbursement for incidental expenses; owner-operators of a truck-tractor; and drive-away owner operators. All of these groups of people are exempt from the workers' compensation laws of the state by law.

What If My Employer Does Not Have Workers' Compensation Coverage?

If your employer failed to secure the payment of workers' compensation as provided by law, you, or your legal representative if death results from the injury, may maintain an action either in the Workers' Compensation Court or in the district court, but not both, for damages due to the injury. If the action is maintained in the district court, the limits on benefits under the workers' compensation law do not apply.

When Should I Report An Accident That Occurred On The Job?

Any job-related injury should be reported to your supervisor as soon as possible. Failure to timely report an injury may result in the loss of benefits. An employee must report a single event injury to the employer within 30 days or medical treatment must be obtained within the 30-day period. In cases of occupational disease or injuries caused by "repeated" trauma, an employee must give notice to the employer within 90 days of the employee's separation from employment.

What Do I Do About Medical Treatment?

After you are injured, your employer shall promptly provide medical, surgical or other treatment that is reasonable and necessary due to the injury. Your employer has the right to select the treating physician. However, an employee is allowed to secure necessary medical services from a physician of the employee's choice, at the employer's expense, where the employer fails or neglects to provide treatment within 7 days after actual notice of the injury, or where an emergency exists.

The physician selected by the employer shall become the treating physician. If the employee is covered by a certified workplace medical plan, the employer shall select a treating physician for the injured employee from the plan's network of physicians.

Can I Change Doctors?

Yes, but the procedure for changing a treating physician is different depending upon whether or not the employee is covered by a certified workplace medical plan (CWMP). CWMPs are organizations that provide managed care in workers' compensation.

If the employee is **not covered by a CWMP**, the employee may apply to the Court for one change of physician for any affected body part. No change of treating physician is allowed for a body part unless medical care for that body part was provided for 180 days before the application. No more than two (2) changes of physician are allowed in a claim.

If the employee is **covered by a CWMP**, the employee may apply for a one-time change of physician to another appropriate physician within the network of the CWMP using the dispute resolution process set out in the CWMP. Once the dispute resolution process has been exhausted, the employee may petition the Court for a change of physician within the plan. If there is not a physician available within the plan that is qualified to treat the employee's injuries, a physician outside of the plan may be selected if the physician agrees to comply with all the rules, terms and conditions of the certified workplace medical plan.

What If I Need Emergency Medical Treatment? Must I Use The Certified Workplace Medical Plan?

No. An injured worker that is covered by a certified workplace medical plan may secure necessary emergency medical services, at the employer's expense, from medical providers who are not part of the plan.

Do I Have To Pay For Any Of The Medical Costs?

No. Your employer or its insurance company must pay for all authorized and medically necessary care for a compensable injury.

How Long Before Weekly Temporary Total Disability (TTD) Benefits Begin?

If you are off work due to your injuries for more than 7 calendar days after your injury, you may be entitled to weekly TTD benefits. No TTD benefits are authorized for the first 7 days after the injury unless the Court determines you were temporarily totally disabled for more than 21 days. In that event, TTD benefits are payable from the first day. TTD benefits may be commenced without a Court order.

How Is The Amount Of My TTD Weekly Income Benefits Determined?

When you are injured on the job and you are unable to work for more than 7 calendar days, you are eligible for weekly benefits amounting to 70% of your average weekly wage, up to the maximum set by law. The maximum is equal to the state's average weekly wage.

The maximum allowable weekly TTD benefits based on injury date are as follows:

<u>Date of Injury</u>	<u>Max. TTD Rate</u>
Nov. 01, 2012 to Oct. 31, 2013.....	\$771.00
Nov. 01, 2011 to Oct. 31, 2012.....	\$735.00
Nov. 01, 2010 to Oct. 31, 2011.....	\$716.00
Nov. 01, 2009 to Oct. 31, 2010.....	\$717.00
Nov. 01, 2008 to Oct. 31, 2009.....	\$683.00
Nov. 01, 2005 to Oct. 31, 2008.....	\$577.00
Nov. 01, 2002 to Oct. 31, 2005.....	\$528.00
Nov. 01, 1999 to Oct. 31, 2002.....	\$473.00
Nov. 01, 1996 to Oct. 31, 1999.....	\$426.00

To obtain rates for earlier injury dates than those listed, please contact the Counselor Program.

How Long Am I Eligible For TTD Weekly Income Benefits?

Generally, the duration of temporary total disability benefits depends on the date and nature of the injury and when your healing period ends. You may receive TTD benefits for as long as you are unable to work, subject to certain limitations. The maximum duration of TTD benefits is 156 weeks, unless there is a consequential injury, in which case the Court may award an additional 52 weeks.

TTD benefits for soft tissue injuries (e.g. sprains, strains, contusions, tendonitis, muscle tears and cumulative trauma) are subject to special rules set by law. In some instances, TTD for a soft tissue injury may be limited to 8 weeks.

Must I Notify My Employer If I Accept Other Employment While Receiving Temporary Total Disability?

Yes. Any person receiving temporary disability benefits from an employer or the employer's insurance company must report within 7 days, in writing, to the employer or insurance carrier any change in material fact, the amount of income being received, or any change in employment status while receiving temporary total disability benefits.

What If My Injury Keeps Me From Getting A Job I Can Perform?

You may be entitled to educational assistance and training to learn another skill. You also may be eligible for job-placement assistance in obtaining other employment.

What Benefits Am I Eligible To Receive If I Have A Permanent Disability?

Permanent Partial Impairment (PPI). PPI benefits are paid for disability resulting from a job-related injury or occupational disease which is permanent but does not result in total disability. If you are determined to be permanently partially impaired, it is expected that you will be able to return to some type of work. PPI benefits are based on the type and extent of disability.

Disability for certain injuries is compensated based on a schedule found in the law. A sample of benefits under this schedule is located on the Court's web site at www.owcc.state.ok.us, under "Benefit Charts" for the applicable injury date. If your injury is not specifically listed in the schedule, your compensation will be based on the percentage of disability to your body as a whole. "Scheduled injuries" include, but are not limited to, injuries to the hands, feet, arms and legs. "Whole body injuries" include injuries to the back, neck, head, shoulders and hips. Determination of the percentage of impairment for injuries, except scheduled injuries, is based on the criteria of the American Medical Association's "*Guides to the Evaluation of Permanent Impairment.*"

PPI benefits are figured at 70% of your average weekly wages, not to exceed \$323 per week for injuries occurring on or after August 27, 2010 through August 26, 2015. For injuries occurring on or after August 27, 2010, the PPI benefit shall not be less than \$150 per week.

Permanent Total Disability (PTD). PTD benefits are paid for a job-related injury or occupational disease that results in permanent and total disability. PTD benefits are paid during the continuance of the disability until the employee reaches the age of maximum Social Security retirement benefits or for a period of 15 years, whichever is longer.

PTD benefits are figured at 70% of your average weekly wages, up to the maximum set by law. The maximum is equal to the average weekly wage in Oklahoma. For injuries occurring from November 1, 2011 through October 31, 2012, the maximum rate for permanent total disability is \$735 per week.

***If I Die As The Result Of A Job-Related Accident,
What Benefits Can My Dependents Receive?***

A surviving spouse is entitled to a lump sum benefit payment, as is each dependent child. In addition, the spouse and other dependents may receive weekly benefits based upon the wages earned by the employee at the time of death, and may receive funeral costs. Benefits stop when a spouse remarries, at which time a lump sum equal to two years' compensation is paid. A child's benefits stop at age 18, but can continue until age 23 if the child is a full-time student enrolled in an accredited educational institution or is home-schooled. A child who is mentally or physically unable to be self-supporting also may be entitled to benefits after age 18.

***Can I Receive Social Security Disability And
Workers' Compensation Benefits At The Same Time?***

Yes. However, Social Security benefits may take credit for the amount of workers' compensation benefits you are receiving. This may result in a reduced Social Security benefit.

***Am I Entitled To Receive Temporary Total Disability (TTD) And
Unemployment Benefits At The Same Time?***

No employee may receive TTD benefits covering the same period of time as unemployment compensation benefits or for which employer provided short-term disability benefits are received.

How Do I File A Workers' Compensation Claim With The Court?

If you wish to file a claim as a result of a job-related injury, a "Form 3" should be filed with the Workers' Compensation Court. A "Form 3B" should be filed if you have an occupational disease (such as "asbestosis" or "silicosis"). A "Form 3A" should be filed for a death claim if an employee dies as the result of a job-related injury. You may request the necessary forms to file a claim from your employer or the Workers' Compensation Court. The forms also are posted on the Court's web site at www.owcc.state.ok.us/court_forms.htm.

Is There A Time Limit On Filing A Claim With The Court?

Yes. Anyone wishing to file a claim for workers' compensation benefits with the Court must do so within two (2) years from the date of the injury or death, or within two (2) years from the date of payment of any compensation or wages in lieu of compensation, or within two (2) years of authorized medical care. For "repeated trauma" injuries, the two-year period runs from the date on which the employee was last employed. In case of asbestosis, or asbestosis related disease, silicosis or exposure to nuclear radiation, the two (2) years runs from the date the condition results in a symptom which can be medically diagnosed or from the date of last exposure.

How Do I Obtain Benefits?

You should contact your employer or the employer's insurance carrier as soon as possible after an accidental injury to see if benefits will be provided voluntarily. An employer or insurance carrier may require a letter from your physician stating the type of treatment being provided and whether you are able to work. You should ask your employer to report the injury by filing a "Form 2" (Employer's First Notice Injury) with the Court and to provide their insurance company with a copy.

What Happens After I File A Claim?

If you wish the Court to resolve an issue between you and your employer or their insurance carrier, you may ask the Court to set your case before a judge. You or your legal representative must file a "Form 9" (Motion To Set For Trial) to request a trial. A "Form 9" is available from the Court. The form also is posted on the Court's web site at www.owcc.state.ok.us/court_forms.htm.

***May A District Attorney Or The Workers' Compensation Court
Examine My Records Pertaining To My Job-Related Injury?***

Yes. Upon filing a notice of injury or claim for benefits with the Court, all employers and employees shall give written permission for the Administrator of the Workers' Compensation Court, the Attorney General, and the District Attorney to examine all records relating to the notice of injury or claim. Although the claim form is not a medical authorization, medical records also may be obtained as permitted by Oklahoma law.

What Is A Trial?

A trial before the Workers' Compensation Court is much like any other non-jury trial in an Oklahoma court. Your case will be heard by a judge who will decide what, if any, benefits are due under Oklahoma law. The judge's decision will be based upon the law and the facts involved in your case, including medical evidence introduced and testimony presented to the judge at the trial.

Is A Trial Always Necessary?

No. A trial is necessary only when there is a dispute between you and the employer or its insurance carrier that cannot be resolved. Claims can be settled without a trial before a judge of the Court. Court approval of all final settlements is required.

Other Than A Trial, What Are my Options for Settling a Dispute?

A party to a dispute can request mediation to settle a dispute regardless of whether a claim has been filed with the Court. The Court on its own or in response to a request, may order mediation. Any workers' compensation claim can be mediated except Multiple Injury Trust Fund claims and disputes on medical care arising within a certified workplace medical plan. All final settlements of a case resolved by mediation must be approved by the Court.

If mediation is desired, or if you have questions about mediation or need forms to request mediation, you may contact the Counselor Program. Contact information for the Counselor Program is located on the back page of this pamphlet.

Where Are Trials Held?

Trials are held either in Oklahoma City or Tulsa, or as otherwise provided by law.

Am I Required To Have An Attorney?

No. Workers have the right to represent themselves in a trial before the Workers' Compensation Court. If a trial is necessary because of a dispute, your employer's insurance carrier must be represented by a lawyer. You have the right, but are not required, to be represented by a lawyer.

What If I Want To Hire A Lawyer, But I Do Not Know One?

If you are an Oklahoma resident, you may call your county lawyer referral service. Some County Bar Associations will refer you to an attorney. Under no circumstance may any Court employee recommend an attorney to you.

How Much Will An Attorney Charge?

A maximum of 10% of any award for contested temporary disability, and 20% of any award for permanent disability or for a contested death case is permitted as an attorney fee. All attorney fees are subject to court approval. In addition to the attorney fee, you will be responsible for expenses in preparing your case for settlement or trial.

What If I Am Fired For Filing A Workers' Compensation Claim?

You may have a cause of action if your employer fires you because you have in good faith filed a claim, retained a lawyer to represent you, or have testified or plan to testify in a court proceeding. These actions are filed in district court.

How Can I Report An Employer That Does Not Have Workers' Compensation Insurance Or Who Requires Employees to Pay For Workers' Compensation Insurance Premiums?

You may contact the Oklahoma Department of Labor at (405) 521-6100 or toll free statewide at (888) 269-5353, and give them the employer's name and address.

What If Workers' Compensation Fraud Is Suspected?

Cases of suspected workers' compensation fraud should be referred to the Attorney General Workers' Compensation Fraud Unit for the purposes of investigation, civil action, criminal action or referral to the District Attorney.

The Attorney General Workers' Compensation Fraud Unit can be contacted at:

313 N.E. 21 Street
Oklahoma City, OK 73105
(405) 522-3403
(877) 800-8764 (toll free)

Can I Call The Workers' Compensation Court For Information?

Yes. The Workers' Compensation Court has established a Counselor Program. The program also is known as the Ombudsman Program. A Counselor provides information and improves communications among injured workers, employers, insurance carriers and health care providers. Contact information for the Counselor/Ombudsman Program is located on the back page of this pamphlet.

Who Can Contact The Workers' Compensation Counselor/Ombudsman Program For Information?

The injured worker, the heirs of a deceased worker, the employer, the insurance carrier, the health care provider and other interested persons.

What Kind Of Information Can The Counselor Provide, and Can The Counselor Provide Legal Advice Or Services?

The Workers' Compensation Counselor Program:

- Cannot provide legal advice or services;
- Provides general information and an explanation of rights and responsibilities;
- Helps an employee determine if the employer is insured and whether coverage is through a private carrier, CompSource Oklahoma, or through self-insurance; and
- Explains how to report an injury and how to file a claim.

Where Can I Obtain Additional Information About Workers' Compensation?

You may contact the Workers' Compensation Court's Counselor Program, visit the Court's web site at www.owcc.state.ok.us, or search the Oklahoma statutes on workers' compensation online at www.owcc.state.ok.us/administrator_and_court_rules.htm.

What Are My Responsibilities?

As an injured worker, you have the obligation to assist in your recovery. To help make this happen, you should:

- Keep in touch with your employer;
- Keep appointments made with your doctor, the insurer, and job counselor. Missing a doctor's appointment without good cause may result in you being ordered to pay a "no show" fee;
- Follow your doctors' instructions and treatment plan. Your entitlement to TTD benefits may be terminated by the employer if, without a valid excuse, you do not comply with your medical treatment, miss medical appointments or abandon care;
- Cooperate with persons who are helping you get back to work; and
- Contact your employer immediately when your doctor releases you for work.

This pamphlet has been prepared by the Workers' Compensation Court Counselor Program to provide information to employees with questions about their rights and responsibilities under the Oklahoma workers' compensation laws. If you have further questions, or need additional information, you may contact the Counselor Program at the address and telephone numbers listed below.

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1915 North Stiles Avenue, Oklahoma City, OK 73105
210 Kerr State Office Bldg., 440 S. Houston, Tulsa, OK 74127

Oklahoma City Area: (405) 522-8760

Tulsa Area: (918) 581-2714

Statewide Toll Free: (800) 522-8210

Electronic Mail: Counselors@owcc.state.ok.us

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The information provided in this pamphlet is general in nature and for informational purposes only. It is not intended to be a legal interpretation of the Workers' Compensation Code and should not be construed as offering or providing legal advice.