

ILLINOIS WORKERS' COMPENSATION COMMISSION

**HANDBOOK ON
WORKERS'
COMPENSATION
AND
OCCUPATIONAL
DISEASES**



This handbook is designed to serve as a general guide to the rights and obligations of employees who have experienced work-related injuries or diseases, as well as the rights and obligations of their employers, under the Illinois Workers' Compensation and Occupational Diseases Acts.

This handbook refers only to those injuries or illnesses that occurred on or after February 1, 2006. If you need information for an earlier case, please refer to the previous version of the handbook, available on our web site and in our offices.

No book can address all the situations that may occur. Benefits are determined by applying the law to the facts of each case. If you still have questions, please contact one of the Commission offices.

COMMISSION OFFICES

Toll-free:	Within Illinois only	866/352-3033
Chicago:	100 W. Randolph St., #8-200, 60601	312/814-6611
Collinsville:	1014 Eastport Plaza Dr., 62234	618/346-3450
Peoria:	202 N.E. Madison Ave. #201, 61602	309/671-3019
Rockford:	200 S. Wyman, 61101	815/987-7292
Springfield:	4500 S. Sixth St. Frontage Road, 62703-5118	217/785-7087
TDD:	Telecomm. Device for the Deaf	312/814-2959

This book is also available in Spanish. Both versions of this handbook, as well as the statute, rules, and forms are available for free at each Commission office and on the web site: www.iwcc.il.gov.

200,000 copies printed by the authority of the State of Illinois, on recycled paper with soy ink, at a price of \$0.20 per copy, no print job number. November 2008.

TABLE OF CONTENTS

	PAGE
CHAPTER 1	
Overview	3
CHAPTER 2	
Reporting an Injury or Exposure	7
CHAPTER 3	
Filing a Claim at the Commission	10
CHAPTER 4	
Resolving a Dispute at the Commission	13
CHAPTER 5	
Medical Benefits	19
CHAPTER 6	
Temporary Total Disability (TTD) Benefits	23
CHAPTER 7	
Temporary Partial Disability (TPD) Benefits	26
CHAPTER 8	
Vocational Rehabilitation/Maintenance Benefits	27
CHAPTER 9	
Permanent Partial Disability (PPD) Benefits	28
CHAPTER 10	
Permanent Total Disability (PTD) Benefits	33
CHAPTER 11	
Death/Survivors' Benefits	35
GLOSSARY	37
INDEX	41

CHAPTER 1

Overview

1. *What is workers' compensation?*

Workers' compensation is a system of benefits provided by law to most workers who have job-related injuries or diseases. These benefits are paid regardless of fault.

Each state has its own workers' compensation law. Illinois' law first took effect in 1912.

2. *Who administers the program?*

In 1913, the legislature created a state agency to resolve disputes between injured workers and their employers regarding workers' compensation. It has been known by different names over the years, but is now called the Illinois Workers' Compensation Commission.

As the administrative court system, the Commission must be impartial. Staff will explain procedures and basic provisions of the law, but cannot act as an advocate for either the employee or employer.

3. *Which employees are covered by the law?*

Almost every employee who is hired, injured, or whose employment is localized in the state of Illinois is covered by the law. These employees are covered from the moment they begin their jobs.

4. *What injuries and diseases are covered under the law?*

In most instances, the law covers injuries that are caused, in whole or in part, by the employee's work.

A worker injured by the repetitive use of a part of the body is covered, as is a person who experiences a stroke, heart attack, or other physical problem caused by work.

A worker who had a pre-existing condition may receive benefits if he or she can show the work aggravated that condition.

Injuries suffered in employer-sponsored recreational programs (e.g., athletic events, parties, picnics) are not covered unless the employee is ordered by the employer to participate. Accidental injuries

incurred while participating as a patient in a drug or alcohol rehabilitation program are not covered.

5. *What benefits are provided?*

The law provides the following benefit categories, which are explained in later chapters:

- a) Medical care that is reasonably required to cure or relieve the employee of the effects of the injury;
- b) Temporary total disability (TTD) benefits while the employee is off work, recovering from the injury;
- c) Temporary partial disability (TPD) benefits while the employee is recovering from the injury but working on light duty;
- d) Vocational rehabilitation/Maintenance benefits are provided to an injured worker who is participating in an approved vocational rehabilitation program;
- e) Permanent partial disability (PPD) benefits for an employee who sustains a permanent disability or disfigurement, but can work;
- f) Permanent total disability (PTD) benefits for an employee who is rendered permanently unable to work;
- g) Death benefits for surviving family members.

6. *Are workers' compensation benefits considered income?*

No. Workers' compensation benefits are not taxable under state or federal law and need not be reported as income on tax returns.

7. *Who pays for the benefits?*

By law, the employer is responsible for the cost of workers' compensation. Most employers buy commercial workers' compensation insurance, and the insurance company pays the benefits on the employer's behalf. No part of the workers' compensation insurance premium or benefit can be charged to the employee. Other employers obtain the state's approval to self-insure.

To identify the party responsible for paying benefits, an employee may check the employer's workplace notice, check the Commission's web site, or contact the Commission's Insurance Compliance Division (inscompquestions.wcc@illinois.gov; toll-free 866/352-3033).

8. *What does the law require of employers?*

Employers must:

- a) Obtain workers' compensation insurance or obtain permission to self-insure;
- b) Post a notice in each workplace that explains workers' rights under the Workers' Compensation Act and lists the insurance carrier, policy number, contact information, etc.;
- c) Keep records of work-related injuries and report to the Commission those accidents involving more than three lost work days;
- d) NOT charge the employee for any part of the workers' compensation insurance premium or benefits;
- e) NOT harass, discharge, refuse to rehire, or in any way discriminate against an employee for exercising his or her rights under the law.

9. *What if the employer does not have workers' compensation insurance?*

The employee should give the employer's name and address, and the date of injury, to the Commission's Insurance Compliance Division (inscompquestions.wcc@illinois.gov; toll-free 866/352-3033).

An employer that *negligently* fails to provide coverage is guilty of a Class A misdemeanor for each day without coverage, punishable by up to 12 months imprisonment and a \$2,500 fine.

An employer that *knowingly* fails to provide coverage is guilty of a Class 4 felony for each day without coverage, punishable by 1-3 years imprisonment and a \$25,000 fine.

An uninsured employer may be also fined up to \$500 for every day it lacked insurance, with a minimum \$10,000 fine.

An uninsured employer loses the protections of the Workers' Compensation Act for the period of noncompliance. That means an employee who was injured during the period of noncompliance may choose to sue in civil court, where there are no limits to awards.

In addition, if the Commission finds that an employer knowingly failed to provide insurance coverage, it may issue a stop-work order and shut the company down until it obtains insurance.

Fines collected under these provisions are deposited into the Injured Workers' Benefit Fund, which are then distributed, on a pro rata basis, to injured workers whose uninsured employers failed to pay benefits.

10. *What is done to fight fraud?*

It is illegal for anyone—a worker, employer, insurance carrier, medical provider, etc.—to intentionally do any of the following:

- Make a false claim for any w.c. benefit;
- Make a false statement in order to obtain or deny benefits;
- Make a false statement in order to prevent someone from filing a legitimate claim;
- Make a false certificate of insurance as proof of insurance;
- Make a false statement in order to obtain w.c. insurance at less than the proper rate;
- Make a false statement in order to obtain approval to self-insure or reduce the security required to self-insure;
- Make a false statement to the state's fraud and noncompliance investigation staff in the course of an investigation;
- Help someone commit any of the crimes listed above;
- Move, destroy, or conceal assets so as to avoid payment of a claim.

A "statement" includes any writing, notice, proof of injury, or any medical bill, record, report, or test result.

Anyone found guilty of any of these actions is guilty of a Class 4 felony, punishable by 1-3 years imprisonment and a \$25,000 fine. The guilty party shall be required to pay complete restitution, and may be found civilly liable for up to three times the value of benefits or insurance coverage that was wrongfully attained.

If you wish to report a possibly fraudulent situation, you may contact the Workers' Compensation Investigative Unit at the Illinois Department of Financial and Professional Regulation/Division of Insurance (francis.walsh@illinois.gov; 312/636-9457; toll-free 877/923-8648). You will be required to identify yourself and, at some point, the person you are reporting will be given your name. Anyone who intentionally makes a false report is guilty of a Class A misdemeanor, punishable by up to 12 months imprisonment and a \$2,500 fine.

CHAPTER 2

Reporting An Injury or Exposure

1. *Who should the injured worker notify?*

The employee should inform the employer promptly. The law requires the employee to notify the employer of the date and place of the accident, if known.

Notice may be given orally or in writing. To avoid problems, we recommend the employee give the employer a written notice containing the following items:

- a) The date and place of the accident;
- b) A brief description of the accident, injury, or disease; and
- c) The employee's name, address, and telephone number.

Notice to a fellow worker who is not a part of management is not considered notice to the employer.

2. *What are the time limits for notifying the employer?*

Generally, the employee must notify the employer within 45 days of the accident. Any delay in the notice to the employer can delay the payment of benefits. A delay of more than 45 days may result in the loss of all benefits.

For injuries resulting from radiological exposure, the employee must notify the employer 90 days after the employee knows or suspects that he or she has received an excessive dose of radiation.

For occupational diseases, the employee must notify the employer as soon as practicable after he or she becomes aware of the condition.

3. *What should the employer do after receiving notice?*

The employer should promptly take the following steps:

- a) Provide all necessary first aid and medical services;
- b) Inform the insurance carrier or w.c. administrator, even if the employer doubts the employee's claim;
- c) If the employee cannot work for more than three days because of the injury, the employer must do one of the following:
 - (i) Begin payments of TTD; or

- (ii) Give the employee a written explanation of the additional information the employer needs before it will begin payments; or
- (iii) Give the employee a written explanation of why benefits are being denied.

4. *What records must the employer maintain?*

Employers must:

- a) Post a notice in each workplace that explains workers' rights under the Workers' Compensation Act and lists the insurance carrier, policy number, contact information, etc.
- b) Maintain accurate records of work-related deaths, injuries, or illnesses (other than minor injuries requiring only first aid and not involving further medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job).
- c) Report accidents to the Commission on the form, "Employer's First Report of Injury" (Form 45).

Written reports of all job-related deaths must be made to the Commission within two working days.

Written reports of job-related injuries or illnesses resulting in the loss of more than three scheduled work days must be made within one month.

5. *What if the employer won't pay the worker any benefits?*

The worker or the worker's attorney should contact the employer directly to determine why benefits are not being paid. Poor communication often causes delays and misunderstanding.

If the problem persists, the employee should file a claim at the Commission. Please note that an accident report does not trigger any action by the Commission. The Commission gets involved only if the worker files a claim and follows the procedures to request a hearing. (See next chapter.)

6. *Can a worker be fired for reporting an accident or filing a claim?*

It is illegal for an employer to harass, discharge, refuse to rehire, or in any way discriminate against an employee for exercising his or her

rights under the law. Such conduct by the employer may give rise to a right to file a separate suit for damages in the circuit court.

An employee with a pending workers' compensation claim may still be disciplined or fired for other valid reasons.

CHAPTER 3
Filing a Claim at the Commission

1. *How is a claim opened at the Commission?*

The worker must file three copies of the *Application for Adjustment of Claim*, along with a *Proof of Service* stating that a copy of the application was given to the employer. Claims may be filed by mail or in person at any Commission office.

There are no fees for the forms or to file a claim.

2. *What happens after a claim is filed?*

The Commission assigns a case number and an arbitrator to the case. In Cook County, cases are randomly assigned among the Chicago arbitrators; downstate, cases are assigned to the hearing site closest to the site of the accident.

The case is set on an automatic two-month cycle. Every two months, the case is set for a status call. At the call, the parties may request a trial. If neither party requests a trial, the case is continued for another two months.

This rotation continues for three years. For the first three years after a case is filed, it is the parties' responsibility to move the case along. After three years, the arbitrator may dismiss the case unless the parties show there is a good reason to continue it.

It is important to realize that each arbitrator is responsible for thousands of cases, cannot monitor individual cases, and has no information as to whether benefits are or are not being paid. It is the parties' responsibility to track the case and take action when appropriate.

3. *Must an employee file a claim to receive benefits?*

If the employee wants the Commission to order benefits to be paid, he or she must file a claim.

An employee who is receiving benefits but is concerned about protecting his or her rights to receive future benefits may also wish to file a claim.

4. *What are the time limits for filing a claim?*

Generally, an employee who fails to file a claim within the time limits loses his or her right to claim future benefits.

In most cases, the employee must file a claim within three years after an injury, death, or disablement from an occupational disease, or within two years of the last payment of TTD or a medical bill, whichever is later.

Some cases have different deadlines:

Asbestos exposure: file within 25 years after the last exposure.

Death: file within three years of the death, within two years of the date of last compensation payment under the Workers' Compensation Act, or within three years of the date of last compensation payment under the Occupational Diseases Act, whichever is later.

Occupational disease: In most cases, unless an occupational disease causes a disablement within two years of the date of last exposure, no compensation is payable. For berylliosis or diseases caused by the inhalation of silica or asbestos dust, disablement must occur within three years from the last exposure to be compensable.

Pneumoconiosis: file within 5 years after the last exposure or last payment.

Radiation exposure: file within 25 years after the last exposure.

5. *Does the voluntary payment of benefits affect a claim?*

If the employee accepts benefits, he or she does not give up any rights under the law. Similarly, if the employer pays benefits, it does not waive its right to dispute the claim. Even if a claim is filed with the Commission after some benefits have been paid, the employer still has the right to contest its liability to pay any compensation at all.

6. *Does the worker have to hire an attorney to file a claim?*

No, but in disputed cases, most employees and employers do hire attorneys.

If the worker does not hire an attorney, it becomes the worker's responsibility to keep track of the claim, appear at hearings when

necessary, and present evidence at hearings that proves his or her eligibility under the law.

Arbitrators and commissioners must be neutral. They cannot act as an advocate for the worker or for the employer.

The Commission cannot recommend attorneys. People who want to retain legal counsel may wish to ask friends for a recommendation or call an attorney referral service. The Commission has a list of bar associations that make referrals.

7. *How much can an attorney charge?*

The law limits the attorney's fee:

- a) An attorney shall not charge any fee on payments the employer voluntarily made in a timely and proper manner for medical care, TTD, and any other compensation.
- b) The attorney's fee is limited to 20% of compensation recovered, up to 20% of 364 weeks of the maximum TTD benefit, unless a hearing is held and the Commission approves additional fees.
- c) If the employer made a written offer to the employee, the attorney may only charge a fee on the amount recovered in excess of this offer. In this case, the attorney's fee may exceed 20% of the additional amount recovered.
- d) The attorney's fee must be stated on the *Attorney Representation Agreement* form, signed by the employee (or in death cases, by the beneficiaries) and approved by the Commission.

8. *What if the worker is dissatisfied with the lawyer?*

The Commission cannot resolve problems between an injured worker and his or her lawyer. The claimant may try to improve the relationship with the lawyer, hire another lawyer, or proceed without a lawyer.

We encourage lawyers to keep their clients informed. We encourage claimants to educate themselves and follow the progress of the case.

CHAPTER 4
Resolving a Dispute At the Commission

1. *What must the worker do to receive benefits?*

It is the worker's responsibility to prove he or she is eligible for benefits. The employer does not need to disprove a worker's claim. By law, the burden of proof rests with the employee.

Some of the main issues in a workers' compensation case are listed below. The employee must prove all of them to qualify for benefits.

- a) **Jurisdiction:** on the date of the accident, the employer was subject to the Illinois Workers' Compensation or Occupational Diseases Act.
- b) **Employment:** on the date of the accident, a relationship of employee and employer existed between the parties.
- c) **Accident or exposure:** the worker sustained accidental injuries or was exposed to an occupational disease that arose out of and in the course of employment.
- d) **Causal connection:** the medical condition was caused or aggravated by the alleged accident or exposure.
- e) **Notice:** the employer received notice of the accident or exposure within the time limits set by law.

If the worker prevails on these issues, he or she will generally qualify for some benefit, but there may be other issues in dispute: for example, the parties may disagree over the extent of the worker's disability, or the worker's average weekly wage, or whether the medical treatments and/or bills were reasonable and necessary, or whether the worker is entitled to penalties, etc.

2. *How are disputes resolved?*

An arbitrator of the Commission will conduct a trial, relying on Illinois law, rules of evidence, precedents set by previous workers' compensation cases, and the *Rules Governing Practice Before the Commission*. A court reporter will make a record of the hearing.

Except for emergency hearings, an arbitrator cannot resolve a case until the worker has finished healing. Once the worker has healed, the parties need to prepare the case for trial by obtaining medical

records, doctors' depositions, and other paperwork. By the time everything is ready for trial, it is not uncommon for one to two years have passed.

Once everything is ready for trial, the arbitrator will schedule a trial within the month that the parties request it. After the trial, the arbitrator will issue a decision within 60 days, stating the amount of benefits, if any, to which the employee is entitled.

3. *Is there a way to get a quicker decision if there is an emergency?*

Yes, if either lost-time benefits or medical bills are unpaid, a party may petition for an emergency hearing.

Under Section 19(b), a final decision will be issued within 180 days of the date the *Petition for Review* was filed.

An employee who claims to be owed medical or compensation benefits may file a 19(b) petition, regardless of whether the employee is working.

An employer that is paying TTD may also file a 19(b) petition, as long as it keeps paying TTD until:

- a) the arbitrator rules on the petition;
- b) the worker's medical provider releases him or her back to regular work; or
- c) the employee starts work of any kind.

If there is a dispute about the insurance coverage for a case, an insurance carrier, private self-insured employer, or group w.c. pool may file a 19(b) petition, as long as it keeps providing medical and/or TTD benefits.

Neither the employee nor the employer is entitled to a 19(b) hearing if the employee has returned to work and the only benefit in dispute amounts to less than 12 weeks of TTD.

Under Section 19(b-1), a final decision will be issued within 180 days, but it should be noted that there are many technical requirements to this process.

An employee who claims to be unable to work as the result of an injury and who is not receiving medical benefits or TTD may file a 19(b-1) petition to obtain a quick ruling on the medical care and/or TTD issues.

