

WHAT TO DO WHEN YOU'RE INJURED ON THE JOB

**A Publication of
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INTRODUCTION

The Arns Law Firm fought against the current workers' compensation laws, and does not support or agree with these rules

The Arns Law Firm created this pamphlet to give a brief understanding of the rules and limitations of the new workers' compensation system. In short, your rights to compensation, medical benefits, retraining, and a permanent disability award were radically changed in April 2004 when Governor Arnold Schwarzenegger signed SB 899 into law. None of the changes benefit injured workers. All of the changes help the insurance companies and employers save money while eliminating, reducing or limiting the benefits available to the injured worker.

Almost every injured worker you encounter will have a horror story about how "I couldn't get the surgery I needed;" "physical therapy was abruptly terminated even when my doctor ordered more;" or "the award did not cover anything close to what I lost while I was injured." It is our goal to explain your rights after suffering an industrial injury, and to give you some understanding as to the severe and unfair limitations that are imposed by the workers' compensation system.

The California workers' compensation system was initially set up to protect employers and insurance companies from civil lawsuits where a jury can render a verdict that forces an insurance company to fairly compensate the injured worker. The workers' compensation system protects your employer and the insurance company from being sued. Instead of filing a lawsuit against an employer, the injured worker receives minimal benefits – a portion of their wage loss while injured, medical treatment, and a very small award for any permanent limitations suffered.

With the passage of SB 899 in 2004, the system is even more imbalanced in favor of the employer and insurance company. Previously, it was possible to avoid many of the pitfalls in the workers' compensation system with knowledge and a lawyer. However, with the changes implemented by SB 899 the system is heavily weighted against the injured worker to the point that a lawyer may be necessary to avoid being completely shut out of the system.

While this pamphlet addresses many of the most common issues faced by injured workers, it is not intended to replace the possible need for an attorney. If you have a serious work related injury, you should contact an attorney of your choice immediately.

YOUR RIGHTS UNDER WORKERS' COMPENSATION LAW

The workers' compensation system provides limited compensation for work-related illness and injury. If you are injured on the job, you may receive:

- medical treatment;
- temporary disability benefits, and;
- permanent disability payments if you suffer a permanent disability.

What you are not entitled to receive under the workers' compensation system is:

- Full compensation for past and future lost wages and benefits and costs of past and future medical treatment;
- Money for "pain and suffering" or emotional distress;
- The right to sue your employer.

These types of damages may only be recovered in a "third-party" lawsuit. If your injury was caused, **in part**, by the fault of someone other than your employer, you may have a case against the third party. It

YOUR RIGHTS UNDER WORKERS' COMPENSATION LAW

is called a “third party” because it is not you (the first party) or your employer (the second party). A third party civil lawsuit is litigated in the civil court, with the constitutional right to a jury trial. Through a third-party lawsuit, you can recover all lost wages, all medical costs, future lost wages, and damages for pain and suffering, if you can prove the third party's negligence caused your injury. You must consult an attorney to advise you whether you have a potential third-party lawsuit. This should be done immediately since, as time goes by, valuable evidence may be forever lost.

An employee has a right to represent him or herself in a workers' compensation action. However, an injured employee also has the right to attorney representation. An attorney can be helpful in negotiating with defense attorneys, selecting appropriate medical providers, and evaluating the case. Attorney's fees in workers' compensation cases are determined by the workers' compensation board and are generally limited to 15 percent of the final award.

[What Is A “Third-Party Case,” And Why Should I Ask An Attorney About It?](#)

If your injury was caused by the fault of someone other than your employer, you may have a case against this third party. For example, you might have a third-party case even if the general contractor was simply “aware” or “should have been aware” of the condition that caused your injury.

Through a third-party lawsuit, you can potentially recover all lost wages, all medical costs, and damages for your pain and suffering, none of which can be recovered through workers’ compensation alone. As you can see, a third-party case potentially has a much greater value than a workers’ compensation case. You must consult an attorney to advise you whether you have a potential third-party lawsuit.

[What Benefits Can I Receive Under Workers’ Compensation?](#)

The California's workers' compensation system provides the following benefits:

- *Temporary Disability* payments for the time that you cannot do your work;
 - *Medical Treatment*;
 - *Permanent Disability* payments, if you have a permanent disability;
 - *Vocational Retraining Voucher*, if you cannot return to your trade.
-

A. *What are Temporary Disability benefits?*

If your injury prevents you from working while you are recovering from an injury, a doctor may declare you “totally temporarily disabled.” This means you will be at home or in the hospital recovering from your injury, not working and not receiving your normal wages and benefits.

If a doctor determines that you are “totally temporarily disabled” the workers’ compensation insurance company must pay you two-thirds of your average weekly wage up to a maximum of \$840 per week. This means if you earn \$1200.00 per week and have a history earning a similar amount per week, you would be entitled to \$800 per week for the entire time a doctor declares you totally temporarily disabled. This is your Temporary Disability benefit, you do not pay taxes on it.

B. *How Long May I Receive Temporary Disability benefits?*

Under the new law you may only receive temporary disability benefits for a maximum of 2 years. Exceptions to this short time period are few. For instance, severe back injuries requiring surgery may take 3 to 4 years to recover from, yet *there is no exception for back injuries under the new law*.

Temporary Disability payments generally start no sooner than 14 days following your injury, and will continue until you are considered "permanent and stationary" ("P&S" or you have reached maximum medical improvement). This is a medical-legal term that means you have healed to a point where you will not get any better or any worse.

C. What Happens if my Temporary Disability benefits are Cut-off or Denied?

When a doctor declares you are P&S or have reached a maximum amount of improvement in your physical condition, you will no longer receive Temporary Disability benefits. If you have a Permanent Disability, you will receive Permanent Disability payments *which are much less* than Temporary Disability Payments. For that reason, it is very important to have a treating physician who listens to your complaints and understands your job demands. Your Temporary Disability payments can be prematurely discontinued if an incompetent doctor finds you P&S before you have reached a maximum amount of improvement in your physical condition.

For some injured workers, the P&S date is the date at which they can return to their old job. However in many instances, if the injury is serious enough, then the P&S date merely marks the point at which Temporary Disability payments are terminated. Being declared

“permanent and stationary” by a doctor does not necessarily mean that you can return to work.

The new law makes it easier than ever for insurance companies to deny valid claims which leads to prolonged litigation to receive your Temporary Disability benefits. If the insurance company is disputing your claim and refusing to pay Temporary Disability, you may be without any source of income. If this happens you are entitled to sign up for EDD – State Disability. If your workers’ compensation claim has been denied or delayed, when you apply for State Disability, it is very *important* to tell your doctor your injury was work related. Otherwise you may lose your right to Temporary Disability benefits.

You must tell State Disability that your workers’ compensation claim is being disputed. When the workers’ compensation claim is accepted and you start receiving temporary disability benefits under the workers’ compensation system, you must notify State Disability. You **CANNOT** receive both State Disability and workers’ compensation benefits at the same time. This will result in a double recovery and you will have to return funds to one of these entities.

D. *What if the Doctor Releases Me to Light or Modified Duty?*

Many doctors unfamiliar with workers' compensation or your specific line of work, may release you to perform "modified work" or "light duty," without realizing how this could hurt your rights to receive benefits under workers' compensation.

Every union construction worker knows that there is no "light duty" in the trades. However, under the law, if a doctor releases you to "light" or "modified" duty, *you are required to call your employer or show up at the job site and ask if they have a position.* If you are released to modified or light duty and you do not contact your employer, you may lose your benefits. By showing up, even if your employer does not have light duty work, you will prevent the insurance company from claiming you failed to do something required of you to receive benefits.

The lesson is: *It may be a mere formality, but you MUST contact your employer and show up for modified or light duty if you are released by the doctor to perform modified or light duty work.*

If your employer does not have “light duty” or “modified duty” then the insurance company must continue paying Temporary Disability benefits as discussed above. If your employer provides light duty work, but you are unable to perform the work because of your injury, inform your employer and return to the doctor who released you. Then the insurance company must resume paying you Temporary Disability benefits.

Also under the new law, employers are given financial incentives to “invent” light duty positions, to avoid having a loss time injury. Thus, a construction worker may find him/herself sitting in a job trailer counting bolts when they should be home recuperating, for the sole purpose of giving a financial benefit to the employer. Nonetheless, if your employer is providing light or modified duty and it is work within the restrictions set by your doctor, you must continue to show up at the job.

MEDICAL BENEFITS UNDER WORKERS' COMPENSATION LAW

A. Why Can't I Choose My Own Doctor?

Probably the most significant change to the workers' compensation system is the elimination of injured workers' right to choose his/her doctor. You no longer have a right to choose your own doctor. Prior to January 1, 2005, the injured worker had an absolute right to choose a new doctor after the first thirty days of injury. Now the injured worker may only select a doctor from the "Medical Provider Network" ("MPN"). The insurance company assembles the MPN to provide medical treatment for workers' compensation injuries. Thus, the only doctors the injured worker can treat with are doctors that have been pre-screened, approved, and paid by the insurance company. Obviously, it is unlikely any of the doctors within the MPN will be on the injured workers' side.

A worker injured on the job has the right to receive medical treatment reasonably necessary to cure and relieve the effects of the injury. The employer or the employer's insurance company pays for these medical expenses. If the MPN does not have a doctor with the specialty necessary to treat the injury, the injured worker may receive a referral to a doctor outside the system. However, this is an extremely rare occurrence.

B. Rare Instances When a Worker Can Use Their Own Physician

In some situations, an injured worker may be allowed to treat with their personal physician. This can only occur if the employee has pre-designated a treating physician in writing prior to the injury. Many unions have a section on their dispatch slip that allows workers to list their doctors before they get to a job site. If you are currently treating with a doctor who you are comfortable with, and your union provides you with this slip, you should fill in that doctor's name prior to arriving at the new jobsite and starting work.

Keep in mind, ability to treat with your own doctor depends entirely on the insurance your employer carries. In some cases, even if you do fill your doctor's name in on the dispatch slip, the insurance company's bureaucracy may still prevent you from seeing that doctor.

C. *Cookie Cutter Medical Care*

Under the new law, medical treatment is strictly governed by guidelines set down by the American College of Occupational and Environmental Medicine (ACOEM). Under the new law, any treatment that your physician recommends would be subject to review by the insurance company's Utilization Review department. This review may be done by a doctor who you never see, nor ever have any contact with. Utilization Review, in many cases, has a destructive effect on an injured workers' medical treatment – either by delaying it or denying it altogether.

If a Utilization Review doctor decides that the treatment your primary treating doctor requests is not reasonably necessary under the ACOEM, you may have to fight for the right to receive that treatment in front of the Workers' Compensation Appeals Board. Keep in mind, even if you do petition the court, there is no guarantee that a judge will rule in your favor.

One of the major limitations the new law has placed on treatment for injured workers is a "hard cap" on physical therapy and chiropractic treatment. No matter how severe the injury or pressing the need, under the new law, an injured worker is entitled to a maximum of 24 visits to the physical therapist and chiropractor, per industrial injury.

TEMPORARY DISABILITY BENEFITS UNDER WORKERS' COMPENSATION LAW

Amount of Temporary Disability Benefits

By California law, an injured worker is limited to workers' compensation payments that are no more than two-thirds of his or her salary at the time of injury. However, many people are not entitled to this level of workers' compensation benefits since there is a *maximum cap* for temporary disability. In other words, the insurance company has to pay you either two-thirds of your salary, or the maximum shown below, whichever is *lower*. The payments generally start if you are out of work for two weeks. As the chart below describes, the amount of your weekly temporary disability payments depends on the date of your injury.

Date of Incident

July 1, 1996-2002	\$490 per week
January 1, 2003	\$602 per week
January 1, 2004	\$728 per week
January 1, 2005	\$840 per week

All Temporary Disability benefits will end as soon as any doctor (whether hired by defendant or not) states that you are permanent and stationary.

PERMANENT DISABILITY BENEFITS UNDER WORKERS' COMPENSATION LAW

A. What is Permanent Disability?

You are entitled to Permanent Disability payments if the injury impairs your ability to compete in the labor market. The amount money you are entitled to receive for a Permanent Disability award is based on doctors' reports and the *State of California's Schedule for Rating Permanent Disability*. The Rating Schedule has been completely revised as a result of SB 899. The new rating schedule significantly restricts and reduces the injured worker's potential recovery. There are situations where an injured worker would be entitled to an award in excess of \$60,000.00 under the pre-SB899 rating schedule, but is only entitled to \$1,500.00 under the new rating schedule.

This drastic reduction in potential benefits under the workers' compensation system is not unintentional. Senate Bill 899 was designed to limit payments to injured workers, thereby limiting the total amount of money paid on each claim.

B. How is my Permanent Disability Percentage Determined?

The effect the new rating schedule will have on your case increases the importance of obtaining a

well written report from a doctor that understands your injury and your work. The rating your injury receives can be based on reports from three types of medical examiners:

-The *treating physician*, who provided the treatment for your injury, may provide a report that can be used by the Workers' Compensation Appeals Board to rate your injury.

- *Qualified Medical Examiners (QME)* are doctors other than your treating physician. QMEs are selected separately by the employer's insurance company to provide second opinions concerning your injury. The Workers' Compensation Appeals Board decides which of the reports it will follow. (Not surprisingly, the insurance company's QME almost always rates the injury at a substantially lower level than the treating physician.)

- *Agreed Medical Examiners (AME)* are doctors chosen by both your attorney and the insurance company to evaluate your injury. Both sides agree to this doctor's findings, and both sides are then bound by the AME's report. Under the new law if the parties cannot agree, a list of 3 doctors is provided, and each side may strike 1 doctor. The doctor remaining becomes the AME.

A. *What if I Cannot Return to My Old Job?*

If you are a "qualified injured worker" ("QIW") -- which means you can no longer physically perform your regular line of work -- then you qualify for retraining. To determine if you are QIW, after you are off work for 90 days, the employer's insurance company will give your doctor a job description prepared by your employer that lists the physical demands of your job. This document is prepared to allow the treating physician to decide if you can return to your previous employment. You will have a chance to make changes to this job description. If you make no changes, then the plan submitted by the employer will be final.

Vocational rehabilitation has been through several changes in the last few years. In place of the old vocational rehabilitation system, the new law provides only for a supplemental job displacement voucher. This is a voucher that can only be used to cover costs incurred at state approved or accredited schools.

Keep in mind, the new law requires a Qualified Injured Worker to pay for the training or school out of their own pocket. The worker is then reimbursed by the insurance company upon presentation of a receipt. Depending on the level of a workers' permanent disability, the amount of reimbursement ranges from as little as \$4,000, to as much as \$10,000.

Death Benefits

If a worker dies while on the job, the family will receive \$5,000 in burial expenses as well as approximately \$100,000 to \$160,000, depending on prior earnings and the number of dependent children.



What Is The Value Of Your Permanent Disability Award?

The value of a permanent disability award will vary depending on the amount of disability as found by either your treating doctor, a QME, or an AME.

The following is a description of standard permanent disability benefits for injuries occurring after 1/1/05. The payment the injured worker receives depends on the injury's rating, which is determined by the evaluating doctor. The evaluating doctor must consult and adhere strictly to the American Medical Association's guide to the Evaluation of Permanent Impairment. These guidelines severely restrict the level of disability that the evaluating doctor can give on injured workers.

As shown by the values below, permanent disability payments are quite limited and they represent the total recovery allowed for even serious injuries.

RATING	VALUE
10%	\$6,655
15%	\$11,110
20%	\$16,610
25%	\$22,165
30%	\$28,820
40%	\$44,220
50%	\$54,675
60%	\$77,275
70%	\$116,977

Insurance Company Investigations (Sub Rosa Investigations)

Inurance companies also investigate all claims, even the most severe injury claims. The insurance company investigator will stake out an injured worker after an injury and take hidden videos showing the physical ability of the worker. Remember, you should live as normally as possible after an injury. If you are later questioned about whether you changed the oil in the car or mowed the lawn and you did, just tell the truth. You do not have to be "paranoid" because someone is trying to get videos of you; just always remember what physical activities you did and admit to them.

[Labor Code Section 5430](#)

requires us to print the following:

Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison, or a fine up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

Can My Workers' Compensation Benefits Be Denied?

Yes. Unfortunately, the deck is stacked against Injured workers seeking workers' compensation benefits. After you are hurt on the job, your employer has 90 days to "accept" or "reject" your claim. This means that for three months you could receive no benefits when you need the funds the most.

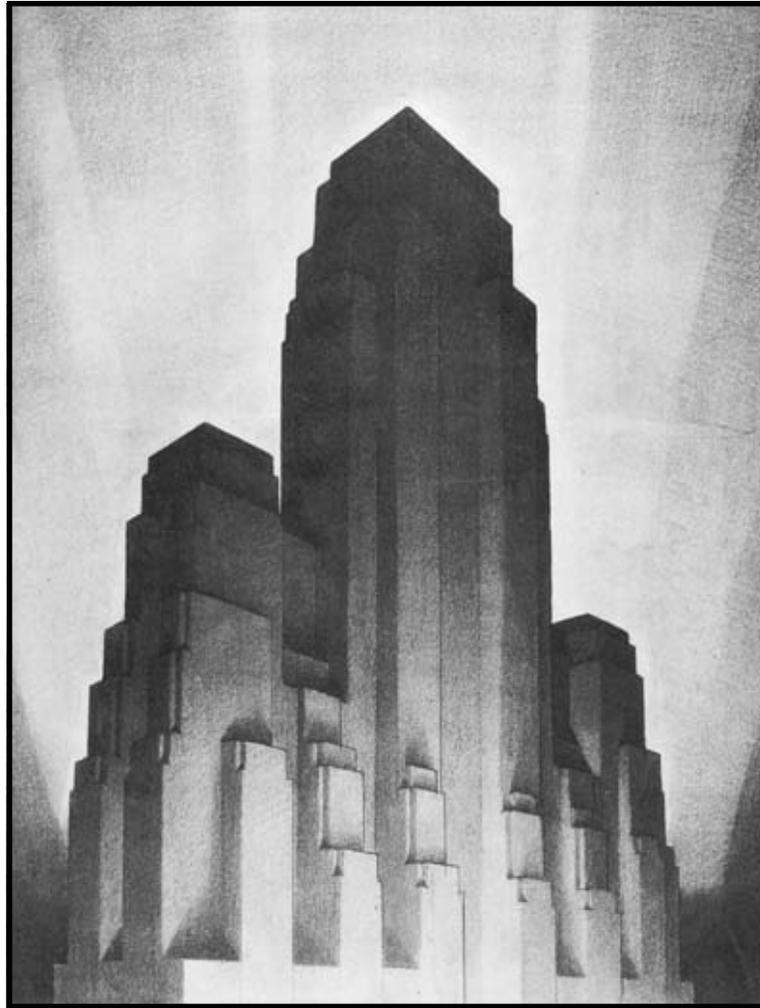
If the claim is denied, it will take the action of the Workers' Compensation Appeals Board to require the employer to pay the claim, and this process can take many more months.

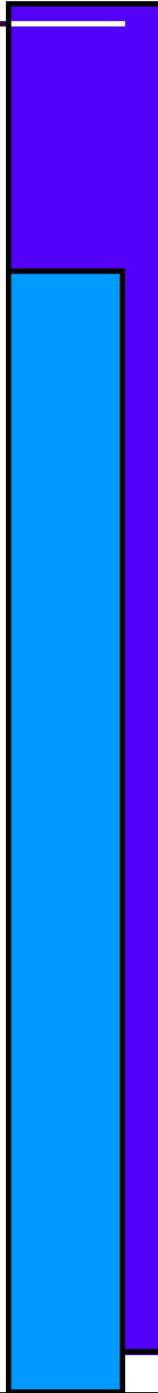
In addition, your employer has a right to dictate what doctor you see. This doctor can, and often does, render an opinion that you are perfectly capable of returning to work even when you are still hurt. The employer may deny paying you temporary disability benefits based on this doctor's opinion.

Even though you may be limited to an insurance company MPN, The Arns Law Firm can help direct you to a well-respected treating physician who is fair and understands the physical requirements of your trade.

CONCLUSION

We hope you have benefited from this brief discussion of the workers' compensation system and third-party lawsuits for on-the-job injuries. If you have any questions, please feel free to contact our office.





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