

Chapter 2. After You Get Hurt on the Job



What should I do after reporting my injury or illness to my employer?

After reporting your injury and getting emergency treatment if needed (see Chapter 1), follow the steps below.

Fill out a claim form and give it to your employer

Your employer must give or mail you a Workers' Compensation Claim Form (DWC 1) within one working day after you report your injury or illness (or your employer learns about it). You use this form to request workers' compensation benefits. If your employer does not give you a claim form, you can get one from an Information & Assistance officer. Please call **1-800-736-7401** for more information.

Read all of the information that comes with the claim form. Fill out and sign the "employee" portion of the form. Describe your injury completely. Include every part of your body affected by the injury. Give the form to your employer. This is called "filing" the claim form. Do this right away to avoid possible problems with your claim. If you mail the form to your employer, use first-class or certified mail and buy a return receipt.

Get good medical care

You should be treated by a doctor who understands your particular type of injury or illness. Chapter 3 explains how this doctor, called your "primary treating physician," is chosen. The role of this doctor is to:

- Prescribe care for your job injury or illness and manage your overall care
- Help determine when you can return to work
- Help identify the kinds of work you can do safely while recovering
- Refer you to specialists if necessary
- Write medical reports that will help determine the benefits you receive.

Tell the doctor about your symptoms and the events at work that you believe caused them. Also describe your job and your work environment.

What happens after I file the claim form?

Your employer must fill out and sign the "employer" portion of the form and give the completed form to a claims administrator. This person handles workers' compensation claims for your employer. (Most claims administrators work for insurance companies or other organizations that handle claims for employers. Some claims administrators work directly for large employers that handle their own claims. This person may also be called a claims examiner or claims adjuster.) Your employer must give or mail you a copy of the completed form within one working day after you filed it. **Keep this copy.**

The claims administrator must decide within a reasonable time whether to accept or deny your claim.

For tips on how to keep your claim on track, see p. 9. See also Chapter 11.

“Accepting” the claim means the claims administrator agrees your injury is covered by workers’ compensation. If your claim is accepted, you will receive paid medical care for your injury. You may also be eligible for payments to help make up for lost wages. To learn about these payments, see Chapter 5.

“Denying” the claim means the claims administrator believes your injury is not covered by workers’ compensation. If the claims administrator sends you a letter denying your claim, you have a right to challenge the decision. Don’t delay, because there are **deadlines** for filing the necessary papers. To get help with your claim, use the resources in Chapter 11.

If I haven’t heard from the claims administrator, is my claim accepted?

The claims administrator must decide within a reasonable time whether to accept or deny your claim. If you have questions about a delay with your claim, use the resources in Chapter 11. If the claims administrator doesn’t send you a letter denying your claim within 90 days after you filed the form or reported your injury, your claim is considered accepted in most cases.

Who decides what type of work I can do while recovering?

Your primary treating physician is responsible for explaining in a medical report:

- What kind of work you can and can’t do while recovering
- What changes are needed in your work schedule or assignments.

You, your primary treating physician, your employer, and your attorney (if you have one) should review your job description and discuss the changes needed in your job. For example, your employer might give you a reduced work schedule or have you spend less time on certain tasks. See Chapter 6.

If you disagree with your primary treating physician, you must promptly write to the claims administrator about the disagreement, or you may lose important rights. To review the steps you can take if you disagree with a medical report, see Chapter 4.

NOTE

On the claim form, you will see a message telling you that it is against the law for anyone to commit fraud in order to:

- Obtain workers’ compensation benefits or payments, or
- Deny an injured worker these benefits.

Fraud is a felony. This law applies to everyone in the workers’ compensation system, including injured workers, employers, claims administrators, doctors, and attorneys.

To report fraud, contact a local district attorney’s office or the California Department of Insurance (DOI).

You can call the DOI toll-free at 1-800-927-4357, and ask for the phone number of the nearest office of their Fraud Division. See also the DOI website: www.insurance.ca.gov/0300-fraud/0100-fraud-division-overview/

I'm afraid I might be fired because of my injury. Can my employer fire me?

It's illegal for your employer to punish or fire you for having a job injury, or for filing a workers' compensation claim when you believe your injury was caused by your job. It's also illegal for your employer to punish or fire co-workers who testify in your case. The California Labor Code (section 132a) prohibits this kind of discrimination.

Also, the federal Family and Medical Leave Act (FMLA) applies to employers with 50 or more employees, while the California Family Rights Act (CFRA) applies to employers with 5 or more employees. To qualify for either FMLA or CFRA, the employee must have been employed by the employer for at least 12 months and have worked at least 1,250 hours over the prior 12 months. These laws provide eligible employees with unpaid leave for up to 12 weeks without losing their job if they need time off for serious medical condition.

If you do not fully recover from your injury, the federal Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) make it illegal for your employer to discriminate against you because of a serious disability.

If you feel your job is threatened, find someone who can help. Use the resources in Chapter 11. Note that there are deadlines for taking action to protect your rights.

Besides workers' compensation benefits, can I get any other financial assistance?

Other types of assistance may be available:

- State Disability Insurance (SDI) benefits are paid by the Employment Development Department (EDD) when workers' compensation payments are delayed or denied. It is recommended you apply for SDI benefits even if you are receiving benefits from the claims administrator, in case there is a problem with your workers' compensation claim. Make sure you tell the EDD about your workers' compensation claim. These benefits may be reduced by the workers' compensation payments that you receive.
- Social Security disability benefits paid by the US Social Security Administration (SSA) for total disability (these benefits may be reduced by workers' compensation payments that you receive).
- Benefits offered by employers and unions, such as sick leave, group health insurance, long-term disability insurance (LTD), and salary continuation plans.
- A claim or lawsuit if your injury was caused by someone other than your employer.

To learn more about these other kinds of assistance, use the resources in Chapter 11.



Keep your claim on track

Whether or not you have a problem:

- **Keep good records.** You will probably fill out and receive many forms and other papers. Keep copies of *everything*, including envelopes showing postmarks!
 - Keep notes of all discussions you have with the people involved in your claim.
 - Keep track of your medical condition and how it affects your ability to work.
 - Request in writing that the claims administrator give you copies of all medical reports and other documents.
 - Save pay stubs and time sheets before and after your injury showing your income, the dates you worked, and when you were off work.
 - Keep records of any out-of-pocket expenses that workers' compensation could cover (like prescriptions or travel costs to medical appointments).
- **Learn more about workers' compensation.** The laws and procedures in workers' compensation are complicated. What applies to another injured worker may not apply to you. Learn what your rights are, and don't be afraid to ask questions. Use the resources in Chapter 11.

Many injured workers get their benefits quickly, with no trouble at all. Others face problems and delays. This page gives tips on how to take charge of your case and make sure your rights are protected.

If you have a concern, speak up. See whether **your employer** or the **claims administrator** can agree to resolve the problem. If this doesn't work, don't delay getting help. Try the following:

- **Contact an Information & Assistance officer.** I&A officers answer questions and help injured workers. They may provide information and forms and help resolve problems. DWC also has free virtual workshops for injured workers or employers. For more information, call the Information & Assistance Unit at **1-800- 736-7401**; website: https://www.dir.ca.gov/dwc/workshop/workshop_english.htm
- **Consult an attorney.** Lawyers who represent injured workers in their workers' compensation cases are called applicants' attorneys. Their job is to protect your rights, plan a strategy for your case, gather information to support your claim, keep track of deadlines, and represent you in hearings before a workers' compensation judge. For more information, see p. 56. You can get names of applicants' attorneys from the State Bar of California (Northern region **1-415-538-2000** or Southern region **1-213-765-1000**; website: www.calbar.ca.gov), a local bar association, or the California Applicants' Attorneys Association (**1-800-648-3132** within California; website: www.caaa.org).
- **Contact your union.** Your union may be able to help resolve problems, tell you about other benefits, negotiate changes needed in your job, protect you from job discrimination, and refer you to legal services.
- **Represent yourself.** If you can't get help from the above resources, you can prepare your own case and request a hearing before a workers' compensation judge. For instructions, contact an Information & Assistance officer (see above).