

Perspective of the Injured Worker

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We're all workers

Imagine you sustained a major workplace injury that would require you to be off work indefinitely.

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Imagine you sustained a major workplace injury that would require you to be off work indefinitely.

**With your inside knowledge,
what would your first concerns be?**

How would you feel?

What the worker may consider before filing a claim

- Safety incentive programs and other indirect discouragement.
- Direct discouragement from employer after an incident.
 - Intimidation: “If you file the claim, our rates will go up.”
 - Intimidation: “Just tell the doctor it happened at home.”
- Fear that if you file the claim you’ll be fired, etc.
- Fear of the fate of other injured workers.
- Workplace culture of working through pain and perceptions of co-workers.
- Direction to on-site care before filing or a specific medical provider.

A real life story

“When I hurt my back at work, I was afraid to use workers' comp. I don't have papers to work, and I think my boss knew that. I did file a claim, even though I was scared to make my employer mad. Then I hurt my back again at work when I returned, and my employer fired me soon after that. I felt happy to find an attorney to help me fight the retaliation, but losing my job affected me a lot – emotionally and financially. Plus, I was still injured.”

Concerns about interim compensation and wage replacement

This is often the most immediate concern for workers. Specific issues include:

- Delays in payment of the first interim compensation check.
- Payment on a different schedule than normal.
- Withholding of arrears and overpayments.
- The time loss rate is often not enough to cover monthly expenses.
- Multiple claims creating misunderstandings for all parties.
- Inaccurate or incomplete wage records.

A real life story

“Over six weeks they just didn't pay me. Then I had to wait another two and half months for the State of Oregon to decide, yep, they were supposed to pay him months ago. Wow. I got an extra 25 percent for waiting. I had to miss out on Christmas and a birthday for my daughter. I could hardly buy her school clothes. I have put into this system for years, and I was taken advantage of and forgotten.”

Workers' rights in the process

- Right to file a claim.
- Right to medical care and to choose medical providers.
- Right to receive time loss on an accepted disabling claim.
- Right to receive wage loss to attend medical appointments.
- Right to reinstatement and reemployment.
- The right to be free from retaliation for using the compensation system.
- Right to benefits after claim closure and aggravation rights.

Workers' obligations

- Report the injury to the employer.
- Choose an attending physician.
- Cooperate in investigation.
- Medical releases/questionnaires.
- Initial recorded statements from the worker.
- Attend independent medical exams (IME).
- Respond to an offer of light duty work.
- Request additional accepted conditions.

Concerns of the worker regarding medical providers

- Doctors who won't treat for a workers' compensation claim.
- Finding a doctor who speaks your language.
- Being believed by doctors.
- Limits on who can be the attending physician and for how long.
- Finding providers in remote areas.
- Location of required exams can be inconvenient.
- Time away from work; going back to work before healed.
- Approval of appropriate light duty.
- Who will make the final decisions for the claim closure.

A real life story

“This has been the worst experience in my whole life. I am 60 years old and survived cancer when I was 18. This has been far worse. After surgery, I needed wound care but, since it took so long for the insurer to approve it, I became septic and spent over a week in the hospital. I could have died. The insurance companies run the whole world and I’m not going to try to fight the tiger. Getting an attorney just means I have to wait longer to be compensated. I don’t have time for that. I just wanted it to be over, so it’s settled. On top of that, because I couldn’t work, my private health insurance was canceled.”

Broader concerns

Communication

Wage loss rate and
employee benefits

Wage loss timing
and arrears

Managed care
organizations and
limits on attending
status

Understanding
scope of
acceptance

Hurdles to getting
authorization for
treatment

Rights and
obligations
surrounding
modified work

Calculation of
permanent
disability

Closure versus
settlement

Vocational benefits

Post-closure rights

A real life story

“It's very complicated, very stressful. Sometimes I get papers just in English, and they are hard to understand. It's hard to find a doctor who speaks Spanish. My workers' comp attorney helped me find a doctor after my doctor didn't want to help me anymore. The new doctor doesn't speak Spanish, but they are treating me well. The interpreter does a good job most of the time I think, but sometimes the doctor will say something long and the interpreter will only translate a few words of it. Another time, an interpreter gave me advice based on her own experience of being injured, and it was different from the doctor's advice.”

A real life story

“I learned everything I needed to know about how these insurers operate when they denied my claim based on the opinion of the ‘independent’ doctor they chose without even talking to my actual doctors.”

Questions and comments