

Workers' Compensation: What Nurses Need to Know

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What is workers' compensation?

- A statutory scheme for compensating workers who are injured or become ill on the job

What is workers' compensation?

- The only legal action available to a worker

What is workers' compensation?

- A compensation system that does not require proof of negligence

What is workers' compensation?

- A system that limits compensation paid to workers

What is workers' compensation?

- A claim in addition to contractual or other statutory claims

What is workers' compensation?

- Mandatory insurance carried by private sector employers for employees
 - Who is an employee?
 - Independent contractors vs. employees
 - “Loaned” employees

Requirements for eligibility

- Injury or illness contracted at work (“compensable injury”)
- Notification to employer “as soon as practicable”
- Claim filed within 4 years of knowledge of causal connection (statute of limitations)
- Injury/illness not due to worker’s serious and willful misconduct
- Incapacity of 5 or more days

Compensable injury

- Arises out of the course of employment
- Wear and tear - not compensable
- Infectious diseases
- Emotional distress or mental disabilities
- Pre-existing conditions / aggravation of underlying condition

Compensable Injury

- Arises out of the course of employment
 - Work hours / off-hours
 - “Coming and going” rule
 - Motor vehicle operation
 - Unusual tasks / extraordinary demands
 - Recreational activities
 - Actions of co-workers

Compensable injury

- Wear and tear
 - Injuries/illnesses due to “wear and tear” are not compensable
 - Normal activities not unique to a particular job = wear and tear
 - Repetitive strain injuries are compensable

Compensable injury

- Infectious diseases
 - Compensable if risk of contracting disease is inherent in job
 - TB, needle stick injuries
 - Contracting disease from fellow employee is not compensable

Compensable injury

- Emotional distress or mental disabilities -- compensable if
 - Arise from physical injury or illness OR
 - Predominant cause is an event or series of events at work
- May not be compensable if
 - Arise from bona fide personnel action taken without intention to inflict emotional distress

Compensable injury

- Pre-existing condition / aggravation of underlying condition -- compensable if
 - Work-related event(s) make(s) underlying condition disabling
 - Work-related event(s) is/are the major cause of disability

Notification to employer

- How soon is “as soon as practicable”?
- What must be included in the notification?
- Employer must notify DIA of injuries

Statute of limitations

- Claim must be filed within 4 years of knowledge of causal connection between work and injury/illness
- What is “knowledge”?

Worker's conduct

- Injury that is the result of worker's "serious and willful misconduct" is not compensable
- Injury that is the result of co-workers' conduct is compensable
- Worker who misrepresents health status at time of hire may not be eligible for workers' compensation benefits

Incapacity

- Worker must be incapacitated for 5 or more days

Types of benefits

- Income replacement benefits
- Medical benefits
- Loss of function benefits
- Rehabilitation benefits
- Death benefits
- Double benefits

The workers' compensation process

- Notification to employer
- Option for payment “without prejudice”
- Claim filed at DIA
- Conciliation
- Conference / preliminary order
- Hearing / order
- Possibility of settlement (“lump sum”)

Return to work

- Preference in rehiring
- Accommodations
- Re-injury

The workers' compensation law prohibits:

- Retaliation against employee for filing workers' compensation claim
- Waivers of workers' compensation eligibility

When should you consult with a workers' compensation attorney?

- Questions about employment status
- Questions about compensability of injury
 - illness vs injury
 - arising out of course of employment
 - pre-existing condition
 - stress / emotional distress
- Timelines, sufficiency of doctors' opinions
- Return to work issues

When should you consult with a workers' compensation attorney?

- Benefit levels and disability evaluations
- Re-evaluation of disability status
- Employer misconduct
- Coordination with other benefits or claims

Questions?

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