

Worker Guidebook



STATE OF NEW MEXICO

Workers' Compensation
Administration

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A Better New Mexico for Workers and Employers



STATE OF NEW MEXICO

Workers' Compensation Administration

Worker Guidebook

A Guide to Your Rights and Responsibilities Under
New Mexico Workers' Compensation Law
2019 Edition

This book is based upon the law and rules in effect in 2017. Laws can change by acts of the Legislature, rulemaking by the Workers' Compensation Administration, or decisions of the state's higher courts. Learn about the current laws affecting your case by visiting our website, or by contacting the Workers' Compensation Administration.

Workers' Compensation Administration
PO Box 27198
1-866-WORKOMP
(1-866-967-5667)

<https://workerscomp.nm.gov>

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About this Guidebook

The information contained in this book provides a general guide for workers injured or made ill on the job. The guidebook provides help in navigating the workers' compensation system and serves as a resource for basic legal rights as well as what steps to take to initiate workers' compensation benefits.

In addition to the Worker Guidebook, the Workers' Compensation Administration (WCA) has other publications on its website that provide detail on a variety of workers' compensation topics.

The workers' compensation system can be complicated, and no case is completely like any other. The guidebook provides information for injured workers so they know where to start in recovering benefits and, whenever possible, in returning to work.

Chapter 1 overviews the basics of the workers' compensation system.

Chapter 2 overviews the responsibilities of workers and employers.

Chapter 3 describes what happens when a worker is injured on the job.

Chapter 4 provides information on the basics of medical care specific to workers' compensation and how best to resolve problems, should they arise.

Chapter 5 overviews temporary disability benefits, outlining how payments are provided and calculated during recovery.

Chapter 6 deals with returning to work and touches upon re-employment and rehabilitation.

Chapter 7 provides information on how permanent disability benefits are determined.

Chapter 8 explains dispute resolution and the workers' compensation administrative court system.

Chapter 9 overviews lump-sum payments.

Chapter 10 overviews workers' compensation fraud.

Chapter 11 provides additional resources to help workers navigate the system.

Further help can be found in a glossary that contains commonly used workers' compensation terms.

WCA *ombudsmen* can assist with any questions. Ombudsmen investigate and attempt to fairly resolve complaints. Find out about the WCA ombudsman program on page 49. Injured workers may also seek assistance through a workers' compensation attorney.

This guidebook describes the New Mexico workers' compensation system as of September, 2017. Workers using the guidebook should check for updates posted at the Workers' Compensation Administration (WCA) website: <https://workerscomp.nm.gov>

About New Mexico Workers' Compensation

New Mexico's workers' compensation laws were first passed in 1929. The Workers' Compensation Act (the Act) was created to balance the interests of workers and employers. Under this *"no fault"* system, workers had the security of receiving prompt medical care, and, when applicable, monetary compensation after a workplace injury or illness. Employers had the certainty of predictable costs through the exclusive remedy of workers' compensation insurance. Workers' compensation insurance provides an *exclusive remedy to tort liability*.

The New Mexico Legislature created the Workers' Compensation Administration (WCA) in 1986 in order to expedite the resolution of workers' compensation cases. From that point on, the WCA's administrative court, rather than state district courts, have ruled on disputes over *benefits*.

The WCA's mission is to assure the quick and efficient delivery of benefits to injured workers at a reasonable cost to employers. It works steadfastly to maintain a balance between the interests of workers and employers. To better serve all New Mexico residents, the WCA has field offices across the state.

The WCA also provides the legal framework and processes for the workers' compensation system to function. It regulates the system by ensuring most employers carry workers' compensation insurance. The WCA has jurisdiction over most New Mexico businesses. The agency provides information and assistance, free of charge, to workers and employers, with services that include help from ombudsmen, reports and publications, seminars and workshops. It provides safety training and assistance, and ensures employers who are required to implement safety programs do so.

In 2003, the New Mexico Legislature created the Uninsured Employers' Fund (UEF). The fund provides monetary assistance to injured workers whose employers were illegally uninsured (see page 42).

What is the function of the WCA?

The WCA is a state agency that:

- educates all parties in the workers' compensation system;
- regulates the workers' compensation system;
- resolves disputes between workers and employers.

The WCA also issues a medical fee schedule, which it reviews and updates annually, and maintains a separate schedule for hospital charges. It resolves workers' compensation billing and payment disputes, and has special programs for case management and utilization review of workers' compensation care.

The agency enforces the Act, ensuring that employers who are required to carry coverage do so. The agency has an Enforcement Bureau that investigates and prosecutes administrative and criminal violations of the Act and **Rules**.

One of the major responsibilities of the WCA is to provide a dispute resolution process for injured workers and employers/insurers. The agency has an administrative court system to provide mediations and determine disputes through trials.

The WCA provides information about the agency and its tasks. It creates publications such as this Guidebook, the Annual Report, and other informational tools for workers, employers and health care professionals.

While the WCA works to ensure that the workers' compensation system runs smoothly, there are certain things the agency does **not** do:

- **The WCA does not sell insurance, nor does it pay benefits for worker injuries.** Benefit payments for workplace injuries and illnesses are made through the employer's workers' compensation insurance carrier. An exception to this is the UEF (see page 42).
- **Workers' compensation is not unemployment insurance.** For help with unemployment insurance, contact the [New Mexico Department of Workforce Solutions](#).
- **The WCA is not a job placement agency.** For help with job-related issues, contact the [New Mexico Department of Workforce Solutions](#).
- **The WCA does not provide job training or retraining.** For help with job retraining, contact the [New Mexico Division of Vocational Rehabilitation](#).
- **The WCA does not provide assistance with veterans affairs.** For help with veterans affairs, contact the [New Mexico Department of Veterans Services](#).
- **The WCA does not process or collect the workers' compensation assessment fee from employers.** That is done through the [New Mexico Taxation and Revenue Department](#).

Ombudsmen are WCA employees who help parties understand their rights and responsibilities, investigate complaints and attempt to resolve them. They can be reached by phone and are available in person. Drop-ins are allowed, but appointments are recommended to ensure someone is available. Contact them at 1-866-967-5667. Their services are free of charge.

Chapter 1: Workers' Compensation

What is workers' compensation?

Workers' compensation provides a standardized solution for what to do when a worker is injured on the job. It is a system of insurance that protects workers and employers from some of the losses caused by on-the-job accidents and job-related illnesses. Injuries can occur through:

One event on the job. Examples include falling, sustaining injuries in a car accident while delivering goods, or when lifting a heavy object.

Repeated exposure at work. Examples include loss of hearing from working around loud machinery, repeated exposure to chemicals, or injuries sustained from repeating the same motion over and over.

What is the workers' compensation fee?

The workers' compensation fee is not the same as workers' compensation insurance. The fee is taken quarterly from the employer and worker, and funds the Workers' Compensation Administration to cover operational costs. See page 11 for details.

Who is covered by workers' compensation insurance?

In New Mexico, employers with three or more workers are required to carry workers' compensation insurance. There are some exceptions. Real estate agents and domestic workers are not required to be covered, though their employers may voluntarily purchase coverage. In addition, all businesses required to be licensed by the Construction Industries Division of New Mexico's Regulation and Licensing Department are required to carry insurance regardless of the number of workers. The insurance covers all full-time, part-time, temporary and seasonal workers. Federal workers are covered by a separate federal workers' compensation system. The New Mexico WCA does not have enforcement authority on tribal land, absent their consent; however, tribes may choose to enforce the requirement. For more information on coverage, see the *WCA's Employer Guidebook*.

What is covered by workers' compensation insurance?

Payment for medical care. If an injured worker requires medical care, workers' compensation insurance will cover the cost of care.

Payment of temporary wage replacement for loss of work. If a worker is unable to work and earn pay for seven cumulative days, or if the worker continues working at a lower rate of pay, temporary disability benefits provide some measure of financial relief while the worker is unable to work, or until the worker's medical condition becomes more stable (see Chapter 5).

Payment for permanent injury. If a worker is permanently injured, disability payments are made to the worker for an extended period of time (see Chapter 7).



STATE OF NEW MEXICO
Workers' Compensation
Administration

The mission of the New Mexico Workers' Compensation Administration is to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers.

How do workers report a workplace accident?

Workers who sustain a workplace injury or illness must generally report the accident within 15 days after the occurrence.

Are independent contractors covered by workers' compensation insurance?

Independent contractors are not considered to be employees, so business owners who use independent contractors are not required to carry workers' compensation insurance. Independent contractors are responsible for carrying their own insurance. However, there are times when employers try to avoid paying workers' compensation insurance premiums by wrongfully claiming their employees are independent contractors. Workers who suspect they may be misclassified can determine a more accurate classification by looking at the [Internal Revenue Service's definition of an independent contractor](#), or by contacting an ombudsman.

The New Mexico *statutes* governing workers' compensation can be found by using the [New Mexico Compilation Commission's database](#). Search Chapter 52 of the New Mexico Statutes Annotated (NMSA) for information on workers' compensation.

Rules governing New Mexico workers' compensation issues can be found online. Rules of the New Mexico Administrative Code (NMAC) are created by the Workers' Compensation Administration and are updated annually.

What if a worker is injured on the job but the employer doesn't have the required insurance?

Some employers do not carry workers' compensation insurance even though they may be legally required to do so. To determine whether an employer has workers' compensation insurance, ask the employer or supervisor. It is also possible to look up the employer's business name to see if they carry coverage. If it appears they do not, contact the WCA's Employer Compliance Bureau. If an employer is illegally uninsured, the worker may be eligible for assistance through the Uninsured Employers' Fund (UEF) (see page 42).

Chapter 2: Worker/Employer Responsibilities

Both workers and employers have responsibilities pertaining to workers' compensation. This chapter looks at what actions can be taken *before* and *after* a workplace injury by both workers and employers, in order to assure the quick and efficient delivery of benefits to workers at a reasonable cost to employers.

What are a worker's responsibilities before a workplace accident?

- Practice safety at all times while at work.
- Read the WCA poster (p. 12). The WCA poster contains information on a worker's rights as well as who administers the employer's workers' compensation insurance.
- Note the employer's insurance information. The WCA poster contains a box in the center in which the employer should have indicated the name of the insurer and their contact information.
- Know where the *Notice of Accident (NOA)* forms can be found. The forms and the WCA poster should be in an obvious place where workers can see them. They are usually together.
- Determine if the employer has designated a health care provider to treat work-related injuries. This may be found in a company book that contains workplace personnel policies.

What are an employer's responsibilities before a workplace accident?

- Provide a safe workplace.
- Pay the workers' compensation fee. The workers' compensation fee is \$4.30 per worker, per quarter. Employers pay the fee based upon the number of workers on the last working day of the quarter. Part of the fee is deducted from each worker's payroll (\$2), and part is paid by the employer (\$2.30) for each worker, each quarter. The workers' compensation fee funds the operations of the Workers' Compensation Administration.
- Display the WCA poster and NOA forms in a conspicuous place. The WCA poster contains information about what to do if a worker is injured at work. The employer's insurer or *adjuster* should be listed on the poster, as well as the worker's rights and responsibilities. The WCA poster must be posted in an obvious place, such as the company break room.

Did You Know?

- Workers receive benefits no matter who was at fault for the workplace accident.
- Medical care must be paid for by an employer's insurer if a worker gets hurt on the job, whether or not time from work is missed.
- Workers may be eligible for benefits even if they are a part-time, seasonal, or temporary workers.
- It is illegal for an employer to retaliate against a worker simply for filing a workers' compensation claim.

WORKERS' COMPENSATION ACT

If You Are Injured At Work Si Se Lastima En El Trabajo

1) **Notice** -- In most cases you must tell your employer about the accident within 15 days, using the Notice of Accident Form.

2) **You have the right** to information and assistance from an information specialist known as an Ombudsman at the Workers' Compensation Administration.

3) **Claims information** -- Contact your employer's Claims Representative (see box below).

1) **Aviso.** -- En la mayoría de los casos usted debe de avisarle a su empleador del accidente dentro de los primeros 15 días usando las formas de Aviso de Accidente.

2) **Usted tiene el derecho** a información y ayuda contactándose con un especialista en información conocido como "Ombudsman" en la Administración para la Compensación a los Trabajadores.

3) **Información acerca de Reclamaciones.** -- Contáctese con el representante de reclamaciones de su compañía.

Employer's Insurer / Claims Representative:

Name: _____
Phone #: _____
Address: _____

Note: Employer must fill in insurer / claims representative information.

YOUR RIGHTS

If you are injured in a work-related accident:

Your employer / insurer must pay all reasonable and necessary medical costs.

You may or may not have the right to choose your health care provider. If your employer / insurer has not given you written instructions about who chooses first, call an ombudsman. In an emergency, get emergency medical care first.

If you are off work for more than seven days, your employer / insurer must pay wage benefits to partially offset your lost wages.

If you suffer "permanent impairment," you may have the right to receive partial wage benefits for a longer period of time.

Ombudsmen are located at the following offices:

Albuquerque: 1-866-967-5667 1-505-841-6000	Farmington: 1-800-568-7310 1-505-599-9746	Hobbs: 1-800-934-2450 1-575-397-3425	Las Cruces: 1-800-870-6826 1-575-824-6246	Las Vegas: 1-800-281-7889 1-505-454-9251	Roswell: 1-866-311-8587 1-575-623-3997	Santa Fe: 1-866-476-7381
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SUS DERECHOS

Si se lastima en el trabajo:

Su empleador / asegurador debe de pagar por los gastos médicos necesarios y razonables.

Es posible que usted tenga, o no tenga, el derecho de escoger el proveedor de servicios para la salud. Si su empleador / asegurador no le ha dado instrucciones por escrito de quien es el que selecciona primero, pregúntele o llame a un ombudsman. En una emergencia, obtenga asistencia médica de emergencia primero.

Si usted está fuera del trabajo por más de siete días, su empleador / asegurador debe de hacerle un pago compensatorio de prestaciones para compensar parcialmente la pérdida de su salario.

Si usted sufre "daño permanente," usted puede tener el derecho a recibir prestaciones parciales de salario por un periodo de tiempo más largo.

If You Need HELP Call:

Ask for an Ombudsman

Si Usted Necesita Ayuda Llame Al:

Pregunte por un Ombudsman

1 - 8 6 6 - W O R K O M P (1-866-967-5667)

Visit our website at: <https://workerscomp.nm.gov>

For FREE copies of this poster and Notice of Accident Forms call: 1-866-967-5667

USE A NOTICE OF ACCIDENT FORM TO REPORT YOUR ACCIDENT TO YOUR SUPERVISOR

EMPLOYER: You are required by law to display this poster where your employees can read it. Post the Notice of Accident forms with it. The poster without the Notice of Accident forms does not comply with law. You have other rights and duties under the law.

-
- Inform workers in writing about health care provider selection. Workers should be informed in writing about the health care provider choice in case of an accident or illness. It should be clear whether or not the employer chooses to make the first selection of a health care provider and where to seek treatment if injured. Employers may allow workers to seek care from a provider of their choice, but it should be stated. This does not include emergency treatment, which should be found at the nearest facility if needed.

What are a worker's responsibilities after a workplace accident?

- The first thing a worker should do after a workplace accident or illness occurs is seek necessary medical care.
- Workers should timely notify the employer of an accident or injury (see page 15 for details.)
- The injured worker should keep the employer informed, and communicate with the insurance claims adjuster and health care provider.
- If there is a disputed claim, the *burden of proof* lies with the injured worker. The worker must prove an injury or illness is work-related, and the causal connection must be verified by a health care provider.
- Workers should take responsibility for their claim. They should also maintain clear communication with the adjuster/employer, and become familiar with the workers' compensation claims process. Workers should keep copies of all records, including medical records and doctor's notes.

What are an employer's responsibilities after a workplace accident?

- After a workplace accident occurs, the employer must acknowledge the injured worker's claim. The employer must provide the injured worker with a copy of the completed and signed Notice of Accident form if one has been submitted. The employer must notify the workers' compensation insurance company within 72 hours of the notice of accident or injury.
- The employer/insurer must file a *First Report of Injury (FROI)* form with the WCA if the worker misses seven or more days of work because of the workplace injury. The seven days do not have to be consecutive.
- Once the FROI has been completed, the employer must provide the injured worker with a copy.

-
- The employer should cooperate with the insurance carrier and provide any information necessary to help the carrier make a timely decision on whether to accept or deny a claim.

There are also some things an employer should *not* do.

- Employers cannot refuse to accept a Notice of Accident form.
- Employers are generally not allowed to administer the claims or pay any workers' compensation benefits out of pocket (see page 24).
- Employers cannot intimidate workers into not following through with a claim, or *retaliate* against a worker for filing a claim.



Chapter 3: When Hurt on the Job/Filing a Claim

This chapter provides the steps a worker should take when filing a workers' compensation *claim*.

What should workers do if they have a workplace injury or develop a work-related medical problem?

Workers who are injured on the job or who develop a job-related illness should seek appropriate medical care, and if needed, emergency medical care. Workers' compensation coverage generally pays 100 percent of the medical expenses for a worker injured on the job or with a job-related illness.

How does a worker timely report a workplace injury or illness?

Injured workers have up to **15 days** from when they knew or should have known of the accident to provide **written** notice to an employer/supervisor (this is 15 calendar days, to include weekends and holidays). The worker fills out, signs and dates a Notice of Accident form (NOA, see page 17), which is given to the employer, who signs and dates the form and submits it to the insurer. If an injury or illness develops gradually, it should be reported as soon as it is apparent it was caused by the job. Prompt reporting helps avoid problems and lessens delays in receiving benefits and medical care.

An NOA form should be provided by the employer, an employer's agent or another person acting in a supervisory capacity so the injured worker can document the work injury. While using this form is preferred, it is not the only method of notification. A worker is not required to give notice when the supervisor has direct observation of the accident or the consequences of the accident.

Failure to report within the time frame mandated by law could lead to loss of benefits. For this reason, it is important to report any workplace injury immediately, even if it is minor. Reporting an accident at the time it occurs makes it easier to demonstrate the claim is work-related. Evidence about the accident or the recollections of witnesses could be lost when reporting is delayed, making it more difficult to show what happened.

What if a worker is prevented from giving notice of an accident because of circumstances beyond the worker's control?

If a worker is prevented from giving notice of accident because of circumstances beyond the worker's control, notice may be extended to 60 days. An example would be when the injury requires lengthy hospitalization and the worker is unable to communicate.

Did You Know?

Workers' compensation can cover injuries that don't happen in the workplace. While most workplace injuries happen at the work site, they also sometimes occur while traveling on business, running a work-related errand, or attending a conference or trade show.

Compensation is also available for injuries that occur over time or as a result of work conditions.



What happens once an accident is reported to the employer?

The employer should immediately notify their insurance carrier. When employers receive the NOA or other form of notice that an accident has occurred, they must report the incident to their insurer within 72 hours (three days). The insurer manages the claim once the employer has filed it. Employers who need help understanding the requirements of the law can contact a WCA ombudsman (see page 49), or refer to the *Employer Guidebook* published by the WCA.

What if a worker does not become aware of an injury until outside of working hours?

Some work-related injuries may not immediately manifest or become apparent. If workers become aware of a workplace injury outside of work hours, they should contact their supervisors or managers to inform them a work-related injury has occurred.

What if employers attempt to discourage workers from submitting a workers' compensation claim?

Employers should never discourage workers from submitting a claim, nor should they refuse to sign the form, or tell supervisors not to sign the form. Problems reporting an accident should be discussed with a WCA ombudsman (see page 49).

Can a worker be fired for filing a workers' compensation claim?

It is illegal for employers to retaliate against a worker for filing a valid workers' compensation claim.

What makes a claim *compensable* (subject to benefits)?

Generally, claims for injuries or illness the worker sustains during the course and scope of employment are deemed compensable. The resulting injury or illness has to be a natural and direct result of the accident.

What happens if the worker's injury was caused by drug/alcohol use?

Workplaces should be drug and alcohol free. Having a drug- and alcohol-free workplace helps prevent accidents. New Mexico law provides for a reduction in workers' compensation indemnity benefits proportional to the degree the worker's intoxication contributed to the incident causing an injury (§ 52-1-12.1). Indemnity benefits, sometimes called lost-time benefits, help offset lost wages (see Chapters 5 and 7). The reduction in benefits can be anywhere from 10 to 90 percent, which is determined by a workers' compensation judge. Employers cannot seek a reduction in worker indemnity benefits if they knew of the impairment but allowed the worker to remain on the job. Also, the employer must have a written drug- and alcohol-free workplace policy in place, and communicate the policy to workers in order for any reduction in benefits to take effect. The

NOTICE OF ACCIDENT OR OCCUPATIONAL DISEASE DISABLEMENT NOTIFICACIÓN DE ACCIDENTE O ENFERMEDAD DE OFICIO

In accordance with New Mexico law, Section 52-1-29, Section 52-3-19 and Section 52-1-49, NMSA 1978; NMAC 11.4.4.11
Conforme a la Ley de la Compensación de los Trabajadores, Sección 52-1-29, Sección 52-3-19 y Sección 52-1-49, NMSA 1978; NMAC 11.4.4.11

I, _____ was involved in an on-the-job accident or was disabled
Yo, (name of employee/hombre del empleado) me lastimé en un accidente en el trabajo o fui incapacitado

by an occupational disease at approximately _____, on _____, 20____.
por enfermedad de oficio aproximadamente (time/la(s) hora(s)) el (date/fecha) del 20____.

Employee's social security number: _____ Where did the accident occur? _____
Número de seguro social del empleado: ¿Dónde ocurrió el accidente?

What happened? _____
¿Qué ocurrió?

To be completed by Employer: Completado por el empleador: If Yes, Employer has right to change health care provider after 60 days. En caso afirmativo, el empleador tiene derecho a cambiar de proveedor de atención médica después de 60 días.	Worker will choose health care provider. Yes ___ No ___ Trabajador elegirá proveedor de atención médica. If No, Worker has the right to change health care provider after 60 days. En caso que no elige, el trabajador tiene derecho a cambiar de proveedor de atención médica después de 60 días.
WORKER'S INITIALS _____ INICIALES DEL TRABAJADOR	

Signed: _____ Signed/Notice Received: _____
 Firma: (employee/empleado) Firma/Notificación recibida: (employer or representative/empleador o representante)
 Date/Fecha: _____ Date/Fecha: _____

ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.
PREVIOUS NOA FORMS ARE STILL VALID FOR USE

Form NOA-1 Employer/employee: Each keep one copy. ---SEE BACK OF THIS FORM---
 Empleador/empleado: Retener una copia. ---VER AL REVERSO DE ESTA FORMA---

Worker --
 For emergency medical care, go to any emergency medical facility.

Workers and Employers with questions about workers' compensation may contact an Ombudsman at any New Mexico Workers' Compensation Administration office for information and assistance. The offices are open Monday through Friday, 8 a.m. to 5 p.m., except holidays.

Trabajador
 Para emergencias médicas vaya a cualquier clínica / hospital.

Trabajadores y empleadores con preguntas acerca de la compensación de los trabajadores pueden comunicarse con un asesor ("ombudsman") a cualquier oficina de la Administración de la Compensación de los Trabajadores para información y asistencia. Las oficinas están abiertas desde las ocho de la mañana hasta las cinco de la tarde de lunes a viernes, con la excepción de días festivos.

Statewide Helpline -- Línea de Asistencia
1-866-WORKOMP / 1-866-967-5667
 toll free -- llamada sin costo de larga distancia
 New Mexico Workers' Compensation Administration
 PO Box 27198, Albuquerque, NM 87125

Albuquerque: (505) 841-8000 - 1 (800) 255-7965
 Farmington: (505) 599-9746 - 1 (800) 568-7310
 Hobbs: (575) 397-3425 - 1 (800) 934-2450

Las Cruces: (575) 524-6246 - 1 (800) 870-6826
 Las Vegas: (505) 454-9251 - 1 (800) 281-7889
 Roswell: (575) 623-3997 - 1(866) 311-8587

Santa Fe: (505) 476-7381

reduction in benefits does not apply to medical benefits. It also does not affect death benefits for survivors.

Did You Know?

Workers' compensation does not cover injuries caused by employees intentionally harming themselves.

Also, for injuries caused by the use of drugs or alcohol, indemnity benefits can be reduced anywhere from 10 to 90 percent if the employer implements and enforces a written drug- and alcohol-free workplace policy (see page 16).

How can a worker ensure a claim is processed as soon as possible?

The notes and records of the health care provider (HCP) who initially treats an injured worker after an accident or job-related illness are important. These are used by a claims adjuster when reviewing and managing a case. It is important to tell the treating HCP everything about the circumstances of an accident, including pain and other effects being experienced. It is important to tell the HCP if the accident happened at work. Workers should request copies of medical records at various stages of treatment. If an injury or illness continues, medical records should be requested frequently.

Who decides if a claim is accepted and whether there will be benefits?

The insurer, self-insurer or group insurer determines if a claim is compensable (subject to benefits) based on the information available. This includes any statements or information the injured worker provides as well as the opinions of medical providers. The claims administrator will:

- Verify that a workplace accident occurred
- Review bills and records from the HCP, and pay the bills
- Determine if and how much an injured worker is owed in indemnity benefits and assure the worker receives those benefits.

What workers' compensation benefits are available for workplace injuries?

Medical care. The workers' compensation insurer pays for necessary medical care for the worker to recover from an injury sustained at work. Medical care includes HCP visits, tests, medicines, equipment, and other treatment services and expenses, including mileage.

Temporary Disability Benefits. Workers should return to work as soon as medically possible, with a doctor's approval. If they cannot, they receive indemnity payments for wages lost during the time a job-related illness or injury prevents them from returning to their pre-injury wage.

Permanent Disability Benefits. If an injury results in a permanent loss of physical or mental function, the worker may receive these indemnity benefits.

Death Benefits. Death benefits are available if a worker dies within two years of an accidental workplace injury. When a worker dies as the result of a job injury or job-related illness, payments are made to eligible dependents, which may include spouse and children. Learn more about benefits in Chapters 5 and 7.

Keeping Your Claim on Track

Whether problems arise regarding a claim or not, it is important to:

Keep good records. Workers will probably fill out and receive many forms and other papers pertaining to their workers' compensation claims. Keep copies of everything, including the envelopes papers come in, which have a postmark date.

- Keep notes of discussions with those involved with a claim, to include the HCP, and date them.
- Request that the treating HCP provide copies of all medical reports and other documents at each visit. This request should be made in writing.
- Keep track of the medical condition, and how it impacts your ability to work. Be sure to document dates of any medical changes that occur.
- Keep pay stubs and timesheets from before and after the injury. These will show the dates worked, time off, and income.
- Keep records of all out-of-pocket expenses that could be covered by workers' compensation, such as costs for travel to medical appointments.

Learn about workers' compensation. Workers' compensation laws and procedures are complex. It's important for injured workers to understand their rights. Ask questions and make use of resources such as those found in Chapter 11.

Speak up if there is a concern. Start with the employer and adjuster to see if they can help resolve the issue. If that doesn't work, help may be found through the following:

- **Contact an ombudsman.** The WCA's ombudsmen are available to answer questions, explain the workers' compensation process, and provide any needed forms (see pages 42 and 49).
- **Consult an attorney.** In New Mexico, lawyers representing workers in workers' compensation cases are called plaintiff's attorneys. These attorneys can help with a case; gather information for a claim; help protect the worker's rights; and represent workers in hearings before a workers' compensation judge. Find the names of plaintiffs' attorneys through the State Bar of New Mexico (1-800-876-6227). See Chapter 11 for more resources.
- **Contact your union.** Unions may be able to help resolve problems or talk about benefits. They can assist with negotiating changes in the job, protect the worker from job discrimination, and refer workers to legal services.
- **Represent yourself.** If you are unable to get help from the resources mentioned above, you can prepare your own case and request a hearing before a workers' compensation mediator or judge. This is called *pro se* representation. Contact an ombudsman for assistance.

Chapter 4: Medical Care

A major goal of workers' compensation is to help injured workers return to work quickly and safely. In New Mexico, workers' compensation law requires claims adjusters to authorize care that is reasonable and necessary (*medical benefits*) for relieving the effects of any compensable workplace injury or illness.

Workers made ill by or injured on the job should:

- Seek treatment for job-related injuries or illnesses
- Be truthful in claims for medical care
- Use only authorized health care providers (HCP)
- Faithfully follow HCPs' instructions
- Take prescribed medications as directed
- Work toward recovery and return to work as soon as possible

Who provides medical treatment for a workplace injury?

When injured, seek emergency care if needed. For non-emergency care, find an HCP who takes workers' compensation claims. Some care centers and/or providers will take workers' compensation claims, and some will not. The first time care is received for a work injury, the treating provider will fill out paperwork that becomes part of the workers' compensation claim, so it is important to get a copy of the report. Insurance adjusters should authorize care that is reasonable and necessary for relieving the effects of any compensable workplace injury or illness. Be sure to inform the HCP that the injury took place at work. HCPs are any medical care provider licensed in New Mexico or otherwise approved by the WCA Director, including surgeons, psychologists and physical therapists.



Who selects the authorized HCP for work injuries?

New Mexico law allows both the employer and worker an opportunity to select an HCP, but the employer decides who will have the right to first selection of a treating physician for a workplace injury. The chosen HCP is authorized for at least 60 days. The party who did not make the initial HCP selection will have the right to select a different HCP after 60 days of treatment. To choose another HCP, the Notice of Change of Health Care Provider form may be used. The other party then has the right to file an Objection to Change of Health Care Provider form within three days of receiving a notice of change form.

In a non-emergency situation, the employer will either select the HCP or allow the worker to make the selection (§ 52-1-49 (B)). The authorized HCP selection should be in writing. Sometimes, workers are injured on the job and the employer does not specify whether the worker should go to their own HCP or to an HCP of the employer's choosing. If the employer does not timely communicate the HCP selection in writing to the worker,

this may constitute unfair claims processing and the employer/insurer may still be responsible for paying for any medical care received.

Did You Know?

A health care provider does more than administer medical treatment. The health care provider offers recommendations that can affect claims and benefits.

Treatment for workers' compensation claims may require a series of doctors. As long as there is a referral from the authorized health care provider, it should be paid for.

What is the role of the HCP in workers' compensation?

The main role of the HCP is to provide necessary medical care for injured workers so they can recover from injuries and return to work. The HCP also offers recommendations that affect claims and benefits. The HCP makes recommendations for return-to-work accommodations. The HCP notes when patients reach *Maximum Medical Improvement (MMI)*, and refers patients to providers and specialists. HCPs also provide recommendations on the degree of physical impairment, which can influence how much is given in indemnity benefits for permanent disabilities. HCPs play an important role, so it is important to stay in touch with them.

When can a worker change medical care?

If it is believed the HCP is not providing reasonable care, a request can be made for a change of HCP by either party at any time. If the parties do not agree, they can file a Health Care Provider Disagreement/Request for Change of Health Care Provider Form with the WCA Clerk of the Court.

Can a health care provider from out of state provide treatment to a worker?

Yes. Sometimes it is necessary for a worker to use an HCP outside of New Mexico. Before doing so, contact the adjuster or an ombudsman. Special approval is sometimes needed from the WCA Director.

What is Maximum Medical Improvement (MMI)?

The date of Maximum Medical Improvement (MMI) occurs when no further recovery or lasting improvement from an injury can be reasonably anticipated. The treating HCP offers a recommendation on when this happens. Benefits will either be stopped or reduced, depending on the degree of recovery at MMI. For those receiving temporary total disability benefits (see next chapter), payments will stop when MMI is reached. Workers may also be eligible for permanent disability benefits, depending on the nature of the injury. If a worker has temporary disability benefits before being awarded permanent partial disability benefits, the permanent benefits payment period will be reduced by the number of weeks the worker received temporary disability benefits. See Chapters 5 and 7 for more on benefits.

Can workers return to work before reaching MMI?

Yes, returning to work is encouraged if the HCP approves, but workers should be mindful of any restrictions outlined by the HCP, as they will help to avoid re-injury or complications. Returning workers may be placed on light or modified duty by the HCP. Employers should try to accommodate such restrictions. Find out more about return to work in Chapter 6.

What about medical referrals?

The HCP may refer the patient to other doctors. Care from authorized HCPs will be paid in workers' compensation claims as long as the treatment is reasonable and necessary. If a referral is made by an authorized HCP, it should be paid for through the workers' compensation claim. Throughout the course of medical treatment, workers may see different HCPs in different specialty areas.

Does the worker have any out-of-pocket expenses for medical care?

Generally, bills are paid by the employer's insurer, and are taken care of by the adjuster. The exception is with medical marijuana and travel expenses. To the extent out-of-pocket expenses occur, receipts should be saved and turned in to the adjuster for reimbursement.

If a worker receives a medical bill for a work-related injury that the insurance company has ruled compensable, send a copy to the adjuster. Treatment received for a work-related injury should not be billed to the worker or to a private health insurance company. HCPs cannot bill a party for the difference between usual charges and the maximum amount of reimbursement listed in the Health Care Providers' Fee Schedule. This is called "balance billing," and is prohibited in workers' compensation. Contact the HCP to remind them that their care is covered by workers' compensation, and that bills should be sent to the claims adjuster. The WCA annually updates and publishes the fee schedule that determines limits on costs of medical services. A separate schedule for hospital charges sets rates for hospital stays.

Can medical cannabis be used to treat a workplace injury?

Yes. The WCA added medical cannabis to the providers' fee schedule in January, 2016. Medical cannabis may be effective when other treatment methods have failed. The worker's HCP may certify the worker for participation in the Medical Cannabis Program (MCP) administered by the [New Mexico Department of Health](#). Once the worker has been enrolled in the MCP, the worker is responsible for obtaining the cannabis from an appropriate dispensary. The worker pays upfront for the medical cannabis, and is then reimbursed by the insurer at a rate set by law.

Can the employer offer to pay the worker's medical bills directly?

An insured employer is prohibited from making any payment of workers' compensation benefits directly to the worker, the worker's dependents, or to the HCP. The only exceptions are if the employer is self-insured or illegally uninsured. If the employer is illegally uninsured and will not pay workers' compensation benefits, the worker may file a claim at the WCA against the employer and the Uninsured Employers' Fund (See page 42). If an employer wants to pay bills directly, contact an ombudsman.



Did You Know?

The opioid drug overdose death rate for workers' compensation claimants in New Mexico is significantly higher than that found in the general public. It is important to work closely with a health care provider to limit opioid prescription use. Know how long it is safe to use prescription opioids and at what point addiction occurs. Ensure any decrease in dosage is safely monitored to mitigate withdrawal symptoms. If possible, use non-opioid prescriptions for pain.

What medical benefits require pre-authorization?

Pre-authorization is required before scheduling or performing independent medical examinations (IMEs, see below); physical impairment ratings; functional capacity evaluations; physical therapy; caregiver services; and durable medical equipment.

Are travel expenses available if travel is needed for medical care?

Yes. Traveling 15 miles or more one way from home or work to receive health care for the injury/illness will be reimbursed according to rates set by law. Travel benefits include a *mileage reimbursement*, commercial carrier costs, lodging costs, and limited meal reimbursement. Find the current *per diem* rates under Rule 3 of the link on the Rules and Statutes page of the WCA website.

How long do medical benefits last?

There is no time limit on medical benefits. In most cases, an injured worker's medical care occurs over a short period of time, for injuries such as cuts or bruises. For more serious injuries, care continues as long as medical or related treatment is reasonably necessary.

What is an Independent Medical Evaluation (IME)?

An *independent medical evaluation (IME)* is a medical evaluation by a neutral provider who has not so far treated the injured worker. An IME is sometimes necessary to clarify a medical issue. These evaluations help answer questions and help determine issues in a dispute regarding the worker's injury or condition. IMEs can be performed by a single physician or by a panel of physicians and/or specialists. IMEs can be requested by any party, or can be ordered by a workers' compensation judge.

Can a worker decline an IME?

A worker who refuses to take part in an IME that has been ordered by a judge risks losing benefits. If a worker is unable to attend a scheduled IME exam, it is important to communicate with the adjuster. Insurers could ask to be reimbursed for any charges incurred during missed appointments.

When is a case assigned to a nurse case manager?

In general, case managers are only used when the injury is very serious or complicated. A case manager is a nurse who coordinates health care services and facilitates the claims process for an injured or disabled worker. Case managers can be assigned by the employer or the insurer. In those cases, the worker has the right to decline the case manager's services. If assigned by the WCA, however, working with a case manager is mandatory.

What is the insurance adjuster's role?

The adjuster will be the primary point of contact about a claim, and the person to talk to about any concerns with a claim. When a compensable claim opens, the adjuster will talk to the worker about the claim, explain benefits, how to get care, and how to go about filling necessary prescriptions.

The adjuster also investigates and determines if the claim is compensable, dispenses medical payment to the HCP, and if an indemnity claim is involved, provides funds to the injured worker. The adjuster has the right to receive written reports from the HCP about an injured worker's medical condition. (The injured worker also has the right to copies of any medical reports from an HCP). Conversations between an HCP and adjuster about a worker's care cannot happen outside of the worker's presence unless the worker authorizes such in writing. Workers should not be pressured or forced to sign documentation authorizing such communication.

What happens if the adjuster does not authorize treatment right away?

The WCA has rules regarding pre-authorization. If pre-authorization is sought for medical care, it should be approved or denied within five (5) business days after receipt of all supporting documentation from the HCP or inpatient facility, and no later than five (5) business days before a procedure. If a worker has been admitted to an inpatient facility, requests for authorization of referrals and procedures during the stay should be approved or denied by close of the next business day after all supporting documentation is received. Seeking pre-authorization is often in everyone's best interests, and helps avoid disputes.

What is the Worker's Authorization for Use and Disclosure of Health Records form?

The Workers' Authorization for Use and Disclosure of Health Records form allows for the release of medical notes and records pertaining to the workplace injury. The form enables the insurance adjuster to expedite processing a worker's claim. A worker must complete and sign this form when filing a complaint with the WCA. In addition, workers may be asked to sign the form by their employer or employer's insurer. If the worker's authorized HCP refuses to accept the WCA approved form, the worker may be required to sign a different form requested by his or her authorized HCP.



What is the Form Letter to Health Care Provider?

The Health Care Provider Form is commonly used if the cause of the injury is in question. The information on the form will indicate whether or not a worker should return to work with or without restrictions, and if there is any impairment. The form should be filled out completely and accurately by the HCP, including signatures and dates. The form letter can be sent by any party to seek a doctor's opinion. A practitioner may charge for the completion of the form, at an amount set by the WCA fee schedule. Workers should not pay for the form; rather billing should be sent to the claims adjuster.



Chapter 5: Temporary Disability Benefits

When a worker is unable to work because of a job-related injury or illness which results in seven or more cumulative days of lost work, temporary disability benefits (also called lost-time benefits) are available to help offset lost wages. Temporary disability benefits are payments made to workers while they recover from a workplace injury. There are two types, **Temporary Total Disability (TTD) benefits**, and **Temporary Partial Disability (TPD) benefits**.

What are temporary total disability (TTD) benefits?

Temporary Total Disability (TTD) payments are made to workers who are temporarily unable to work due to an injury (§ 52-1-25.1). TTD benefits are paid only until the worker returns to work at the pre-injury wage, or reaches Maximum Medical Improvement (MMI) as determined by the authorized health care provider (HCP), whichever comes first. MMI occurs when further recovery from or lasting improvement to an injury can no longer be reasonably anticipated (see page 22). In most cases, TTD benefits are equal to the **compensation rate**, which is two-thirds of the worker's average weekly wage up to a maximum based on the state's average weekly wage.



There are cases when workers are not entitled to TTD benefits. If they have not yet reached MMI and the HCP releases them to return to work, they cannot collect TTD benefits if the employer offers reasonable work at the pre-injury wage. Also, if workers obtain employment elsewhere at the pre-injury wage, they are no longer eligible for TTD benefits.

TTD benefits are determined by a formula set by statute and are based on gross wages. Employers submit a worker's wage information to the insurer for the 26 weeks (half year) prior to the workplace accident or illness. Wages will include extras such as overtime pay and any non-cash benefits that were part of the wage package, such as living quarters and meals. The worker's **Average Weekly Wage (AWW)** (see page 28) is calculated as an average of the 26 weeks of wages. TTD benefits are calculated by multiplying the pre-injury AWW by 66 2/3 percent. Weekly checks won't exceed the maximum compensation rate, or be less than the state minimum of \$36 per week.

EXAMPLE: John injures his leg while doing road work. His pre-injury AWW is \$600. His doctor takes John off work for at least four weeks. John's weekly TTD rate is \$400 during those four weeks ($\$600 \times 66.67\%$).

What are temporary partial disability (TPD) benefits?

Temporary partial disability (TPD) payments are made when an injured worker has not yet reached MMI, but is able to return to work in a different capacity at the place of employment, or at a reduced wage, or with reduced hours during the period of temporary disability. Benefits are determined

by a formula set by statute. TPD benefits are calculated by subtracting the post-injury wage from the pre-injury wage, and multiplying the remainder by 66 2/3 percent (66.67%).

EXAMPLE: Kathy's doctor releases her to return to work, but she cannot stand for more than four hours a day. She normally makes \$600 working a 40 hour week. Kathy will be paid \$300 a week working light duty 20 hours a week, and the TPD benefits for the remaining 20 hours a week will be paid at a weekly rate of \$200 ($\$600 - \$300 = \$300 \times 66.67\% = \200 , or two-thirds of the difference). Adding the \$200 TPD benefits to the \$300 she is paid for 20 hours a week, Kathy's weekly income will be \$500.

Workers may be eligible for permanent disability benefits when injuries occur to the body as a whole. To find out more, see Chapter 7.

Workers' compensation provides temporary help for workers while they recover and get ready to return to work. A worker will always make more money on the job than by staying out of work on a workers' compensation claim. This is true even if a worker returns to work at a different job or lower pay. The worker's goal should be to recover as soon as is reasonably possible, and return to full employment. See page 30 for examples of benefit calculations.

When do temporary disability benefits begin?

Temporary disability benefits are paid when a worker is unable to immediately return to work following an injury. The first seven days of missed work count as a waiting period and will not be paid for unless a full 28 days of work are missed, per a doctor's order. If a check doesn't appear in a timely manner, contact the insurer's adjuster. By law, the first check shall be paid no later than 14 days after a worker misses more than seven days of work because of a workplace injury. Indemnity benefits are generally paid every two weeks.

What is the pre-injury Average Weekly Wage (AWW)?

The pre-injury *average weekly wage (AWW)* is a crucial element of workers' compensation claims. It is determined by calculating the total wages paid to a worker over a 26-week period, and dividing by 26. It includes overtime pay and gratuities, but excludes all fringe and other employment benefits and bonuses. AWW includes the reasonable value of board, rent, housing or lodging if that is part of the worker's benefits. Wages from a second or part-time job are also included. If a worker worked less than 26 weeks prior to the injury, the average will be for whatever period was worked.

The AWW maximum rate is based on the state's AWW, which is calculated by the New Mexico Department of Workforce Solutions, and is updated annually. The minimum is set by law at \$36 per week. Rates can be found on the WCA's website. If there is a dispute about what the AWW is, a workers' compensation judge may have to decide. For disagreements or disputes, contact an ombudsman.

Do workers pay taxes on indemnity benefits?

Generally, there are no income taxes on indemnity benefits. However, it is important to keep track of how much money is received in indemnity payments. Visit [irs.gov](https://www.irs.gov) or consult with a tax attorney for information on workers' compensation benefits and taxes.

How long do temporary disability benefits last?

Temporary disability, or indemnity benefits, last until a worker reaches MMI or returns to work at the pre-injury wage. The maximum time a worker could receive temporary benefits is capped at 700 weeks.

Can workers lose benefits for any reason?

With a judge's approval, benefits can be suspended if a worker fails to follow a doctor's orders or prescribed therapies, or doesn't keep medical appointments. Benefits can be lost when workers unreasonably refuse a post-injury return to work offer, or are terminated for misconduct after returning to work post-injury (§ 52-1-25.1 (D) (3)). Benefits can also be lost if a worker intentionally misrepresents an injury in order to collect benefits (see Chapter 10).

What if a worker doesn't receive a compensation installment?

First, contact the adjuster to find out why the payment was not made. If a worker does not receive the biweekly benefit check, it is the duty of the worker to file a claim with the WCA. This must be done no later than one year after the failure or refusal of the insurer to make payment. Workers should keep the adjuster updated with their current contact information, including a valid mailing address.

What other benefits are available while an injured worker is in recovery?

An injured worker *may* be entitled to unemployment insurance benefits while unemployed because of a workplace injury. Workers can file a claim with the New Mexico Department of Workforce Solutions (DWS). For workers who receive workers' compensation and unemployment benefits, the unemployment benefits become primary, and there is a cap on the sum (§ 52-3-60). Social Security disability may also be available for injured workers. Disability income may be reduced by any workers' compensation payments received. Other compensation may be offered through an employer or union, such as sick leave, and short-term or long-term disability insurance. Information on Supplemental Security Income (SSI) can be found through the [Social Security Administration](https://www.ssa.gov).

A major objective of workers' compensation is getting the worker back to work as quickly as possible. To learn more about how injured workers can return to work, see Chapter 6.



Temporary Disability Payment Examples

Jobs(s)	Year of Injury	Average Weekly Wage	Calculated Comp Rate	Maximum Weekly Comp Rate	Compensation Rate Used
TTD: Truck driver	2016	\$1,100	\$733.33 per week	\$785.03	Two-thirds of pre-injury wages, \$733.33
TTD: Dispatch Operator	2015	\$1,730/week	\$1,153.33/week	\$764.18	Worker will be paid maximum rate of \$764.18
TTD: Concrete mix bagger and janitor	2014	\$800/week (bagger) \$250/week (janitor) \$1,050 per week total	\$700/week	\$759.89	Worker has two jobs with different employers. Rate is two-thirds of wages from both jobs combined, \$700
TPD: Factory worker	2017	Pre-injury \$500 (40 hrs/week @ \$12.50/hr) Post-injury light duty=30 hrs @ \$12.50/hr	Difference between pre- and post-injury wage=\$125 x 2/3=\$83.33	\$797.77	Worker hours reduced to 30 per week. Worker collects wages plus TPD rate, which is 2/3 the difference between regular and reduced wage, \$83.33

Chapter 6: Return to Work

After a workplace injury or illness, the goal is for workers to return to work as quickly as possible. Even if a worker has a severe injury and can't go back to work right away, it may be possible to return to work in a limited capacity. Research shows that returning to work may help with recovery and keeps workers connected to the job. Workers' compensation is structured so that even if the worker returns to work at a different job or lower pay, more money is made by working than by staying out of work.

Can a worker stay at work or return to work after a work-related injury?

Yes, as long as the worker is able to safely do the job. Returning to work as quickly as possible is a team effort. A team helps the injured worker determine when it is safe to return to work, and what kind of work can be done once back on the job. The people who make up the team include:

- The treating doctor(s) (HCPs)
- The employer (or supervisor or someone in management)
- The adjuster
- An attorney, if applicable

It is important that everyone stay in communication with each other throughout the return to work process (though the employer/insurer must not talk to the HCP without the worker present. In *Church's Fried Chicken No. 1040 v. Hanson*, the New Mexico Court of Appeals upheld an order prohibiting the employer/insurer from engaging in contact with the worker's treating physician without the worker's knowledge). A worker must actively talk with the treating HCP, employer and adjuster about:

- The work done before the injury
- The kinds of work that can be done now
- The worker's medical condition
- The kinds of work the employer could make available for the worker

After returning to the job, the employer may give the worker documents to take to appointments with the HCP in order to aid them in determining what work can be safely done. This includes light-duty job descriptions available at the place of employment for the HCP to evaluate. The employer may also give a form for the HCP to report on the worker's job restrictions. This ensures the employer knows about work restrictions, and helps them determine if light duties can be accommodated.

Who decides what kind of work can be done during a worker's recovery?

The treating doctor will make recommendations as to what kind of work a worker can or shouldn't do while recovering, and what changes should be made in work assignments to accommodate recovery. The worker, HCP,



employer, and attorney (if applicable) should review the job description and talk about any necessary adjustments. Workers may return to work with restrictions, as employers can sometimes provide temporary work accommodations that enable them to return to work as quickly as possible.

What happens when a worker goes back to work while recovering?

The HCP who examines an injured or ill worker will send a report about the worker's medical condition to the adjuster. If the HCP says the worker can return to work, the recommendation should entail clear, specific limits on what tasks can be done while recovering. These limits are called ***modified work restrictions*** and are based on information from the worker and the employer about what activities the job entails, and what it demands.

If a dispute arises during a workers' compensation claim, mediation services are available. See Chapter 8 for details.

These restrictions are put in place to protect the worker from further injury. Examples of possible work restrictions include *no standing for more than an hour at a time* for a worker with a leg injury, and *accommodate with a stool or chair*. The HCP's report should also indicate if any changes are needed in working conditions or schedule while the worker recovers. For example, if a worker has a hearing injury, an HCP might advise the employer to *provide a noise canceling headset to minimize loud noises*.

What kind of job offers can an injured worker expect from the employer?

Any offer of work must be for a job that can be performed and which meets the work restrictions (if there are any) from the treating HCP. Be prepared for the unexpected when returning to work. It may be possible to return to the same job, or the same job with accommodations, but it may also not be possible to return to the same work. There will be a spectrum of possibilities, so it is best to be open to them.

If workers disagree with the HCP's opinion on whether or not they should return to work, they should contact the adjuster immediately about the disagreement. Workers who are able to return to work but refuse to take the offered job risk losing indemnity benefits.

Is an employer required to rehire an injured worker?

Yes, under limited circumstances. Employers are not required to hold a worker's position open following a job accident. However, once a worker is released by the HCP to return to work, the employer is required to offer to rehire the worker if the employer is hiring, the worker requests re-employment, and the job is available (§ 52-1-50.1). The HCP must certify that the worker is able to return to the pre-injury job or a similar or modified job. Wages will be paid at the former rate or lower. If the wage rate is lower, there is help in the form of temporary partial disability benefits or permanent partial disability benefits (See Chapter 5).

What if workers return to the job after an injury but find they are unable to do the work?

No one is expected to do work they cannot do. It is important to communicate with the HCP and employer about modified duties or work restrictions. The worker should consult with the employer to determine if there are jobs that can be done with medical restrictions. If the employer can't find lighter duties for the worker, then it may be necessary to look for work elsewhere. See Chapter 7 for information about other benefits.

What if an employer assigns work that is outside of a doctor's work restrictions, or is not the kind of offer a worker wants?

A worker does not have to accept any work that does not meet a doctor's restrictions. Workers should communicate with the employer about the doctor's work restrictions and discuss ways the restrictions can be met. Discussing the restrictions with the employer allows everyone to come to a better understanding of what the restrictions are. The worker can also contact the adjuster to discuss the problem. The adjuster will communicate with the employer.

Sometimes employers are unable to offer the kind of job a worker wants and they are justified based on business realities. Sometimes the doctor's work restrictions don't fit in with any of the employer's available jobs.

However, if an employer *can* bring a worker back but doesn't, it could be a violation of workers' compensation and other law. For assistance, contact the WCA to talk to an ombudsman.

Is it possible to still get medical treatment for a work-related injury or illness after returning to work?

Yes, medical benefits will continue if they are deemed reasonable and necessary by the HCP. For a list of what's included in medical benefits, see Chapter 4.

What types of rehabilitation services are available?

The [New Mexico Division of Vocational Rehabilitation \(DVR\)](#) offers job placement services as well as guidance and counseling, specific job training, education, physical and mental rehabilitation services, and more, depending on individual needs. If an injured worker meets DVR's eligibility requirements, the agency also provides job placement services for workers who cannot return to their previous employer.



Can a prospective employer ask about prior medical history?

Yes, under certain circumstances. Pursuant to the New Mexico Workers' Compensation Act, employers may ask by written questionnaire or employment application about the applicant's medical condition. It is important to disclose medical information honestly, as there may be penalties for withholding information (§ 52-1-28.3).



Chapter 7: Permanent Disability Benefits

Workers who suffer a permanent impairment or loss of function to their body will be entitled to additional compensation after they have reached maximum medical improvement (MMI).

Permanent disability benefits include:

- **Permanent Partial Disability (PPD)** benefits, which includes *whole body* impairments, whole body impairments with modifiers, and *scheduled injuries* (loss of use), and
- **Permanent Total Disability (PTD)**, which occurs rarely.

What are permanent partial disability (PPD) benefits?

A partial disability is a condition where a worker suffers a permanent impairment from a workplace injury. PPD benefits are based on the worker's *impairment rate* and other factors, including the nature of the injury and body part(s) affected. The PPD rate (also called the *disability rating*) is calculated using rates set by statute (§ 52-1-26.1-4).

There are three types of PPD benefits:

Whole Body - Impairment Only

If a worker's injury is to the *body as a whole* (usually an injury to the head, neck, shoulder, back or hip), it is considered a whole body injury. The HCP assigns a percentage impairment rating to the worker, based on the standards in the *American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides)*. If the worker is back to work and earning at least the pre-injury wage, the worker is entitled to receive permanent partial disability benefits at the compensation rate, multiplied by the impairment rating percentage only.

For example, a worker has been placed at MMI and has returned to work making as much or more than the pre-injury wage. The worker's pre-injury average weekly wage was \$600, so the compensation rate would be \$400, or two-thirds of the weekly wage. That number, multiplied by the impairment rating of 10 percent assigned by the HCP, would qualify the worker to a payment of \$40 per week for the injury.

Whole Body - Impairment with Modifiers

If a worker does not return to work after MMI, or returns to work earning less than the pre-injury wage, PPD whole body benefits may be increased based on a formula that considers the worker's age, education, skill level, training and reduction in physical capacity, as these factors are relevant to the worker's ability to return to the workforce. These factors are commonly called "modifiers."



The modified PPD rate is calculated using the following *modifier formula*, which is based on statute (§§ 52-1-26.1 - 4):

EXAMPLE: (Impairment rating): A 42-year-old worker with an injury to his back receives an impairment rating of 12 percent from the HCP.

(Age): The worker receives one (1) modifier point because his age is 42.

(Education): He completed school through the 10th grade, so he is awarded two (2) points.

(SVP): The worker's *specific vocational preparation (SVP)* assigned by the *Dictionary of Occupational Titles* is six because he is a barber. Workers with an SVP of six receive two (2) modifier points.

(Training): The worker was retrained for another job, which he was able to perform, so he receives zero (0) points. (If he had been unable to perform that position, he would have received one (1) point). The worker's modifiers total five (5) points.

(RPC): The total of five (5) modifier points is multiplied by the points the worker receives for *residual physical capacity (RPC)*. RPC is based on a chart set in statute (§ 52-1-26.4), which assigns a number based on the difference between the worker's capacity to perform physical work before and after an injury. The worker's HCP found the worker's post-injury capacity was only medium duty, less than his usual and customary work of heavy duty, and according to the chart, the worker should be assigned an RPC of three (3). Multiplying the modifiers of 5 with the RPC of 3 provides a total of 15. That number is added to the impairment rating of 12, for a total of 27, which results in the PPD rating of 27 percent. The worker's pre-injury wage was \$800 per week, so the compensation rate would be two-thirds that amount, or \$533.36. Multiplying the compensation rate by 27 percent results in a weekly PPD payment of \$144.

Tips:

Complete and return immediately all requests for information sent to you regarding your claim.

Inform your adjuster about any changes in your employment status while your claim is open.

Use your name as it appears on your employer's payroll, and use it the same way on all forms relating to your injury.

Keep your claims adjuster informed of your current mailing address.

Age + Education + SVP + Training = (subtotal)

x RPC = (subtotal)

+ Impairment Rating = PPD%

Compensation rate x PPD% = Weekly PPD payment

Scheduled Injury

If an injury results in a permanent loss of use of a specific body member as listed in the statutes, such as a finger, hand, arm, foot, leg, eye, or ear, then it is called a *scheduled injury*. Scheduled injuries are paid at a percentage of the compensation rate equal to the loss of use of the specific body part. The percentage is determined by the degree of loss of function caused by the injury or impairment. Loss of function or use describes how an action can't be done like it was before. Loss of use is not necessarily the same as impairment. New Mexico statute lists the specific period of time benefits are allowed. For example, an injury of the foot at the ankle would be eligible for scheduled injury benefits for 115 weeks (§ 52-1-43).

What is an impairment rating?

The impairment rating describes the degree of permanent damage to a body part. The rating is given by an HCP, and is based on a reference book called the *AMA Guides*. It is also sometimes called “residual impairment.” This medical determination is expressed as a percentage, such as “10 percent impairment to the right foot.”

What happens if a worker has a permanent impairment and has reached MMI and is back at work?

When a worker has reached MMI and is back at work earning the pre-injury wage or *higher*, and has a permanent impairment, the worker may receive ongoing indemnity benefits. The benefits would be equal to the compensation rate times the impairment rating, which is a percentage. Normally, this will continue until the total number of weeks receiving workers’ compensation pay (TTD plus PPD) equals 500 weeks.

EXAMPLE: A worker’s pre-injury average weekly wage was \$500, so the compensation rate would be \$333.32, or two-thirds of the weekly wage. The HCP assigned an impairment rating of 12 percent, so the worker would also qualify for a weekly payment of \$39.99 for the injury.

What happens if a worker has a permanent impairment and has reached MMI but is not able to go back to work?

A worker who has reached MMI but cannot return to work at or above the pre-injury wage will be eligible for continuing PPD, as determined by the PPD formula. In most cases, the indemnity pay will continue until the total number of weeks receiving workers’ compensation pay (TTD plus PPD) equals 500 weeks. If wages increase during this period to the pre-injury wage or higher, the PPD may be reduced to the compensation rate multiplied by the percentage of impairment.

How long do injured workers receive PPD whole body benefits?

The number of weeks PPD benefits are paid depends on the injured body part and degree of impairment or *loss of use*. The payment period may range from seven weeks for loss of a fourth finger, to 200 weeks for the loss of an arm. Whole body injuries are typically paid for up to 500 weeks (minus any weeks for TTD payments). A worker who receives a PPD disability rating of 80 percent or higher may receive benefits for up to 700 weeks. PPD benefits are generally paid bi-weekly.

What are permanent total disability benefits (PTD)?

Permanent total disability (PTD) is a category of indemnity benefit payable when a worker has suffered a brain injury, or has been left with the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of them. PTD provides lifetime benefits at the compensation rate.



What if a worker dies as a result of a workplace accident or injury?

If a worker dies as the result of a workplace accident, workers' compensation benefits are paid to the worker's *dependents* up to the full compensation rate, contingent upon the dependent's relationship to the worker and the number of eligible dependents. The maximum amount due is how much the worker would have received in temporary total disability benefits for 700 weeks. This amount is exclusive of funeral expenses, which are also paid for at a set amount of up to \$7,500.

Are there special conditions that might qualify an injured worker for indemnity benefits?

Certain conditions can result in the award of indemnity benefits. Also, certain medical conditions can be covered *only* if they meet certain criteria. Conditions that are covered by indemnity benefits include:

- **Mental Impairment:** Primary *mental impairment* occurs when a worker has lost the ability to function mentally or emotionally at a normal level as the result of a severe and unusual workplace event. Ordinary workplace stress does not qualify, nor does ordinary emotional stress or mental problems. A mental impairment claim requires a diagnosis of mental illness from a doctor. Primary mental impairment occurs without a physical injury. Secondary mental impairment results from a physical impairment which is the result of a work injury (§ 52-1-24).
- **Facial disfigurement:** Serious and permanent disfigurement of the head or face may qualify for an extra indemnity payment.
- **Hernia:** A hernia is covered only if it meets certain conditions. It must be proven the hernia is work-related, and due to a sudden, severe strain or force at work. To qualify for compensation, a worker must also prove the hernia did not exist prior to the date of the alleged injury.

Did You Know?

Death benefits may be available even if a worker does not immediately die as the result of a workplace injury. The law covers workers who die within a period of up to two years after the workplace injury or illness.

Chapter 8: Dispute Resolution

Sometimes disagreements arise in workers' compensation claims. The WCA has its own administrative court to resolve such cases. The court is staffed with professional mediators, administrative law judges and the official court clerk, who keeps records and processes legal documents.

What is a complaint?

Complaints are legal documents filed in a workers' compensation case that set forth a dispute and ask for relief from the court against the other party. Complaints can be filed for a variety of reasons by either the worker or the employer/insurer. Not every dispute results in a complaint. In some cases, parties can seek an expedited decision by filing an application or petition. There is no fee for filing a complaint or other court documents. The WCA handles complaints that fall under workers' compensation law.

How are complaints filed?

A complaint is filed by filling out a workers' compensation complaint form and filing it at the WCA. Workers can contact an ombudsman or attorney about this. Along with the complaint, a summons for each responding party and insurer must be filed. If the complaint is filed by the worker, the worker's authorization for use and disclosure of health records must also be filed. All three forms can be found in the complaint packet on the WCA website. The complaint should be filled out completely and thoroughly, or there could be delays.



What are the time limits on filing a complaint?

It is important to file a complaint within the allowable time frame. It is up to the worker to file a claim within one year of when the worker knew or should have known there was a work-related injury, or within one year of the employer or insurer refusing to pay compensation. Filing for death benefits must take place within one year of a worker's death, if filing for eligible dependents (§ 52-1-31). If failure to file a claim within the mandated time period was caused in whole or in part by the employer/insurer leading the worker to believe compensation would be paid, the one year deadline may be extended (§ 52-1-36).

What happens after a complaint is filed?

Once a worker files a complaint with the WCA, a mediation conference is scheduled within 60 days. Injured workers, employer representatives, and insurance adjusters and their lawyer (if they choose to have one at this stage), are normally present at a mediation conference so all parties can participate.

What is a mediation conference?

Mediation conferences bring all parties together in an attempt to reach an agreement to resolve the complaint. Mediations are scheduled at the WCA field office closest to the involved parties, and are assisted by a WCA attorney mediator. This may involve videoconferencing, as mediators are located in Albuquerque.

What does a mediator do?

A mediator listens to all parties involved in the dispute, and considers a possible solution. After the mediation conference, if the parties do not reach an agreement on their own, the mediator writes a **recommended resolution** which describes a way for the dispute to be resolved. If a party wishes to reject the recommended resolution, they must do so within 30 days of receiving it, or it is deemed accepted. Once a resolution is accepted, it becomes binding. The majority of workers' compensation disputes are resolved through mediation.

What happens if the dispute is not resolved through mediation?

If the recommended resolution is rejected, the case is assigned to a judge. Then the case moves forward toward trial. All parties are given at least 20 days notice of the trial and the issues to be heard.

What happens in a workers' compensation trial?

A workers' compensation trial is a formal court proceeding. The parties are each given an opportunity to present the evidence in the case and state their arguments before a WCA judge. The administrative judges at the WCA specialize in workers' compensation law. Proceedings are recorded. Most trials last one day or less.

What is the judge's role?

A judge weighs witnesses' testimony and exhibits in order to make an informed ruling on the case. The judge follows the rules of a court proceeding and has the power to preserve and enforce order, administer oaths, issue subpoenas and compel the attendance and testimony of witnesses. Any information needed may also be compelled, such as papers, documents and other evidence. The judge's decision is filed within 30 days and is called a compensation order.

How do I talk to the judge about my case?

It is inappropriate to contact a judge outside of formal channels. Neither party may talk to the judge outside the trial setting regarding the case, something known as **ex parte communication**. Communications between a party and the judge about the merit of the case should include all parties.

Are hearings open to the public?

All hearings before a workers' compensation judge are open to the public, unless the judge decides otherwise.

What if a party wants to appeal a case?

If a judge decides a case and either party wishes to appeal, they may do so within 30 days of notification of the judge's final order. The case would be reviewed first by the New Mexico Court of Appeals. An appeal is not a new trial about the facts in the case. Rather, appellate judges examine the legal procedures of the trial to see if any technical error was made, or whether evidence presented was enough to support the trial judge's decision. An appeal can result in the trial judge's decision being affirmed, overturned, or a combination thereof, depending on how many issues are in dispute. Additional hearings are sometimes necessary.

When should a worker hire an attorney?

The decision on whether or not to hire an attorney is something that can only be decided by the worker. In complicated workers' compensation disputes, an attorney may be a valuable resource. It is their job to protect the worker's rights, act as an advocate, negotiate on the worker's behalf, gather information to support the complaint, keep track of deadlines and provide representation in hearings before a workers' compensation judge. An attorney can be hired at any time.

Does a worker pay attorney fees?

Yes, by law workers are generally responsible for 50 percent of their attorney fees, and the employer is responsible for the other 50 percent. Attorney fees are capped at an amount set by statute (§ 52-1-54).

What is the best way to find an attorney?

Workers should choose an attorney with experience in workers' compensation law. See chapter 11 for resources on locating an attorney.

Can workers represent themselves on a case?

Yes. Self-representing (pro se) workers will be expected to present their case, and prepare for trial as an attorney would. *Pro se* workers should carefully assemble information about the case and be prepared to answer any and all questions. Good record keeping is a must. Ombudsmen can help answer questions, but cannot give legal advice.

Can a non-attorney assist or represent workers before the WCA?

Yes, but that person cannot accept any money for helping in a dispute. An example of help from non-attorneys might be a close relative or friend.

Workers always have the right to seek assistance from an attorney. Half the attorney's fee is paid by the employer's insurer and half by the worker, usually out of funds deducted from the workers' compensation award for the worker. An attorney cannot charge more than a set amount. Any fees charged must be approved by a workers' compensation judge.

When and why should someone call an ombudsman?

Ombudsmen are specialists in the workers' compensation claims process who can explain how the workers' compensation system works. They also help resolve disputes. Ombudsmen can be reached by phone, but they can also meet parties in person. Ombudsmen are available at all WCA field offices to provide assistance to workers and employers across the state. Some ombudsmen are bilingual in English and Spanish, so if help is needed in Spanish, a Spanish-speaking ombudsman can be made available. Ombudsmen will explain rights, responsibilities and options, or they may contact the other party and attempt to resolve a problem. Ombudsmen are not advocates for any party and do not take sides. They cannot give legal advice. Ombudsmen cannot assist any party who is represented by an attorney, nor on any claim that is in the formal adjudication phase. Their services are free of charge.

What is the Uninsured Employers' Fund?

New Mexico workers injured on the job whose employers do not have workers' compensation insurance when legally required to do so may qualify for benefits from the New Mexico Uninsured Employers' Fund (UEF). Benefits are paid by the UEF, which is administered through the WCA. At present, up to \$40,000 is available for payment of medical benefits. Indemnity (disability) benefits are also limited to \$40,000. If indemnity benefits do not amount to \$40,000, any unused portion may be applied to payment of medical expenses above the \$40,000 medical limit. If the UEF pays benefits on a claim, the employer must then reimburse the fund for benefits paid, plus penalties and interest. Penalties assessed against the employer can range from 15 to 50 percent of the total claim amount.

Chapter 9: Lump-Sum Payments

In general, the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law specify that it is in the best interest of the injured or disabled worker to receive benefit payments on a periodic basis (§ 52-5-12). Lump-sum payments and settlements are official agreements that occur only when all parties agree. Any payment agreement must be approved by a workers' compensation judge.

With the approval of a workers' compensation judge, a worker may elect to receive compensation benefits in a *lump-sum payment*. There are several categories of lump-sum payments:

- Return to work lump-sum payment
- Partial lump-sum payment for debt
- Lump-sum settlement
- Quarterly payment

What is a return to work lump-sum payment?

Workers may elect to receive a lump-sum payment for benefits if they have returned to work for at least six months and are earning at least 80 percent of the Average Weekly Wage (AWW, see page 28) earned at the time of the injury or disablement. Medical benefits are not affected. This type of payment can also be ordered by a judge. A Petition for Lump-Sum form must be completed and filed with the WCA Clerk of the Court for all types of lump-sum requests. A hearing may be set so a WCA judge can explain the payment with the worker. This ensures the terms of the payment are thoroughly understood.

Once a worker receives this kind of lump-sum payment, there may not be further benefit income for the compensable injury or disablement. The worker can receive only the portion of the benefit income that is based on the impairment rating from the disability through this return to work lump-sum payment. Also, the insurer can negotiate a fee of up to 5 percent of the current value of all future benefits when disbursing this payment. The fee is called a discount, and it is compounded annually. When considering the amount of money due in the lump-sum, this discount should be considered, as it lessens the amount of the total compensation otherwise payable. Workers can contact an ombudsman for more explanation.

What is a partial lump-sum payment for debt?

This kind of payment can be requested by the worker for the sole purpose of paying genuine debts accumulated during the course of an injury or disablement. It can be a partial payment or for the entire amount of benefits, and can be by agreement, or ordered by a judge. The partial lump-sum payment only occurs after the worker has reached MMI (see page 22), and with the approval of a workers' compensation judge. Copies of records documenting accumulated debt must be attached to a petition for this type of payment.



In a partial lump-sum payment for debt, benefits are deducted from the end of a worker's disability payments. This lessens future benefit payments, as the number of weeks factored into the payment would be reduced and payments would end sooner.

EXAMPLE: Benefits are paid out to the worker in two payments per month, for a total of \$100 per month. A worker petitions for a lump-sum payment in the amount of \$1,000. If a payment is awarded, the length of benefits would be reduced by 10 months, or 20 two-week payment disbursements. A total of 40 weeks of benefits would be deducted from the worker's benefits.

What is a lump-sum settlement?

A worker, employer and employer's insurer may choose to resolve a claim for injury with a lump-sum payment for all or a portion of past, present and future payment of compensation benefits, medical benefits, or both. In exchange, the worker releases the employer from liability of further benefits, depending on the scope of the settlement terms. The proposed agreement for a lump-sum payment must be presented to a workers' compensation judge for approval. A hearing is held and the payment is approved if the settlement has been agreed to by the worker and the employer. The worker must fully understand the terms, conditions and consequences of the proposal. The proposal must be fair and provide substantial justice to both the worker and the employer.

What is a quarterly installment payment?

When benefit payments are quite small, the worker can receive a lump-sum payment that combines the money into larger sums. If the compensation benefit to an injured worker is less than \$50 per week, any party may petition the workers' compensation judge to consolidate payment so that it comes in quarterly installments.

What are the advantages of lump-sum payments?

There are some benefits to lump-sum payments. When using a partial lump-sum payment for debt, a worker is able to pay off bills. Lump-sum payments allow a worker to take a larger portion of money in one sum, rather than multiple, smaller payments spread out over time. Lump-sum settlements avoid the risk of a trial, and allow both sides to negotiate an amicable resolution to a claim.

What are the disadvantages of a lump-sum payment?

Closing out medical and/or indemnity payments with a lump-sum payment requires careful consideration. Once the lump-sum payment runs out, there are no more benefits to be paid. Medical lump-sum payments may seem attractive in the short run, especially when it appears an injury seems to be healed. However, complications can occur after a period of time. For example, a bad back can lead to a bad hip years later, requiring further care.

Workers should also note that a payment that closes out future medical care may be affected by federal Medicare regulations. For instance, it may be necessary to repay Medicare for any payments made for workers' compensation claim-related services received before the workers' compensation lump-sum payment (something known as a claw back). For more information, visit the [Medicare website](#).



Chapter 10: Fraud and Improper Conduct

In order for the workers' compensation system to work properly, all participants must act in good faith. Unlike a poker game, there should be no advantage to anyone lying or concealing information. When anyone in the system acts dishonestly or unfairly, the Workers' Compensation Administration has the statutory authority to investigate and penalize improper conduct.

What is workers' compensation fraud?

Fraud is a crime. Fraud is the intentional misrepresentation of material fact that affects benefit payments, which can occur through conduct, practices, omissions or representations by a party, to include workers, employers, health care providers and insurers. An example of fraud would be an attempt to obtain benefits through false statements and misrepresentation of facts, such as a worker faking an injury, or an attorney stealing money from an injured worker.

If workers lie about their injuries, can they collect benefits?

No. If workers intentionally misrepresent a material fact, that is fraud, and they cannot collect benefits. For example, a worker who injures his back playing football on his day off and then tries to report his injury as one sustained at work, constitutes fraud. If someone believes that fraud is taking place, it should be reported to the WCA's Enforcement Bureau.

How can fraud be reported?

Whenever fraud is suspected, that information should be reported to the WCA. Anyone who suspects fraud has occurred should report it. Reports can be made by telephone at 1-866-967-5667, or online by filling out a form found on the agency website. Once the WCA has received an allegation, an investigation takes place to find out if the allegation can be verified. All parties may report any type of wrongdoing during a workers' compensation claim. If it is discovered that fraud or other wrongdoing has taken place, the WCA will pursue the appropriate legal action.

How is fraud prosecuted?

Fraud may be prosecuted criminally or in a WCA administrative court. If the offender is convicted of criminal fraud, the offender will be required to pay restitution and could face a prison sentence. Administrative penalties include the suspension or reduction of benefits, monetary fines, or the complete dismissal of a claim.

What is bad faith?

Bad faith is unreasonable, intentional or malicious denial or refusal to pay a claim without any reasonable basis. It is also the intentional conduct in the handling of a claim by any person, including the worker, that amounts to fraud, malice, oppression or willful or reckless disregard of the rights of any party.

If a business does not appear on the Employers' Workers' Compensation Coverage lookup page on the WCA website, please contact the WCA Employer Compliance Bureau at (505) 841-6851.

Did You Know?

Reports of fraud or other improper conduct can be made to the WCA by phone, by email, or by filling out a fraud form on the WCA website. Report fraud at 1-866-967-5667.

What is unfair claims processing?

Unfair claims processing is any practice, whether intentional or not, that delays or prolongs benefit payments, including delays in the settlement of claims, failure to pay authorized and undisputed medical bills in a timely manner, or misrepresentation of facts relating to a claim. Workers' compensation law (§ 52-1-28.1) describes how unfair claims processing practices and bad faith can be committed against a worker by an employer, insurer or claims processing representative. The law provides a remedy for the worker in the form of extra benefits in addition to any benefits that are due. The benefit penalty cannot be higher than 25 percent of the benefit amount ordered to be paid the worker. If the employer, insurer or claims processing representative has repeated their unfair claims processes or bad faith, the WCA Director or workers' compensation judge may fine the offender a \$1,000 civil penalty for each occurrence, payable to the WCA.

What are other kinds of improper conduct?

Other miscellaneous examples of improper conduct in workers' compensation include late reporting of injuries or benefit payments, or billing misconduct such as balance billing (see page 23).

What happens if an employer retaliates against a worker for filing a workers' compensation claim?

Retaliation is an illegal act by an employer who punishes a worker who has filed or attempted to file a workers' compensation claim. The punishment may result in the worker getting fired, or in the creation of a hostile work environment. If a judge finds there was retaliation, the employer may be required to rehire the worker and face other penalties.

I don't know if my employer carries workers' compensation insurance. What should I do?

Ask your employer if they carry insurance. It is also possible to look up an employer's coverage on the Proof of Coverage link on the WCA website. Sometimes an employer is not required to carry workers' compensation insurance. If the business does not appear in the Proof of Coverage list, contact the WCA's Employer Compliance Bureau at (505) 841-6851.

What if I find out another party committed improper conduct a year or two after it took place?

Report it anyway. Leave it to the WCA to determine if an investigation is appropriate. Unfair practices can be reported to the WCA Enforcement Bureau at any time. In a filed case, a judge will look at the law and facts in each case. However, if the act took place a long time ago, it may affect the WCA's ability to investigate the allegation or adjudicate the claim.

Chapter 11: Resources

Important Phone Numbers

Toll free numbers:

WCA Albuquerque: 1-800-255-7965

Farmington: 1-800-568-7310

Hobbs: 1-800-934-2450

Las Cruces: 1-800-870-6826

Las Vegas: 1-800-281-7889

Roswell: 1-866-311-8587

Ombudsman Hotline: 1-866-967-5667

NM WCA Albuquerque: (505) 841-6000

Enforcement Bureau: (505) 841-6064

Employer Compliance Bureau: (505) 841-6851

WCA Ombudsman Program

The WCA's Ombudsman program provides a neutral source of information for workers, employers and other parties. Their services are free of charge.

Ombudsmen explain how the workers' compensation system works. They also help resolve disputes. Ombudsmen can be reached by phone, but requests can be made to meet with one in person. Ombudsmen are available at all WCA offices, so contact one at the nearest office. Some ombudsmen are bilingual in English and Spanish, so anyone who needs help in Spanish will be connected to a Spanish-speaking ombudsman.

Ombudsmen will explain your rights, responsibilities and options. They may contact the other party and attempt to resolve the problem. Ombudsmen are not advocates for any party, and cannot give legal advice.

Ombudsmen cannot help any party represented by an attorney, nor can they help with any claim that is in the formal adjudication phase. Contact an ombudsman toll free at 1-866-967-5667.

New Mexico Workers' Compensation Law

The New Mexico workers' compensation system is based on New Mexico's statutes and rules. They outline New Mexico's workers' compensation laws, processes and procedures.

[New Mexico Statutes Annotated \(NMSA\)](#)

The NMSA's Chapter 52 is dedicated to workers' compensation law.

[New Mexico Workers' Compensation Rules \(NMRA\)](#)

New Mexico's workers' compensation rules fall under Title 11, Chapter 4 of the WCA Rules, which are divided into parts 1 - 13, and cover topics that include data reporting, payment for health care services, and general provisions.

Legal Resources

New Mexico State Bar General Referral Program

The State Bar's [referral program](#) helps connect people who have legal issues with private attorneys who can help for up to a 30-minute consultation. There is a fee for the service. Call (505) 797-6066 or 1-800-876-6227.

Albuquerque Bar General Referral Program

The Albuquerque Bar's [referral program](#) will arrange a 30-minute consultation with a licensed attorney, either on the phone or in their office. There is a fee for the service. Call (505) 243-2615.

New Mexico District Court Self-Help Guide

The guide provides general information about how to [represent yourself in court](#).

Glossary

Adjuster

A person licensed by the New Mexico Office of the Superintendent of Insurance to adjust claims while working for an insurance company, a self-insurance program, or a third party administrator. An adjuster makes decisions about benefit payments and authorizes medical treatment. Also known as a claims representative.

AMA Guides to the Evaluation of Permanent Impairment (AMA Guides)

A book published for health care providers by the American Medical Association, which describes how to rate the impairments of injured workers. The *AMA Guides* is the official standard for the impairment ratings for workers' compensation injuries in New Mexico.

Average Weekly Wage (AWW)

The weekly wage a worker earned before the injury or illness occurred, which includes wages for all jobs worked 26 weeks before the injury, even those earned through a second job. It is an average of those wages used to determine the compensation rate. The AWW may include some forms of non-monetary compensation, such as the value of living quarters, if this is part of payment for the job.

Bad Faith

Unreasonable, intentional or malicious denial or refusal to pay a claim without any reasonable basis. Also, intentional conduct in the handling of a claim by any person, including the worker, which amounts to fraud, malice, oppression or willful or reckless disregard of the rights of any party.

Benefit

Any payment to an injured worker, or on behalf of an injured or deceased worker, for compensation, medical treatment, legal expenses, funeral or travel costs resulting from a work-related injury, illness or death.

Burden of Proof

In legal disputes, the necessity of proving a fact or facts on an issue raised between parties.

Claim

A legal demand from the worker to the employer for workers' compensation benefits.

Compensable

A loss or hardship for which compensation is due. A claim for workers' compensation can be compensated if a worker sustains an injury or illness during the course of employment and the disability is a natural and direct result of the accident.

Compensation Rate

See Temporary Total Disability benefits.

Complaint

A legal document filed in a workers' compensation case by one party against another to initiate the Workers' Compensation Administration's review of a dispute.

Dependents

A worker's children or other family members who are reliant on a worker's wages and qualify to receive workers' compensation benefits in the case of a worker's death.

Dictionary of Occupational Titles (DOT)

A publication containing job titles and descriptions which is used in workers' compensation to calculate a worker's PPD rating. The DOT explains the physical abilities required to perform a job and the time and repetitiveness of a job's physical actions.

Disability Rating

A percentage value determined by calculating an injured worker's impairment as modified by the worker's age, education and physical capacity. A disability rating is used to determine benefits for an injured worker with a permanent disability.

Employer's First Report of Injury (FROI)

The form that an insurer or self-insurance program is required to file electronically with the WCA to provide a record of a workers' compensation claim. The employer or insurer is required to complete and provide the worker with a completed copy of the FROI.

Exclusive Remedy

A legal term that means workers injured on the job are not allowed to sue their employers in the regular court system when their injury is covered by the workers' compensation system.

Ex Parte Communication

Improper contact with the judge or HCP to a case without presence or knowledge of other parties involved.

Form Letter to Health Care Provider

A form containing questions to be answered by the HCP in a disputed case. The Form Letter to Health Care Provider is provided to the complaining party by the WCA either online or via the WCA Court Clerk. The form should be completed and brought to the mediation conference by the worker. A copy should also be sent to the insurer or TPA.

Health Care Provider (HCP)

A person or organization that provides health care services. By law, the health care provider may be any person licensed in New Mexico in one of these professions: medical doctors, optometrists, chiropractors, dentists, podiatrists, osteopathic physicians, physician assistants, certified nurse practitioners, physical therapists, occupational therapists, acupuncture practitioners, psychologists, athletic trainers and certified nurse-midwives.

Hearing

A courtroom proceeding where both sides involved in a workers' compensation dispute present their cases to a workers' compensation judge for resolution. This may include a trial.

Impairment Rating

Describes the degree of permanent damage to the body as a whole. This rating can only be given by the treating health care provider or independent medical examiner and must be based on a reference book called the *AMA Guides*.

Indemnity Payment

A payment to the injured or ill worker or dependents to compensate for wage loss, permanent impairment, or death. This may also be known as compensation benefits.

Independent Medical Examination (IME)

When parties dispute a worker's medical treatment, either party may petition a workers' compensation judge for the worker to be examined by an independent physician who has not previously treated the worker. IMEs can also occur by agreement of the parties. The judge then considers the opinion of that examination in determining the case. IME providers must be approved by a committee appointed by the WCA Advisory Council.

Loss of Use

Loss of or decrease of function of a specific body part in a work-related accident. This could include total amputation of a specific body part or a lower degree of loss of function (§ 52-1-43).

Lump-Sum Payment

A single workers' compensation payment, usually in place of the recurring medical or indemnity payments that would otherwise be received over a period of time. Lump-sum payments must be approved by a workers' compensation judge.

Maximum Medical Improvement (MMI)

The date after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated as a result of further medical treatment, based upon reasonable medical probability as determined by a health care provider.

Medical Benefits

Payment by the insurer to a health care provider for an injured worker's reasonable, necessary and related medical care.

Mediation

An informal meeting involving both sides (parties) involved in a workers' compensation dispute. Both sides meet with a WCA mediator to try to resolve the dispute.

Mediator

A dispute resolution specialist from the WCA who meets with the disputing parties, out of court, to try to reach an agreement.

Mental Impairment

A mental illness that can result from a physical or psychological traumatic event. The illness can be primary or secondary. A primary impairment results from a psychologically traumatic event outside the usual work experience. A secondary impairment occurs when a physical impairment results in mental distress (§ 52-1-24 (B) (C)).

Mileage Reimbursement

A monetary payment for every mile approved for travel to get to medical treatment required by the workers' compensation claim, paid only if the worker has to travel 15 miles or more each way.

Modified Work

A change to normal work duties that allows an injured worker to return to employment.

Modifier Formula

Once at maximum medical improvement, a modifier formula may be used to calculate additional permanent disability (PPD) benefits if the worker has not returned to employment at the pre-injury wage. Statute specifies the modifier points to be assigned, as well as the Dictionary of Occupational Titles (see page 36). The formula is based on factors such as age, education, job skills and residual physical capacity.

No Fault

A concept in the law that says the claim will generally be covered no matter who caused the accident.

Notice of Accident (NOA) and NOA Form

A formal notification by an injured worker to the employer that there has been a work-related accident. This can be done through a written statement or by oral notice to the employer know that an accident occurred. An accident witnessed by a supervisor or employer can also count as notice. Employers are required to post WCA Notice of Accident forms for employee use. An adequate supply of WCA Notice of Accident forms must be kept attached to the required WCA Poster (See page 12).

Occupational Disease

A disease that is caused or partly caused by the specific job a worker does.

Occupational Injury

An injury that happens on the job.

Ombudsman

A specialist who investigates and attempts to fairly resolve disputes, problems, or concerns. An ombudsman provides information on workers' compensation for all parties at no charge. An ombudsman does not provide legal advice.

Party

Typically, the worker or the employer and insurer or self-insurance program. Parties may also include HCPs, the Uninsured Employers' Fund, or the estate of a deceased worker.

Per Diem

An amount of money to cover daily cost of living when the worker is away from home for medical treatment related to the injury.

Permanent Partial Disability (PPD)

A category of indemnity benefit payable when a worker has a permanent physical impairment after reaching maximum medical improvement (MMI). The benefit amount is determined by the worker's physical impairment as rated by the *AMA Guides*, and if the worker is unable to return to work, by a formula based on factors such as the worker's age, education and residual physical capacity. See modifier formula on page 36 for additional information.

Permanent Total Disability (PTD)

A category of indemnity benefit payable when a worker has been left with the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of them, or a disabling brain injury.

Pre-existing Condition

A physical condition or illness that the worker had before the work-related accident.

Pro Se

When people represent themselves in a legal proceeding without any representation from a lawyer.

Recommended Resolution

A written evaluation by a mediator on how best to resolve a formal complaint. The parties can decide to accept or reject the recommended resolution.

Residual Physical Capacity (RPC)

A rating given to an injured worker's ability to perform physical tasks after an injury compared to before the injury (§ 52-1-26.4).

Retaliation

Any adverse action a company takes against workers because they reported a workplace injury or illness. Adverse actions can include termination, giving negative evaluations, disciplining or demoting, reassigning, or reducing pay.

Rules

Laws instituted by administrative agencies such as the Workers' Compensation Administration, usually clarifying statutory language or defining internal processes and procedures. The New Mexico WCA director is authorized by § 52-5-4 NMSA 1978 to adopt reasonable rules and regulations in order to implement the legislative purposes of the Workers' Compensation Act.

Scheduled Injury

An injury to a specific body part listed in a schedule in the statute (§ 52-1-43). Benefits for scheduled injuries are based on loss of use rather than the permanent partial disability benefit formula and are paid for a specific limited number of weeks, depending on the affected body part.

Specific Vocational Preparation (SVP)

Specific vocational preparation (SVP) is a component of the modifier formula, used to determine how much time and training is needed for a disabled worker to prepare for another job. Vocational preparation training can include education, apprenticeship, job training and essential experience in other jobs.

Statute

Written laws passed by a legislative body. Laws pertaining to New Mexico workers' compensation can be found in Chapter 52 of the New Mexico Statutes Annotated (NMSA).

Temporary Partial Disability (TPD)

Indemnity payments made to workers who remain employed but at a reduced wage or with reduced hours during the period of temporary disability. Payments are calculated using a set formula (see page 28).

Temporary Total Disability (TTD)

Indemnity payments made to workers based on their inability to perform duties by reason of accidental injury arising out of and in the course of employment, up to the date of maximum medical improvement. The temporary total disability amount is also known as the compensation rate for the worker. To see examples on how TTD is calculated, see page 30.

Third Party Administrator (TPA)

A representative hired by an insurance company or self-insurance program to handle workers' compensation claims.

Tort Liability

In a civil lawsuit for damages, being responsible for damages caused by wrongful conduct or omission.

Whole Body Injury

All other injuries not listed in the scheduled injuries statute, commonly to the back, shoulders and hips.

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