



UNDERSTANDING WORKER'S COMPENSATION

OFF-SITE JOB-RELATED INJURIES AND
COMPENSATION FOR PAIN AND SUFFERING



SCHOTT, BUBLITZ
& ENGEL s.c.



If you are injured during the course of your employment in Wisconsin, you are probably eligible for worker's compensation benefits. Most employers in the state are required to have coverage for their workers, including both public and private employers. Whether you are a full-time or part-time worker, the law is intended to protect you from medical expenses resulting from a work-related injury or medical problem and help you to return to work as soon as possible.

What Worker's Compensation Covers

The scope of Wisconsin worker's compensation is broad, covering everything from one-time traumatic events like slip-and-fall injuries to occupation-related conditions sustained over time, such as repetitive-use injuries like carpal tunnel syndrome.

Worker's Compensation also covers you no matter where you are injured, so long as the injury relates to your job. This means worker's compensation applies to injuries at your primary job site as well as any other location where you are traveling to for your job. For worker's compensation, where your injury has occurred is less important than how it occurred. Worker's compensation may cover injuries that have occurred:

- on company grounds, including the parking lot, while making deliveries or pick-ups
- while making deliveries or pick-ups
- while traveling for business
- at company-sponsored recreational events
- while working remotely

Components of Worker's Compensation Benefits

Worker's compensation pays for benefits related to workplace injuries, including reasonable and necessary doctor's bills, hospital bills, and the costs of medications and supplies. It will even pay for your mileage driving to and from your medical appointments.

If you suffer a work-related injury, you are also entitled to wage-loss benefits during the healing period if your doctor excuses you from work, or puts you on restrictions that cause you to miss earning your full pay.

You may be eligible for **Temporary Total Disability** (TTD) benefits if you are unable to work at all after your injury, or if you work with some limitations, but your employer cannot accommodate you. TTD pays a benefit equal to two-thirds (2/3) of your average weekly wages.

Temporary Partial Disability (TPD) benefits come into play if, after your injury, you can only work part-time or need to work in a lower paying job. The amount of TPD benefits varies, but will still be paid even if you are working in a limited capacity and are missing out on your full pay.

The healing period ends when an injured worker's doctor believes the worker has recovered, or they have done all that they can do to improve your condition. This is sometimes referred to as maximum medical improvement (MMI). At that point, some injured workers will also qualify for **Permanent Partial Disability** (PPD), **Permanent Total Disability** (PTD), and vocational training benefits under Wisconsin's worker's compensation law. PPD is a payment to an injured worker for a permanent loss of function in the injured body part. It is calculated based on the value of that injured body part as assigned by the State's law and the degree that it has been disabled. The degree of disability is assigned by your doctor as a percentage compared to either total amputation or total paralysis of the body part affected. PTD is essentially a determination that the injured worker is incapable of working in any capacity for the rest of their life, and thus, they are entitled to the equivalent of the TTD payments for the rest of their life. Ongoing medical expenses related to the original injury are also covered by worker's compensation.



Vocational retraining benefits come into play in circumstances when your work injury permanently ends your specific career and forces you transition into a new one. For example, if you are an over-the-road truck driver and your work injury makes it so that you can no longer sit for hours at a time, or can no longer lift, push or pull cargo, you may need to get training for a less physical desk job. Under certain circumstances, worker's compensation can provide benefits including payment of tuition for college, expenses, mileage, and even wage loss benefits that result from having to undertake an instructional program full-time to learn that new career. Other than the disability benefits already mentioned, this is sometimes the only remedy left for injured workers to get back on their feet and earn a living for themselves and their family. The right worker's compensation attorney can help you navigate this system and maximize these benefits.

What about compensation for pain and suffering?

While worker's compensation pays for medical expenses, lost wages, permanent functional disability, or the costs of rehabilitation, it unfortunately does not provide benefits for pain and suffering after an injury. Sadly, you cannot even recover your full lost wages in a claim against your employer and its insurer for your work injury. As stated before, the goal of the worker's compensation system is primarily to get you back to work if possible.

However, it may still be possible to get compensation for pain and suffering if a third party was partially or wholly responsible for a worker's injuries. A "third party" is a party other than yourself ("first party") or your employer ("second party"). Third party claims can be difficult to handle without the proper representation because the injured worker is caught in between a third party that may deny responsibility, and their employer and worker's compensation carrier that may also deny responsibility. What is worse is that the injured worker's health insurer may also deny responsibility for paying for treatment for what it may consider to be non-covered, work-related medical expenses, leaving the worker in a sort of injury limbo and unable to get the treatment needed to get better. Understandably, this leaves the injured worker in a precarious position, often times without even the ability to get back to work. In such a situation, you need excellent representation to see your rights and claims protected.



Wisconsin's No-Fault Worker's Compensation System

Wisconsin's worker's compensation program was designed as a "no-fault" system. That means that injured workers are eligible for compensation for their injuries even if the employee was primarily responsible for their own injuries. In other words, someone who was injured during the course of their employment does not need to prove their employer was negligent. Similarly, employers cannot deny claims on the grounds that the employee was somehow responsible for getting hurt.

While the no-fault system is a good thing for an employee whose carelessness led to their injuries, it also protects employers who were at fault. The no-fault system ensures there is generally no denial of benefits when an employee was responsible for their own injury. At the same time, there is also generally no increase in benefits payable when an employer's negligence caused or contributed to the worker's injuries. Exceptions to this are few. The only common exception to this is when an employer knew or should have known that the workplace was unsafe but failed to take steps to make it as safe as it could reasonably be made to be. Even in such circumstances, the employee is only entitled to a 15% increase in his or her benefit.

Worker's Comp: Exclusive Remedy, with Limited Exceptions

If you are injured during the course of your employment, worker's compensation is the only recovery you can pursue against your employer, a co-worker, or the worker's compensation insurance carrier unless you are able to prove one of the following:

- **Intentional assault.** You are not limited to worker's compensation benefits if your injury occurred because your boss, someone you work with, or a third party assaulted you – even if the injury occurred while you were working.
- **Negligent operation of a vehicle.** Similarly, if you are injured in a car accident because of someone else's negligence, including a coworker, and that vehicle was not owned or leased by your employer, you may be able to recover additional compensation.
- **Employer's actions.** Finally, in certain cases, you can also seek damages if you were injured as the result of your employer's actions that were somehow outside the scope of your employment. In this case, which would be rare as the worker's compensation law is intended to be fairly broad your employer may be held responsible just like any other third party.

When a Third Party Causes a Worker's Injuries

If a third party was responsible for causing your injuries, you may be able to recover additional compensation by filing a lawsuit against them. Again, a third party is a party other than yourself ("first party") or your employer ("second party").

If your injuries occurred somewhere other than your primary place of employment, you could have a case against a number of potential parties. The property owner, property manager, cleaning company, snow removal service, or another outside company may be held partially or entirely responsible for your injuries in a court of law. It is certainly common for lawsuits to name multiple defendants seeking to hold all responsible parties accountable for their actions or negligence.

You have the right to sue as the injured employee, but your employer and their worker's compensation insurance carrier can also sue the responsible party for damages. If you choose to take legal action, you should notify the insurance company. The reverse is also true; the insurer should tell you if they intend to file suit so you can join in the lawsuit if you choose. . Getting proper legal representation in these situations is highly advisable, even if you are not the party filing the lawsuit. The other parties will likely be seeking legal representation, and so should you.

If you are successful in proving your case against a third party, the State of Wisconsin's Worker's Compensation Division or the court must approve any settlement. It is also important to understand that you will usually not get to keep the entire settlement amount after legal fees and expenses. This is because there are other parties that also have an interest in your recovery, such as you're the health insurance company that initially paid your medical expenses or the worker's compensation insurance company that may have paid for medical expenses or disability benefits while you were missing work. Accordingly, other involved parties like your health insurance company and the worker's compensation insurance company are entitled to reimbursement from some of the settlement amount, whether the lawsuit was initiated by them or by you. Again, having legal representation is vital to ensure you understand and receive a proper distribution of the settlement proceeds before accepting a settlement

Choose a Law Firm that Handles Both Worker's Compensation and Personal Injury Law

If you were injured during the course of employment, at a work-sponsored event or outing, or while traveling for your job, and if someone else possibly contributed to or caused your injuries, you may have legal recourse in addition to standard Wisconsin worker's compensation benefits.

Because of the nuances and potential overlap between worker's compensation claims and personal injury cases, it is important to work with an attorney and law firm that handles both types of legal matters.

There can be significant issues related to worker's compensation reimbursement and payment of your future medical expenses. These issues can be complex and nuanced, so it is critical that your attorney be able to recognize and identify them. When you work with a lawyer who understands potential advantages and disadvantages of pursuing one avenue for compensation over another, you can have peace of mind knowing your attorney is working to help you get the best possible outcome for your case.

Injured While Working at an Off-Site Location? Understand Your Rights!

Whether your work-related injury occurred at your regular workplace or somewhere else, you have rights under Wisconsin law. If a third party may have some responsibility for your injuries, you may be able to obtain damages for pain and suffering, but only if you work through the proper legal channels to pursue your rights.

Worker's compensation in Wisconsin is an important benefit, designed to protect workers and employers alike. If you were injured on the job, Schott, Bublitz & Engel in Waukesha may be able to help you obtain the benefits and compensation you deserve. Our experienced worker's compensation and personal injury attorneys understand your experiences and are committed to helping injured workers obtain initial benefits, fight wrongly-denied claims, or file lawsuits against responsible third parties. [Contact us](#) online or call us at 262.827.1700 today to learn more and to schedule a free case review.



ABOUT THE AUTHOR

Attorney Raymond LaBarge focuses his practice primarily on representing clients across Wisconsin in Workers Compensation and Personal Injury including complex cases involving third party litigation; injuries that are now permanent or have required surgery; and lawsuits against construction, transportation, trucking, shipping, cleaning, snow removal, and other industries. Attorney LaBarge is known for his approach of litigating focused on his client's goals first and foremost and preparing his clients for their case to get the best outcome possible.



SCHOTT, BUBLITZ
& ENGEL s.c.



sbe-law.com