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## **BEGINNER'S GUIDE TO MARYLAND WORKERS' COMPENSATION LAW**

### **Introduction**

The purpose of this information booklet is to enlighten you about workers' compensation law in general and to explain how your case will be handled by this firm. Many of the questions that you may have about your claim are answered in this booklet. Please read this thoroughly, more than once if necessary. The information will be very important to you. A thorough understanding of the details of your workers' compensation claim can help promote a positive experience and, if you have a permanent injury, an adequate award or settlement.

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## **1. WHAT IS WORKERS' COMPENSATION?**

Workers' Compensation is insurance your employer is required to have in case you are injured at work, aggravate a pre-existing physical problem at work, or develop certain occupational diseases from your job. Benefits are paid by private insurance companies. The cost of workers' compensation insurance itself is borne entirely by the employer. No payroll deductions are taken out of individual employees' paychecks. If your claim is found to be compensable your weekly benefits and all medical bills will be paid directly by your employer's insurer. You are covered under workers' compensation from the first day you start working.

The only exceptions to workers' compensation coverage are:

- Volunteer workers, with some exceptions
- Independent contractors
- Agricultural workers, with some exceptions
- Casual employees
- Domestic workers, with some exceptions

Under workers' compensation laws, it does not matter who is at fault in the happening of the work-related accident. The injured worker is entitled to workers' compensation benefits regardless of fault. By law, however, the injured worker cannot file a lawsuit against the employer, even if the employer is at fault in causing the accident, unless your employer does not purchase workers' compensation insurance. Then you can sue your employer. Usually, a workers' only recourse against the employer for an on-the-job injury or occupational disease is to file a workers' compensation claim.

Although you are not entitled to sue your employer for an on-the-job injury, there may be circumstances where a lawsuit can be filed against another party, other than your employer, who may be responsible for your accident. For example, if you are in the course of employment and are involved in a motor vehicle accident which is some other person's fault, you may collect workers' compensation benefits as well as having the right to sue the other "at fault" driver. Similarly, if you are a machine operator and were injured while operating a piece of machinery, you would be entitled to sue the manufacturer of that machine if it was found to be defective and the defect caused your injury. There are countless other factual situations where you might have a third-party lawsuit. Your lawyer would be responsible for advising you in those situations.

## **2. WHAT INJURIES ARE COVERED BY WORKERS' COMPENSATION?**

The Workers' Compensation Act covers disability or death resulting from "an accidental personal injury" or an occupational disease sustained by the employee that "arises

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out of and in the course of employment.” The quoted words constitute the crucial elements for determining compensability and have been the subject of innumerable Maryland cases.

### 3. ACCIDENTAL PERSONAL INJURY AND OCCUPATIONAL DISEASES

You may have heard that you must have been injured by something unusual to be compensable. Fortunately, in *Harris v. Board of Educ.*, the Court of Appeals overruled a long line of previous decisions which had held that the term “accidental” required that an injury result from an unusual strain or exertion of the employee or an unusual condition in the employment. The court ruled that what must be accidental are the injury and not the activity giving rise to the injury, and that an injury is accidental as long as it was unexpected or unintended. You still must be able to point to an event or a moment of your accidental injury.

The inability of the employee to identify with certainty the exact date of the accident does not bar a compensation claim, but it is far better if you can pinpoint the moment of your injury.

If your job causes or contributes to any injury, illness or disease, you are entitled to benefits. There does not have to be an “accident” in the traditional sense of the word, and your job does not have to be the only cause of your injury.

**Injuries on/off the premises** – You may be entitled to benefits even if you are not on your employer’s property at the time of injury, or even if you are not “clocked in” when your injury occurs. Your lawyer will advise you on this point.

**Aggravation of pre-existing health problems** – Your job does not have to be the only cause of your injury. You are entitled to benefits if your job aggravates or exacerbates a pre-existing medical condition. For example, if you had a bad back when you started the job, and injure your back further while working, you may be entitled to benefits. Any permanent disability in this situation would be apportioned between the pre-existing health problem and the aggravation of that problem caused by your employment. The insurer would only pay for the part solely attributable to the accidental injury or occupational disease. Medical bills, however, will be paid in full under the new claim even if the medical condition partially pre-existed the date of the new accidental injury.

**Repetitive use injuries** – If your injury is caused by doing the same thing over and over again, you may be entitled to benefits. This type of injury is called a “repetitive trauma injury.” A repetitive trauma injury may include carpal tunnel syndrome caused by job duties such as repetitive typing, computer work, assembly work or machine operation over a period of time. These types of injuries are usually classified as “occupational disease claims.”

**Hernias** – A hernia may be compensable even though it did not result from an accidental injury, but merely from a strain arising out of and in the course of employment. In

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hernia cases, however, the claimant must prove that the hernia did not exist prior to the injury or strain or that the pre-existing hernia became aggravated in such a way that an immediate operation was necessary. A second requirement is that the injury or strain must be reported to the employer within 30 days after its occurrence.

**Occupational diseases** – The workers' compensation statute also provides coverage for certain occupational diseases if the worker suffers a disablement or dies as a result of the disease. The statute defines the term "disablement" as the event of becoming partially or totally incapacitated because of an occupational disease. The definition of "disablement" is highly controversial. Your lawyer will help you determine this. In any event, there is no occupational disease unless you first experience "disablement." In the absence of a disablement, an employer and insurer are not liable even if the worker was diagnosed as having the occupational disease and was receiving treatment for it.

When the worker has been employed by a succession of different employers, each of whom exposed the claimant to hazards that could have been a contributory cause of the disease, the employer which is liable for payment of compensation is the one in whose employment the claimant was last injuriously exposed before the date of disablement. The insurance carrier responsible is the one that covered the employer on the date of that last injurious exposure.

Occupational disease cases can often be complicated. The worker must show that the disease is due to the nature of an employment in which the hazards of the disease actually exist. Additionally, the manifestations of the disease must be consistent with those known to result from exposure to a given physical, biological or chemical agent attributable to the type of employment engaged in by the worker and it must be reasonably concluded (based on the weight of the evidence) that the disease was incurred as a result of the employment.

Examples of occupational diseases might include asbestosis for a shipyard worker, scoliosis for a miner, hypertension for a police officer or firefighter, or carpal tunnel syndrome for a worker involved in repetitive wrist motions. Medical documentation is both necessary and critical to prove an occupational disease case. You have two (2) years to file an occupational disease claim after you are actually notified by your doctor about your occupational disease.

#### 4. WHAT SHOULD I DO WHEN I AM INJURED AT WORK?

**Give notice of your injury to your employer immediately** – The law requires that you report your injury immediately to your supervisor or employer. Provide the date, time place and nature of your accident. If you do not tell your employer about your injury right away, you may jeopardize your benefits. You may lose your right to receive workers' compensation benefits if you do not report your injury and file your claim with the Workers' Compensation Commission within the time limits established by law. These time limits are discussed in more

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detail below. It is not in your best interest to postpone giving notice of your workers' compensation claim to your employer. You should act immediately.

**Seek medical treatment for your injury** – Be sure to tell every doctor you see that your injury is work related, and how you got hurt.

### **5. WILL I LOSE MY JOB IF I FILE A WORKERS' COMPENSATION CLAIM?**

The Workers' Compensation Act provides that an employee may not be discharged "solely" because the employee filed a claim for workers' compensation benefits. If an employer fires an employee for that reason, the employee would have a wrongful discharge action against the employer.

Unfortunately, there is nothing in the Act which prevents an employer from discharging an employee incapable of performing his or her work duties. In other words, you cannot be discharged for filing a workers' compensation claim, but the employer is not required to hold your job open while you are unable to work. The exception to this would be if you had a specific employment contract or you are a union member subject to a collective bargaining agreement or under the limited circumstances where the Americans With Disabilities Act applies or where the Family and Medical Leave Act applies.

Conscientious employers will try to accommodate their injured workers. In this regard, a claimant should maintain regular contact with his employer, usually through the personnel department or his or her supervisor and keep them reasonably advised as to your medical situation and/or anticipated return to work date (if known). In this regard, an employee should seek and accept light duty if it is available. It is often easier to return to the same job than to try to find a comparable new job.

### **6. HOW DO I FILE A WORKERS' COMPENSATION CLAIM?**

A special workers' compensation claim form must be filled out. Our firm will properly complete the special claim form. After the proper form is completed, it must be formally filed with the Workers' Compensation Commission in Baltimore City. Our firm will file the claim form with the Commission. The claim form is processed and returned to you in a new format (blue in color).

### **7. WHAT HAPPENS AFTER I FILE A CLAIM?**

A claim number is assigned by the Commission and a consideration date is placed on the bottom right of the blue form. The consideration date means the Commission allows your employer or its insurer until that date to raise any objections they may have to your claim. The name of the insurance company will be shown in the lower left hand corner of the blue form.

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If you do not receive any benefits you may request a hearing before the Workers' Compensation Commission. Your case will be decided by a Commissioner who listens to both sides of the case and determines what benefits, if any, you should receive. The Commissioner's decision will be based on the law and facts involved.

Any party disagreeing with a decision of the Commission may file an appeal to the Circuit Court.

### 8. THE LIST OF INTERESTED PERSONS

The following is a list of persons that you are likely to encounter sometime during the course of your workers' compensation claim. A brief description of the role of each of these persons is included.

**Claimant** – This seems rather obvious. You are the claimant. We mention this because on all future correspondence, pleadings before the Commission, medical reports and court papers, you will be referred to as the claimant.

**Claimant's Attorney** – This is our firm or any other attorney you should choose to represent your interests in the processing of your claim before the Workers' Compensation Commission.

**Employer** – The employer is the legal entity you were working for at the time of your injury. Most often the employer's legal identity is set forth on your pay stub. Under certain circumstances, however, you can have an additional employer. This may occur if you are a borrowed or temporary employee. Another example is if you are working for a sub-contractor at a construction site and your direct employer allowed its workers' compensation coverage to lapse. A general contractor on that job may in fact be deemed to be your "statutory employer" and would be required to provide you with workers' compensation coverage. This result occurs because general contractors are required by law to insure that their sub-contractors carry appropriate workers' compensation insurance coverage. Once you have been injured, the employer will typically delegate the handling of your claim to its workers' compensation insurance company. Some employers are self-insured, but will often use independent adjusting agencies to handle and process the workers' compensation claim.

**Insurer** – The insurer is the private insurance company contracted by the employer to provide workers' compensation insurance coverage benefits to injured workers. IWIF also insures many private companies. If you are a state worker, the insurer will be the Injured Workers Insurance Fund (IWIF). If your employer's workers' compensation insurance company goes out of business or your employer failed to carry workers' compensation insurance, workers' compensation insurance coverage will usually be provided by the Uninsured Employers Fund (UEF) or the Property and Casualty Guarantee Corporation.

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**Claims Representatives** – A claims representative (or adjuster) is hired by either the employer (if self-insured) or by the insurance company providing workers' compensation benefits. The claim adjuster is responsible for making decisions on behalf of the employer and insurer for the payment of benefits, medical expenses and other workers' compensation related services. In most instances, the claim adjuster typically handles only workers' compensation claims as opposed to other types of insurance claims. Therefore, the typical claim adjuster in the workers' compensation area is trained in the rules and regulations of the Workers' Compensation Commission and usually has a working knowledge of the medicine involved in the typical work-related injuries. You should avoid direct contact with the claims representative, unless your lawyer directs it.

The claims adjuster controls the issuance of the claimant's benefit checks. Accordingly, the claim adjusters have a lot of power and influence over how the claim proceeds. Insurance companies do not want to go to the expense of hiring a defense attorney unless a hearing becomes necessary. Claims adjusters carry most of the burden of handling your claim from the employer/insurer's side. Most claims adjusters are supervised and occasionally consult with defense counsel on legal or factual questions that may arise in the processing of a claim.

Claims adjusters maintain extremely high caseloads. The amount of attention that they are able to pay to an individual claimant's case on a daily basis is usually somewhat limited. Therefore, it is in the claimant's interest to make sure that the factual and medical documentation supporting the claim and the necessity for ongoing treatment is supplied to the claims adjuster in a timely and proper manner. Your lawyer will do that for you. If the claimant needs the services of a specialist, it is a good idea to give the claims adjuster a heads-up as to the necessity for the special medical treatment. It is never in the claimant's interest to have a "falling out" with the adjuster handling the claim. Disagreements between the claimant and claims adjuster can and do occur. This is why you should rely heavily on your lawyer for such contacts. Many of these disagreements can be resolved without a hearing before the Workers' Compensation Commission if the lines of communication can be kept open so that the disagreements can be resolved professionally and fairly. This firm takes a proactive approach to dealing with the claims adjuster.

Claims adjusters are not part of the Workers' Compensation Commission. Injured workers coming into our office for the initial consultation often report that "workers' comp" has refused to pay lost income or provide needed medical treatment. Most often, it is the claims adjuster, not the Workers' Compensation Commission, that has refused or cut off benefits. If we believe that the claimant is entitled to additional benefits and our efforts to convince the claims adjuster fall short, this firm will request a formal hearing before the Workers' Compensation Commission to rule on the dispute.

**Defense Attorney** – In most cases, once a hearing has been requested before the Commission, a defense attorney will enter his appearance on behalf of the employer and insurer. Most defense attorneys used by employers and insurers in workers' compensation

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cases are specialists in the defense of workers' compensation claims. The first time the claimant actually meets the defense attorney is normally at the hearing. Any claimant represented by this firm will have an attorney at any contested hearing.

**Treating Doctor(s)** – You may be treated by the doctor of your choice. The law does not require that you treat with the doctor selected by the insurance company. Your doctor will prescribe a treatment program and will release you to return to work when your condition has improved. To receive income replacement benefits, your doctor must find that because of your accidental injury, you are unable to work. Discuss with your doctor your ability to work. **Obtain a disability slip from your doctor if you are to remain out of work on doctor's instructions. It is important that you obtain a disability slip each time you go to the doctor covering the full period of time that your doctor wants you out of work. Make sure that you keep a copy of these out of work slips and send a copy to our office. The Commission will not order income replacement benefits without written off-work slips.**

It is very important that you strictly follow your doctor's treatment recommendations. Return to your doctors as often as they feel it is necessary. You should always report each of your symptoms to your doctors. Do not minimize your ailments to your doctors. Your doctor cannot properly diagnose and treat your injuries unless you completely describe all of your symptoms. If your doctor refers you to additional health care providers or therapists, please make sure that we are kept posted on the name and address of the specialists. Do not worry about the cost of medical care. Your lawyer will make sure all bills are paid by the insurance company.

Your employer's workers' compensation insurer must pay for all reasonable and necessary medical care. This includes your doctor's bills, any hospital bills, therapy or prescription bills. Make sure that you provide your workers' compensation insurance information to all health care providers at the time of service so that the providers may bill the insurance carrier directly. This is the only way health care providers get paid. Do not send medical bills to the Workers' Compensation Commission. If you are unsure or confused about any medical bills you receive, you can send the bills to our office and we will see that they get forwarded to the correct insurance carrier.

**Defense Doctor(s)** – Insurance medical examinations (IME) – Once you begin receiving benefits, the insurance company has the right to have you examined periodically by a physician of its choice. Insurance carriers describe this examination as an "independent medical examination," however, these examinations are anything but "independent." The doctor is selected and paid for by the insurance company. While you do need to be examined by him/her, you do not have to accept medical treatment from this doctor. Do not go to see a doctor that the insurance company wants you to see, unless you first discuss this with your workers' compensation lawyer.

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**Medical Case Manager** – In some cases, the insurance carrier may assign a medical case manager for your claim. The principal role of the medical case manager is to assist the claimant in the coordination of medical care and, if necessary, to help develop a medical case management plan. Medical case managers benefit insurers because they will try to hold down the cost of medical care by making sure that the injured worker receives medical care in a timely and cost efficient manner. The medical case manager will often assist in the scheduling of appointments with specialists and other health care providers to make sure that the injured worker receives the medical care needed in order to achieve a maximum medical recovery.

Medical case managers also supply benefits to the injured worker because they can help ease, reduce or eliminate some of the frustration or adverse events that may extend the injured worker's recovery or disability. Medical case managers are given access to your medical records which they will review. Medical case managers are often registered nurses so they can supply information about medical questions that you may have. Explanations of medical terminology and the purpose of certain medical tests are good examples. The information obtained by medical case managers is routinely shared on a need to know basis with individuals who associate with your case. This includes the claims adjuster, your employer and the claimant's attorney. The medical case manager may collect and evaluate medical information relative to your injury or illness either by telephone, on-site visit to health care providers, the claimant's home and/or workplace.

The medical case managers will often provide treating physicians with your job demands to help effectuate a safe and productive return to work. Moreover, medical case managers can coordinate appropriate medical care and assist in making referrals to specialists by locating special providers and assist in obtaining quality treatment for the claimant. They can also evaluate certain treatment plans or make recommendations to treatment alternatives, assisting the claimant in getting necessary equipment, medications, etc. Medical case managers will occasionally advocate for the claimant in providing medical treatment. The claimant, however, needs to fully understand the role of the medical case manager. While medical case managers should not be viewed as the enemy, you must understand that they are paid by the insurance company and thus owe an allegiance to that company. They sometimes make decisions adverse to the claimant. Be aware.

Medical case managers provide detailed and written reports which are submitted to the insurance carrier. Therefore, disparaging or unkind comments about co-workers and/or supervisors or your employer in general should never be made in the presence of a medical case manager. This information or statement might find its way into the manager's file and may become available for inspection by all parties. Complete candor and honesty with the medical case manager is expected, but personal attacks on individuals involved in the cause of your injury or the handling of your claim do not facilitate the proper resolution of your claim and may cause hard feelings or anger which could interfere with your claim somewhere down the road. The medical case managers share information with all parties so a blow up in the presence of the medical case manager is likely to create unnecessary fallout with other

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interested persons. If you need to blow off steam, the best place to do it is within your own lawyer's office. Also, personal information unrelated to your claim as to yourself and your family should not be discussed.

**Vocational Rehabilitation Providers** – These individuals are frequently employed to evaluate the job potential of an injured worker's ability to return to work. This is usually reserved only for the seriously injured claimant. It is our practice to use only certified vocational rehabilitation experts to provide evaluations, analysis and testimony since their standards of practice and methods are very specialized. Your lawyer must participate in the selection of the vocational expert. The language and approach to these evaluations are quite unique to their profession. Typically, a certified vocational rehabilitation provider will review the medical history, job history, education, training and functional abilities and many other aspects of historical significance. They also employ a variety of other professionals to assist in the evaluation process and written reports which include an opinion as to the ability of a claimant to return to the job market. Vocational rehabilitation evaluations may also include:

- A functional capacity evaluation (FCE) done by a qualified physical therapist to verify physical abilities or restrictions;
- Performing multiple tests to determine educational achievement levels, aptitudes and interest;
- Cognitive functioning testing by a neuropsychologist or the like; or
- An independent medical examination which may include further medical testing such as nerve conduction tests (NCT), electromyography (EMG), etc.;
- Job placement services.

The first goal of the vocational rehabilitation specialist is to restore the injured worker to employment with their previous employer, if at all possible, even if it is in a different position where the claimant is not limited by their reduced physical capacities as outlined by the treating physician. It is usually in the insurer's best interest to have the employee return to previous employment which usually results in a significant savings of indemnity benefits and vocational rehabilitation expenses. Moreover, it is generally in the injured worker's best interest to resume employment where the employer understands and accommodates the individual's physical limitations. Your lawyer will make sure you are handled fairly according to the law.

The vocational rehabilitation benefits available under workers' compensation include development and placement. Development and placement might include the following activities needed to enhance or facilitate the injured workers' potential employability:

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- ❖ Prospecting for job leads (newspaper/internet).
- ❖ Registering at a job service office for free assistance.
- ❖ Advising as to appropriate interviewing attire.
- ❖ Completion of a job application.
- ❖ Teaching interviewing skills with special emphasis toward stressing skills emphasizing the workers' abilities versus his disabilities.
- ❖ Preparation of a resume and cover letter along with thank you letters, if appropriate.
- ❖ Advising as to the availability of on the job training so that the injured worker is given the opportunity to learn new skills within their physical capabilities while on the job. The vocational evaluation component can include certain testing, like the (WRAT) wide range achievement test or the (GATB) general aptitude test battery.
- ❖ When all other forms of vocational rehabilitation have been considered and eliminated, self-employment may also be recommended.

**Workers' Compensation Commission** – The Workers' Compensation Commission is a state government agency. The State Workers' Compensation Commission consists of approximately ten members appointed by the Governor. Each member of the Commission must be a resident of the state of Maryland, at least thirty years old and admitted to practice law in the state. One of the Commissioners will serve as the chairman. The Commissioners serve for twelve year terms. They are randomly assigned to hear the workers' compensation cases scheduled before them. Their decisions and awards are rendered independently of the parties.

When a hearing is held before the Workers' Compensation Commission, only one Commissioner is assigned to hear the case. All hearings before the Commission are open to the public and are considered "on the record." All decisions issued by the Commission are in writing and are considered to be decisions of the entire Commission. The members of the Commission have taken an oath to decide each case fairly and impartially based upon the law, the rules and regulations of the Commission and the facts presented.

When disputes develop between the claimant, the claims adjuster, the insurance carrier or the employer, it is the Workers' Compensation Commission that will make the decision. The Workers' Compensation Commissioner is essentially the same thing as a judge in a civil case, although referred to as "Commissioner."

### **9. CONTACT WITH THE INSURANCE ADJUSTER**

If you hire our firm as your legal counsel, you should not contact, talk or give a recorded statement to the workers' compensation insurance company claim representative or its adjuster. Please remember, the workers' compensation insurance company and adjuster are not the same entity as your employer or the Workers' Compensation Commission. If the representative from the insurance company contacts you, remind them that you are represented by an attorney and give them our firm name and tell them to contact us directly.

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Never sign anything from the insurance company unless we have spoken to you or written to you about it.

### 10. WHAT BENEFITS CAN I RECEIVE?

The most common benefits to which you may be entitled if you are hurt on the job are:

**Lifelong medical treatment** - The employer and insurer are responsible to pay any and all reasonable expenses for the treatment of your injury. This includes all forms of care and treatment, whether hospital, medical, therapy, nursing, diagnostic testing, surgery, physical rehabilitation, or pain management. The right to medical care and treatment continues **for the rest of your life** for conditions related to your accident or occupational disease.

Most workers' compensation insurance companies will voluntarily and willingly pay medical expenses reasonably related to a worker's injury. It is in the best economic interest of employers and their insurers to ensure that injured workers get prompt and appropriate medical treatment, so the injured worker can return to the job as soon as possible. Returning to work is also the ultimate goal of the injured worker. **A "good" workers' compensation claim is a poor substitute for a good job.**

**Income payments while you recover and cannot work** – During any period when you are in the process of healing and completely unable to perform your work duties, you will receive payments, called "temporary total disability" benefits (TTD). These benefits are non-taxable. The amount of your temporary disability payment is two-thirds of your "average weekly wage," (AWW) subject to certain minimum and maximum amounts established by law. Your average weekly wage is generally calculated by averaging your gross earnings for the thirteen week period before the date of your work injury. These income payments are not subject to state or federal income taxes and should not be reported on your annual federal and state income tax returns. It is extremely important that you help your lawyer establish the largest average weekly wage possible, including tips, commissions, bonuses and certain other benefits.

If you have not reached the point of maximum medical improvement (MMI) and have returned to part-time work, you are entitled to receive permanent partial disability benefits (TPD). These benefits are one-half of the difference between your present earnings and your AWW at the time you were injured. Partial disability benefits end when your wages are equal to, or in excess of, your pre-injury AWW or you reach the point of full return-to-work status.

**Vocational rehabilitation** – If, after you have reached your full level of recovery (MMI), and your physical condition does not allow you to return to your old job, the employer and insurer are responsible for providing you with vocational rehabilitation services. Vocational rehabilitation services include the provision of a vocational assessment, followed

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by needed training and job placement assistance. Vocational rehabilitation will take into consideration your age, education, past work experience, and your current physical ability, and is designed to maximize your income when you return to the workplace. You will continue to receive temporary total disability benefits during the time you are undergoing vocational rehabilitation. The maximum time period that you can require formal vocational rehabilitation training is two years.

**Permanent disability benefits** – If as a result of your accidental injury you are left with a permanent medical problem or impairment, then you have a claim for monetary compensation for the permanent medical problem or impairment. This is your final award. Your lawyer is usually paid from this part of your award. The benefits are based on a percentage of disability to the part of your body which is affected. They are paid over time on a weekly basis at a rate established by law. Permanent impairment benefits are paid even if you have returned to work full time at the same or greater salary.

**Future disability benefits due to worsening of your condition** – Workers' compensation provides long-term benefits for the future effects of your injuries. You can have your case reopened, if the injury you sustained on the job worsens after an initial award of temporary or permanent disability benefits. The request to reopen your claim must be made within five years of the last date on which you last received compensation. The payment of future medical bills is not considered in calculating the five year time period for reopening your claim.

**Scheduled Member Benefits** – If your injury results in a degree loss of vision, partial or total loss of hearing, loss of use or amputation of arms, legs, hands, feet, fingers or toes, you are entitled to benefits. Specific member benefits are paid even if you do not lose time from work. Loss of use does not mean total loss of use, but means that your condition or injured body part is not back to what it was prior to the injury.

**Disfigurement** – If your head, neck or face or any other part of your body is permanently disfigured as a result of an injury or disease, you are eligible to receive “disfigurement benefits.”

**Death benefits** – If an injury or occupational disease causes, contributes to, or accelerates an employee's death, the surviving spouse and dependents may be eligible for benefits. In addition, funeral benefits up to \$5,000.00 are payable.

### 11. HOW ARE MY WEEKLY INCOME REPLACEMENT BENEFITS CALCULATED?

Your wage loss benefits are based on your average weekly wage (AWW). Your AWW includes all your gross wages (before taxes are subtracted) from your employer, including overtime and bonuses. Average weekly wage does not include wages from any second job you

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may hold. The higher your AWW, the higher the benefits you receive. Generally, the lost income benefits received are two-thirds of your AWW. State and federal income taxes are not withheld from your compensation benefits because the compensation benefits are not subject to state and federal income taxation. Therefore, your income replacement benefits should not be reported on your state or federal income tax returns.

It is very important that your AWW be correctly calculated, the higher the better. A few dollars difference in your AWW can add up to hundreds or thousands of lost benefit dollars during your claim period. Calculating your weekly wage loss benefits can become complicated. If you are uncertain how your AWW was calculated, discover errors in calculations affecting your benefits check, or need assistance in reviewing AWW calculations, do not hesitate to call us so that we may help guide you through the process.

In most cases, the Commission averages your gross weekly wages for the thirteen weeks prior to the week in which the injury occurs to determine your AWW. The week during which you were injured is not counted when figuring your AWW. The best evidence to prove AWW is your actual pay stubs from the 13 weeks prior to your injury. If you have any weeks of involuntary layoff without pay, those weeks will not be calculated in determining AWW.

### **12. WHEN WILL I RECEIVE MY BENEFITS?**

You must be off of work more than 3 days to receive weekly income replacement benefits (although medical benefits are payable from the first day of injury). If you are off work more than 14 days, the insurance company must go back and pay you for the first 3 days as well.

By law, employers and insurers are prohibited from paying income replacement benefits without an order from the Workers' Compensation Commission authorizing such benefits. It is usually advisable to file a claim for workers' compensation benefits as soon as possible.

In practice, some employers will pay an injured worker full or partial salary while the employee recovers from a work-related injury. This practice is neither illegal nor improper and is sometimes legally required pursuant to specific employment contracts, a union contract or a disability insurance policy. In the long run, this practice is usually in the best interest of both the employer and injured employee. Our firm will help facilitate and request these types of insurance benefits if it is in the best interests of the injured worker.

**The employer's payment of medical bills or the voluntary payment of an injured worker's lost wages, however, should not induce an injured worker to overlook filing a formal workers' compensation claim with the Commission.**

### **13. HOW LONG WILL I RECEIVE WEEKLY INCOME REPLACEMENT BENEFITS?**

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You will receive benefits so long as the doctor says you are unable to work because of the injury and has a plan of treatment outlined for recovery or until you reach maximum medical improvement (also referred to as “MMI”) or until you return to work.

When your treating physician tells you to return to work, you should try to do so. If you find that you are unable to work after you have tried to return, you should call your doctor immediately and make an appointment. Keep your lawyer informed of such a development and make sure you send us a copy of your off-work slip.

### **14. WHAT IF I AM ONLY ABLE TO RETURN TO WORK PART TIME?**

You will receive a reduced benefit based upon your earnings. In this case it would be termed temporary partial disability (TPD) and the injured employee would receive 50% of the difference between his average weekly wage prior to the accident and his present wage earning capacity, not to exceed the State average weekly wage. In other words if you received \$100 a week prior to the injury and now can only earn \$50, you will be paid the difference between the two which will be \$25, making your weekly wage \$75. The \$25 TPD would be non-taxable.

### **15. WHAT KIND OF BENEFITS WILL I RECEIVE IF I HAVE PERMANENT DISABILITY?**

You will receive weekly benefits based on the nature and extent of your permanent disability or impairment. Medical evaluations are usually required to establish the nature and extent of any permanent disability. Most often the award will be for permanent partial disability (PPD) which will be expressed in terms of a percentage. For example, 10% of the left leg.

Weekly benefits for workers who have been totally and permanently disabled, however, may continue indefinitely.

### **16. MEDICAL EXPENSES**

The Workers’ Compensation Commission publishes a medical fee schedule which sets limits on the amount an insurer must pay for various types of medical and surgical treatment.

The employee is not liable for the balance of the costs of medical treatment which exceeds the amount approved by the Commission. Normally, the health care provider will submit a claim directly to the claim adjuster for payment. If the adjuster refuses, the health care provider must then present the claim for payment of medical expenses directly to the Commission rather than suing the claimant in court for payment. Your lawyer can also seek a hearing to require payment of medical expenses.

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The claimant is entitled to select his or her own treating physicians, but if a claimant unreasonably refuses to submit to medical treatment, the Commission may terminate compensation benefits.

### **17. RECORD OF OUT-OF-POCKET EXPENSES**

Your employer's compensation insurer must reimburse you for certain expenses you incur while receiving treatment. For example, you are entitled to reimbursement for prescription medicines, and mileage and travel expenses you incur as part of your treatment. To obtain reimbursement, you must keep a record of your expenses, including prescription costs, mileage and travel expenses. Keep receipts verifying the expenses or you will not be entitled to reimbursement. Accuracy in record keeping is paramount. Your lawyer can seek reimbursement of those expenses, but you must keep written receipts and maintain good records.

### **18. VIDEO SURVEILLANCE OR DETECTIVE AGENCY INVESTIGATIONS**

Insurance companies periodically hire detective agencies to conduct discreet investigations of claimants with pending workers' compensation claims. These investigations can include interviews with neighbors, co-workers or may include secret video surveillance or photographs. In reality, these investigative techniques are used in all types of personal injury claims, not just workers' compensation claims. There is nothing illegal or improper for any insurance company to independently and secretly verify that a claimant has the physical limitations and disability alleged in the case.

In some cases, the surveillance verifies the claimant's allegations of disability. In this instance, the insurer will normally not disclose the existence of surveillance. On the other hand, if the surveillance documents claimant activity which appears inconsistent with the alleged disability, this evidence will normally be disclosed for the first time at the hearing before the Workers' Compensation Commission. Such surveillance can undermine or destroy your testimony at a hearing – so be mindful!

Just remember, the honest claimant who is not exaggerating or misrepresenting the extent of his or her disability has little to fear from video surveillance.

The following examples were observed at hearings before the Workers' Compensation Commission (fortunately, this testimony was presented in cases where this firm did not represent the claimant):

- One claimant argued that he had a severe knee injury and could not work at his former job which required him to be on his feet for hours at a time. The claimant was videotaped playing shortstop for a recreation league softball team during the

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summer season. While out of work on total disability the claimant made the league's All-Star team and had one of the highest batting averages in the league that summer season. The Commission was not impressed with his claim of disability.

- One claimant who alleged an inability to lift more than 20 pounds was filmed helping a U.P.S. delivery man delivering a large box containing a television weighing over 100 pounds.
- Another claimant who was off work claiming total disability due to a back injury was filmed cutting and loading a cord of firewood onto his pick-up truck.

The following is a short list of daily activities that have been the subject of video surveillance:

- Grocery shopping (a gallon of milk weighs 8 pounds).
- Gardening
- Yard and house maintenance.
- Driving an automobile in heavy traffic.
- Participation in certain sports events and hobbies outside the home (bowling, hunting, deep sea fishing).
- Holding down a secondary or part time job (this is especially bad if the claimant is "working under the table").

A claimant who uses neck or back braces, canes or walkers only when visiting medical doctors and testifying at workers' compensation hearings, but not for daily activities of life, raises legitimate suspicions as to whether these devices are truly prosthetic aids or drama props.

Surveillance of a claimant for a short period of time or on one or two separate days does not always portray a full and accurate picture of a person's ongoing physical problems. **Nevertheless, all claimants should assume that they may be placed under discreet surveillance sometime during the course of the claim.**

### **19. EXPLANATION OF ATTORNEY'S FEES IN WORKERS' COMPENSATION CLAIMS**

By law every attorney handling a Maryland workers' compensation claim is paid on a contingency basis. This means that the attorney is paid a percentage of the amount disability benefits recovered on your behalf. The percentage that the attorney is paid depends upon the type of benefits that you are receiving and the total amount of benefits you are awarded.

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If you lose your case or do not receive any award of benefits, you do not owe any fee to your attorney.

The Maryland Workers' Compensation Commission has established a schedule of attorney's fees. A copy of this schedule is available from our office upon request. The schedule is extremely technical because attorney's fees are calculated differently based on the type of award received by the claimant. For example, an award of back temporary total income benefits in a contested case would result in an attorney's fee of 10% of the back temporary total benefits as of the date of the award.

In a case in with a final award for permanent partial disability, the Commissioner will generally approve an attorney's fee calculated as follows:

- 20% of the amount due for the first 75 weeks.
- 15% of the amount due for the next 120 weeks.
- 10% of the amount due in excess of 195 weeks.

For example, the claimant receives an award of 40% permanent partial disability (PPD) to the back. The claimant was injured in 2005 and earned the exact average weekly wage for State of Maryland or \$770.00 per week. Under these assumed facts, the claimant's total award would be determined as follows:

40% of back equals 200 weeks of disability, according to the WCC disability schedule.

The disability award is then paid at the weekly rate of \$257.00 (1/3 of \$770.00 - pursuant to PPD rate set by statute).

The claimant's total award is \$51,400.00 (200 weeks x \$257.00 PPD rate).

The attorney's fees on the award of \$51,400.00 are determined as follows:

20% first 75 weeks (75 x 257 x 20%)	3,855.00
15% next 120 weeks (120 x 257 x 15%)	4,626.00
10% excess 5 weeks (5 x 257 x 10%)	<u>128.50</u>
Total attorney's fee	<u>\$8,609.50</u>

The attorney's fees are subtracted from (the final weeks) of the claimant's award and are paid directly to the attorney by the insurance company.

Additional limitations on attorney's fees apply in cases involving amputation, loss of vision, dependency claims, permanent total awards and cases that are resolved by way of a formal settlement agreement. If you enter into an Agreement of Final Compromise and Settlement, there are further limitations on attorney's fees.

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Other than the attorney's fees referred to above, the only other amounts that would normally be deducted from your recovery would be any amounts paid by your attorney to obtain your medical records from your health care providers, and the fee charged by the physician who provides you with a permanent partial disability rating or opinion.

### 20. NOTICE OF INJURY REQUIREMENTS

The time limitations for notifying an employer of an accidental injury, death or occupational disease are as follows:

- **Accidental injury or death** – Notice in writing or orally, within 10 days after the accidental injury and 30 days after death.
- **Occupational disease** – Unless the employer or the employer's supervisor has actual knowledge, written notice within one year after the employee knows or has reason to believe he or she is suffering from an occupational disease and within one year after death resulting from such disease.
- **Failure to give notice** – Failure to give the required notice bars a claim for compensation unless the Commission excuses the failure on the ground that notice for some sufficient reason could not have been given or that the employer-insurer was not prejudiced by the lack of notice. The burden of proving prejudice is upon the employer-insurer.

### 21. LIMITATIONS ON FILING CLAIMS

- **Time limits – accidental injuries** – A claim for compensation in accidental injury cases must be filed at the Commission within 60 days after the date of the accident, but failure to file the claim may be excused by the Commission on the ground that the employer-insurer has not been prejudiced thereby or for some other sufficient reason. Failure to file the claim within two (2) years after the date of the accident constitutes a complete bar. A late claim can also be excused if the injured worker was misled by the employer.
- **Time limits – occupational diseases** – A claim for disability from an occupational disease must be filed within two (2) years from the date of disablement or the date when the worker or dependents of the worker first had actual knowledge that the disablement was caused by the employment.

A claim for death from an occupational disease must be filed within two (2) years of the date of death, regardless of whether the employee's dependents were aware that the death was caused by the employment.

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A claim for occupational deafness must be filed within two (2) years from the time when the hearing loss is sufficient to become compensable and the worker has actual knowledge that the hearing loss was caused by his or her employment.

### 22. LIMITATIONS ON REOPENING CLAIMS

Unlike other accident claims, (for example: motor vehicle accidents) workers' compensation claims can be reopened.

- **Re-opening for additional compensation** – An application for the Commission to change or modify a previous award must be made within five years from the date of the accident (or the date of disablement in occupational diseases) or the date of the last payment of compensation for temporary to permanent disability, whichever is later. Therefore, it is important for you to keep track of when you received your last compensation check, noting the date on the insurance company check.

A petition to request to reopen or modify an award of compensation is not effective unless it alleges a change in disability status - and not merely a need for continuing medical treatment and must be supported by medical evidence.

- **Reopening for medical expenses** – There is no period of limitations for reopening a claim to require the employer to pay medical expenses, and the employer's liability for payment of medical expenses continues for the worker's lifetime as long as the expenses are reasonable, necessary and related to the original injury.

### 23. LIMITATIONS IN THIRD PARTY CASES

A third-party case means that some party (in addition to your employer) is responsible for your job related injury. A typical example is a motor vehicle accident during the course of your employment.

The period of limitations within which the worker may sue a third party is tolled during the two months following the Commission's first award, because the employer-insurer has the exclusive right to sue the third party during those two months. Under Maryland law most third-party cases must be filed within three years from the date of the accident or the third-party claim will be barred.

### 24. HOW WILL MY CLAIM BE RESOLVED?

Once you have reached your maximum medical improvement (MMI) and completed any vocational rehabilitation authorized by the Commission, you will be evaluated for permanent disability by a physician, recommended by your lawyer. Once your physician has

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ascertained whether you have sustained any permanent disability as a result of your work-related injury, we will schedule a hearing on the “nature and extent” of your disability. This hearing will be held before the Workers’ Compensation Commission. Most claims for disability are resolved by way of a hearing on the nature and extent of disability.

In some cases, the parties are able to agree to a percentage of disability and the case can be resolved by way of a stipulation. A stipulation of disability avoids the necessity of a hearing and is usually entered into and preserves your future rights under the Workers’ Compensation Act such as ongoing medical expenses or the legal right to reopen your case in the event your disability worsens in the future.

Another way to resolve your claim is to enter into an agreement of final compromise and settlement. This type of settlement agreement must be approved by the Commission. By settling in this way, the claimant is giving up many rights under the Workers’ Compensation Act, including medical rights, rights to reopen and rights of appeal. The Commission carefully examines these proposed agreements of compromise and settlements before approving the agreement.

In most cases, however, your claim will be resolved by way of a hearing before the Workers’ Compensation Commission.

### **25. TRIALS BEFORE THE COMMISSION**

In workers’ compensation lingo, a trial before the Commission is usually referred to as a “hearing.” The terms are synonymous in workers’ compensation practice. The words “trial” and “hearing” mean the same thing.

#### **When will my hearing take place?**

This question is dependent on several factors which effect when your case will actually be reached for hearing. Such factors include:

- The number of claims waiting for trial in your jurisdiction.
- The number of Commissioners available to hear claims in your jurisdiction.
- Whether or not all medical reports and information has been exchanged by both sides.
- The particular issue in dispute and whether the claimant is seeking an emergency hearing.
- Whether or not the lawyers in the case have other trials or hearings pending in other jurisdictions.
- Other possible factors.

Your lawyer will be able to tell you approximately when your claim will be reached for a full-blown hearing.

**How much notice will I get before the trial/hearing is held?**

Usually you will receive plenty of notice to prepare for your hearing. You will receive notice of the hearing date, time and place directly from the Commission. Our office will also confirm the hearing date with you at the same time.

**What happens in a workers' compensation trial/hearing?**

In cases which are not complex, the hearing process usually follows a specific format. Do not count on movies or television shows to accurately portray how workers' compensation trials actually occur. With some variations, depending on the Commissioner, your hearing will go something like this:

- The Commissioner will open the hearing by calling the docket. Basically, this is a role call to confirm that the parties and their lawyers and witnesses are ready to proceed. There will be several other cases waiting to be done during the same time frame that your case is assigned.

Cases which have been settled or postponed or with simple issues are usually taken first.

Cases where one or more of the parties have not yet arrived typically go to the end of the line and will be called last.

- The Commissioner will call the case using the name of the claimant. At this time, the claimant and the attorney will proceed to the front of the courtroom.
  - Medical exhibits are submitted to the court reporter for entry into evidence and then handed to the Commissioner for review during the course of the hearing.
  - The Commissioner usually requests both attorneys to identify the contested issues and the employer/insurer's attorney to confirm the claimant's average weekly wage and previously paid periods of temporary total or temporary partial disability.
- Thereafter, the claimant's attorney will normally summarize the course of medical treatment and then proceed with questions to the claimant. After the claimant testifies, other witnesses can also be called to testify.
- After each witness has finished direct examination by your lawyer, the lawyer for the employer and insurer will be entitled to cross examination. That is, you and your witness may be asked questions by the other lawyer.
- After cross examination, your lawyer may have a few additional questions and this process is called re-direct examination.

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- After your lawyer finishes presenting your case, the lawyer for the employer and insurer is allowed to present the other side of the case by calling witnesses for the defense. Your lawyer will be entitled to cross examine those witnesses.
- After both attorneys have finished all questioning and all production of evidence, the Commissioner may also ask questions. In fact, many Commissioners routinely ask questions of claimants and witnesses during the course of the hearing. Some Commissioners will also ask attorneys about various legal issues during the hearing.
- A contested hearing may take as little as ten minutes or as much as an hour or two depending on the complexity of the case and the number of disputed issues.
- The Commissioner will not announce his or her decision at the time of the hearing.
- All decisions of the Workers' Compensation Commission are issued in writing and then mailed directly to the claimant and the attorneys at the same time. The formal decision will usually not be received for several weeks.

### **What should I remember in order to be the best possible witness?**

The hearing is the most important part of your case. It is your only day in court and you will probably not get a second chance. Nobody is perfect, but you can prepare yourself to be as good a witness as possible. The following recommendations will assist you to do the best job possible.

- Dress appropriately. T-shirts or clothing with political and vulgar messages should never be worn to a trial. Women should avoid wearing low cut blouses or miniskirts. You should not wear flashy clothes, a lot of jewelry or a lot of makeup. The type of clothing you would wear to a church function or a PTA meeting is appropriate. Official work clothing that is clean and neat is generally acceptable, subject to the added precautions set forth above.
- Review your medical history with your attorney so that you have a refreshed your memory about injuries you have had, doctors you have seen, hospitals which have treated you, etc.
- Never exaggerate. Do not exaggerate about how the incident happened or about your injuries. An exaggeration will almost always hurt you and never helps.
- Don't be a "wise-guy." A courtroom is not the place for being coy, wise or funny. If something happens in the courtroom that is humorous, it is alright to laugh with the Commissioner, but do not try to be a comedian.

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- Be courteous to everyone including the employer/insurer's attorney and court personnel. Commissioners are impressed by polite people. Call the Commissioner "Your Honor," show respect to courtroom personnel, and call the defense attorney "Sir" or "Ma'am" from time to time.
- Never lose your temper. Defense attorneys know one way to win a case – get the witness to lose his or her temper. If you feel badgered by the attorney, react courteously. Commissioners are impressed by people who can remain calm under cross-examination.
- Listen carefully to each question and take your time to answer. Do not anticipate. Wait for the questioner to finish before you speak. Never speak when no question has been asked.
- Look at the Commissioner! This cannot be stressed enough. Look Commissioners in the eye when you testify just as if you were talking to your best friend or closest relative. Commissioners tend to believe people who can look them straight in the eye.
- Do not look to your lawyer for answers. You are the witness – not your lawyer.
- Be yourself. You are likely to be nervous and this is appropriate because Commissioners expect that people who testify in court will be nervous. After a brief period of time, you will be comfortable, especially if you are telling the truth.
- Tell the truth! This is repeated because it is so important. There may be things about your case that will hurt your recovery – no case is perfect. If so, don't be afraid to admit the truth. The defense lawyer would love to catch you in a lie because one lie can destroy your entire case.
- We will schedule a meeting to prepare you for your hearing several days or a week prior to the hearing.

### **26. AFTER THE TRIAL**

#### **If we win, how long does it take to receive the money?**

If a decision is rendered in your favor, it usually takes 15 days after the date it is received to finalize the results. If the defense attorney does not appeal the verdict, the lawyers will work out the final figures with respect to the benefits due, out of pocket expenses, creditors or deductions and attorneys' fees, if appropriate.

#### **What happens if we lose?**

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Hopefully, you will not lose. If you do, your lawyer will discuss the possibilities of appeal. Appeal is usually a very expensive process, but your lawyer will advise you whether or not appeal is appropriate.

### **If we lose, is it still possible to get a settlement?**

In a few rare cases, the employer or its insurance company may be willing to offer a nominal settlement to avoid an appeal. This is not very probable. The best thing to do is to concentrate on winning your case. If your case is clear on compensability and you have prepared yourself well for hearing, the chances are that you will win your case. Justice usually prevails.

## **27. CONCLUSION**

Your workers' compensation case is very important to you. We know this. In today's society, insurance companies have a lot of power, money and influence. Moreover, the insurance industry does not enjoy a reputation for generosity. Most insurance companies, however, try to be fair in resolving ordinary cases. They do try to compensate people who have been legitimately injured as a result of work-related injuries.

It is important for you to have a positive attitude throughout your case. This requires making an active effort to recover from your injuries. Cooperate with your lawyer. Be honest about your case with everyone involved. The Constitution of the United States, your state laws and fairness dictate that injured workers should be compensated for injuries sustained while working. This is the law and it is on your side.

We are very grateful that you have given this firm the opportunity to serve you. It is our hope and prayer that we will earn your confidence and trust and that God will bless you with a full measure of justice.

**Matt M. Paavola, Esq.**