

## ANSWERS TO MEMBER QUESTIONS

Q: What are the benefits of using an attorney for a work-related injury vs not?

A: In general, it is my experience your claim will be a smoother one with an attorney. Often the company that the Department or Town hires to administer your claim needs to justify its existence and will try to implement cost saving procedure to the detriment of the Member. Often this company will control the doctor who will potentially cut your treatment off prematurely or pressure the authorized Doctor to return you to work prematurely etc. In addition, a lawyer will be in a stronger position based on experience to negotiate a more favorable permanency award which means more money to the member for the legitimately suffered injury. Plus, also remember the attorney fee an attorney can charge is governed by the Workers Compensation Statute and can be no more than 20% of the permanency award but the worker only pays 8% of that 20% directly from the award of permanency so there is nothing out of pocket. The other 12% of the award is paid by the employer. If the attorney does not recover a permanency award the worker pays nothing. Plus, the more the lawyer gets you the more the lawyer makes so there is incentive for the lawyer.

Q: When should a member seek an attorney after a work-related injury?

A: As soon as possible. This does not mean the Lawyer has to let the Town know he or she is retained. It is important you sit down with a lawyer as soon possible so your rights can be explained to you as well as the workers compensation process so that you know what to expect and also that you understand what obstacle you might face. In other words, it's good to be prepared.

Q: If we have to go to workers comp court because town denies case for a member, who is responsible for costs?

A: First if your lawyer files a motion for medical benefits or for replacement wages and you/he are successful then the Town. That is by rule and Law. If he/you lose the motion, I can speak for myself there is no fee and traditionally attorneys will not charge a fee in that scenario. If they do you need to hire another attorney. Additionally, when we go to Court for your permanency benefits which is money that you are entitled to for any residual problems you have from the work-related injury the most that can be charged by law is 20% of the gross settlement. However, the law breaks that down and provides that of the 20%, 8% is paid by the worker to his lawyer and the other 12% from the department. This fee comes directly from the permanency settlement, so nothing is out of pocket. So, in short, your fee is 8% of whatever your negotiated permanency award is and that is deducted from the award and paid directly to your attorney, so nothing out of your pocket.

Q: Dover, local 60. With the vaccine available, if an employee opts to not get vaccinated, is the employee still protected the same as those who did get vaccinated. For example if Covid 19 is contracted and the employee had a vaccine, they get quarantine without needing to using sick time, but if not vaccinated the employee would need to use sick time.

A: I am assuming that is a departmental procedure. However, the law does not make a distinction as to whether the Worker had the vaccine or not when he/she contracted the disease. That being said the workers' compensation protection under the law is the same. However, remember workers compensation is only required to pay at least 80% of your gross wage. So, if not vaccinated then the member is not covered 100% in replacement wages per the potential departmental policy of being vaccinated when contraction occurred so you may be looking at only 70% of your gross wage while you were out in workers' compensation benefits,

Q: How does the WC coverage apply to any psychological injury a member claims to have due to COVID-19 as it relates to them contracting the disease and recovering from it but having residual psych effects, and/or watching a member get sick and die from COVID-19.

A: The first example where the member gets COVID-19 but suffers psychological residuals that would be covered under workers compensation and the member would be entitled to a permanency award(money) for any permanent partial residuals. However, we would need to prove to the Court through a Doctors report that the member has psychological residuals. Please note though once you put forward any psychologic claim that you argue is permanent you have to watch out that your employer does not consider the member a liability and unfit for duty and tries to force the member out on a pension. This is not always in the best interest of the member from a financial point of view.

In regard to the second example. That would be a harder case depending on the facts. In order for a condition or injury to be compensable you have to prove it was caused or contributed by something that occurred in the course of your employment or over the course of your employment due to repetitive exposure etc. In this example you may have indirect causation. In this scenario medical documentation would be crucial to show that the death of a fellow member from COVID-19 caused X,Y and Z resulting in a permanent psychological condition. I would say the result or conclusion of that type of case is more on a case-by-case basis as every Judge is different.

Q: What if a residual you are having (breathing issue), you do not feel like you can perform the duties at this time even though the doctor could be telling you that you are fit for duty?

A: In this case you really have 2 choices in the Compensation world. First your Attorney can file a motion in the Workers' Compensation Court relying on a doctor report of a doctor your Attorney sends you to, to establish what treatment you still need and that you cannot return to work because of your condition. In this motion which is a formal way of saying you are asking the Judge to enter an order saying you can remain out and want more treatment because your medical condition causes you to be currently unable to work, the Judge will make a decision after a short trial and consideration of the medical documentation you lawyer provides. The other choice you have is to apply for State Temporary disability benefits and stay out until you can return. The one thing you always have to keep in mind is if you go out of work and it is not authorized under a comp claim you will burn your sick, administrative, vacation and borrowed time until the case or condition is accepted or ordered by a judge to accept then the time you burned would be returned as compensable.

Q: I was under the assumption this is a presumptive law. Are members obligated to provide a specific potential on the job exposure to be eligible for granted sick time or future health problems related to COVID or is it on the employer to prove it was not contracted on the job? From what I got from this; members must have a specific exposure incident?

A: No and I apologize if that is what I conveyed. It is a presumptive law absolutely. However, what I was saying it does not hurt to go on the offensive and show proof that your exposure was more likely caused by the job. For example, getting a note from your doctor saying it was within a reasonable degree of medical probably contracted on the job. Although not required its helpful. A Judge would appreciate the additional information as it makes their job easier. If you make their job easier more likely they will rule on your side.

Q: Does testing positive for the antibodies hold any legal weight?

A: It would if you had clinical signs of COVID and missed work we could use that test, while not as good as a COVID positive test, to show you in fact had the disease.

Q: If you had no benefits (time) lost so you did not officially file workman's comp. Department has appropriation medical documentation regardless from PCP. If complications arise within two years can you open claim at that point?

A: First you can have no time(benefits) and still file a comp claim. You file a comp claim because you are seeking that comp pay replacement wages while you are out. That would be at least 70% of your gross base wage. If the comp claim is accepted, you get paid even if you have no time. The payments come from a different pot.

To answer your question if no workers compensation benefits are paid on the claim but it was reported and documented you would have to file a comp claim with the court within 2 years of the date of the contraction of the disease to be safe or two years from the date you knew or should have known your contraction of the disease was work related. (this one is a less certain so I would prefer to use the 2 years from your contraction date.)

Q: what do we do if we are mandated to quarantine because we are exposed to a firefighter that tested positive and we missed days waiting on test results

A: That is more of a departmental issue. The Compensation Court will not have jurisdiction or standing or be able to rule on the issue unless you contracted the disease. So, your remedy would be a grievance.