

EMPLOYER'S GUIDE  
to Workers' Compensation Claims  
in Georgia

DAVID &  
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## WORKERS' COMPENSATION IN GEORGIA

In Georgia, workers' compensation is largely controlled by statutes passed by the Legislature and rules and regulations established by the State Board of Workers' Compensation, an administrative agency. There are many laws and rules which establish deadlines and particular forms which must be completed.

Preventive measures, such as safety programs and immediate intervention following a work-related injury, can result in a substantial savings in workers' compensation costs, including insurance premiums. Potential problems can be avoided with communication between employer and employee, both before and after an accident.

We hope you will find this handbook useful as a road map in addressing issues that arise from on-the-job injuries. This reference guide is not a comprehensive discussion of each and every aspect of workers' compensation, but is an overview of a system that affects nearly every employer and employee in this state. The information in this booklet should not be construed as legal advice or opinion on specific facts. You should consult your attorney for legal advice on particular claims. ■

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**D**avid & Rosetti, LLP is devoted to representing employers, insurers, self-insured companies, and third-party administrators in workers' compensation claims throughout Georgia. We are located at Peachtree Center in downtown Atlanta, across the street from the office of the State Board of Workers' Compensation.

Our attorneys and staff have the experience and training to provide the highest quality representation. All attorneys with the firm practice exclusively workers' compensation defense and related areas of law. The firm is AV rated by Martindale-Hubbell, the highest possible rating.

Our representation is not limited to defending litigated cases. The attorneys at *David & Rosetti* are skilled at developing solutions for non-litigated claims to bring those claims to resolution. We frequently conduct in-house seminars, whether at a local plant or at the national headquarters of an insurance company or self-insured company to provide practical advice for reducing costs and handling claims. We prepare an electronic newsletter for our clients providing legal updates as they occur as well as practical tips on a variety of topics relevant to reducing workers' compensation costs.

Communication with our clients is a cornerstone of our practice. We understand that good lawyers listen to their clients and understand their needs. We have not only the technology but the commitment to be responsive to client needs. Telephones and e-mail are important tools in the regard, but we believe personalized service, including visits to our clients—whether across town or across the country—is valuable and necessary to provide the highest quality service. ■

## TABLE OF CONTENTS

Georgia Insurance Requirements.....	1
Safety .....	3
Medical Treatment and the Panel of Physicians.....	5
Investigation of Accidents.....	7
Workers' Compensation Benefits.....	10
Returning the Injured Employee to Work.....	12
Undocumented Workers.....	13
Going to Court.....	14
Workers' Compensation and Other Employment Benefits: <i>Unemployment, Employer-Funded Disability Plans, and the Americans with Disabilities Act</i> .....	17
Recouping Workers' Compensation Benefits.....	19

## Required Workers' Compensation Coverage

Most employers in Georgia are required to obtain workers' compensation insurance or be a qualified self-insured employer. One of the more common exceptions is when an employer has fewer than three employees within the same business in Georgia. If so, the workers' compensation laws may not apply, and no insurance would be required. Other exceptions include certain common carriers, railroad employees, farm laborers, domestic servants, and certain licensed real estate sales persons or associate brokers. An employer, who otherwise would not come within the workers' compensation laws based on one of the above exceptions, can choose to be bound by the laws of workers' compensation and purchase workers' compensation insurance. The Georgia State Board of Workers Compensation's website ([www.sbwcc.georgia.gov](http://www.sbwcc.georgia.gov)) contains more detailed information on the requirements for workers' compensation insurance coverage in Georgia. ■

## Covered Employees

All persons whose employment is in the usual course of the trade, business, occupation, or profession of the employer are considered employees for purposes of workers' compensation. The courts generally interpret the term "employee" broadly to ensure that the worker has a source of payment for medical bills and any lost time. However, your insurance policy may state what types of employees are covered under the policy and whether there is coverage in Georgia if you do business in several states.

Independent contractors are generally not considered employees. Whether an individual is considered an independent contractor or employee depends on a number of factors, most of which center on whether the employer had control over the time, manner, method and means of performance of the work performed by the individual. The judge will look at factors such as payment to the individual (salary versus per unit), intent of parties, length of time of employment, who has the right to select materials and tools, control over work hours, skill and experience required, and the overall control of the employer over the employee. ■

## Change of Insurance Companies

Under many circumstances a change in insurance companies will have no effect on a workers' compensation claim. The date of accident controls workers' compensation benefits. Therefore, if the accident occurred during the policy period with the first insurance company, then the first insurance company will remain responsible for workers' compensation benefits. However, during the policy period with the second (subsequent) insurer it is possible the employee might have a new "legal accident," even if the employee does not reinjure himself. This frequently occurs when an employee is injured during the first policy period but does not miss any time from work until the second policy period begins. The State Board of Workers' Compensation may consider the date the employee stops working as a new "legal accident" in addition to the date the employee was initially injured. Benefits due for the second "legal accident" may be different than benefits due for the initial accident. In these instances, you should always notify both insurance companies of the situation, so they can make a decision regarding which insurer will be responsible for the claim. ■

### Using the Hiring Process to Reduce the Potential Exposure for Workers' Compensation Claims

There are several steps you can take to reduce your exposure for workers' compensation claims. Generally, you cannot ask a prospective employee questions about his medical history or prior accidents; however, you can have a new hire complete a post-offer of employment medical questionnaire asking questions about his medical history. A sample post offer of employment medical questionnaire is attached as Appendix A to this handbook. The post offer questionnaire may provide you with helpful information if the employee is injured while working for your company as it may show pre-existing injuries. Another preventive measure likely to result in fewer accidents is a comprehensive orientation in which safety is emphasized. ■

### Safety Programs

First and foremost, a safety program will demonstrate to your employees the company's emphasis on maintaining a safe work environment. Most work place accidents can be avoided. A safety-conscious work force is more likely to report safety issues before such issues become a serious problem and result in accidents. Furthermore, if an employee is injured, it is less likely that there will be communication problems which could decrease productivity and increase costs.

As a part of any safety program, regularly scheduled safety meetings should be instituted. You also will want to inform all new employees of what to do in the event they are injured on the job, including reporting the incident and using the posted panel of physicians. Finally, inform employees that you may be able to make light duty work available following an accident, if necessary. ■

### Drug and Alcohol Policies

You may qualify for a premium discount under your workers' compensation policy if you have a drug and alcohol policy. To qualify, employers must meet the requirements of the Drug Free Workplace Program which include: 1) a

written policy statement; 2) substance abuse testing; 3) resources available to employees through an Employee Assistance Provider; 4) employee education; and 5) supervisor training. Your insurance agent and insurance company can provide you more information on how to qualify. ■

## MEDICAL TREATMENT AND THE PANEL OF PHYSICIANS

### The Panel of Physicians

The Panel of Physicians is a list of doctors and/or facilities authorized to treat an employee following a workplace accident. The employer, usually in consultation with the insurer, selects the doctors on the panel. If an employee is injured, he must choose a physician from the panel, unless he needs emergency care. This list allows employers and insurance companies to have some control over who will be treating their employees and allows employers to become familiar with the medical providers near the workplace. ■

### The Requirements of the Panel of Physicians

In Georgia, there are three types of panels. The most traditional panel is a list of at least six unaffiliated physicians or clinics. On this type of panel there must be: 1) at least one physician who specializes in orthopedic surgery; 2) no more than two industrial clinics; and 3) at least one “minority” physician, which generally is based on race or gender. There are two other types of panels—a Conformed Panel of Physicians and a Managed Care Organization “panel.” These types are alternatives to the traditional Panel of Physicians. For specific information regarding these types of panels, please consult with your insurance company. ■

### Inform Employees of Panel

At employee orientation, during safety meetings, and certainly following any accident, you should explain to your employees that after an accident, they are entitled to choose a physician from the panel of physicians who will become the employee’s “authorized treating physician.” That physician is permitted to make referrals to other physicians for specialized care. The injured employee is also allowed to make one change of physician within the panel without permission from you, the insurance company, or the State Board of Workers’ Compensation. After one change of treating physician from the panel, the employee must then obtain permission from the employer and insurance company or petition the State Board of Workers’ Compensation before making another change. ■

## The “Posting” Requirement

An employer is required to post the panel of physicians in “prominent places” within the business. Good locations for the panel include the employee break room and other areas where employee notices are posted. The employer is also required to ensure that the employee understands the purpose and function of the panel, that is, his right to choose a physician from the panel and make one change of physician from the panel without permission. ■

## INVESTIGATION OF ACCIDENTS

### Covered Accidents

Generally, any accident which both “arises out of” and occurs “within the course of” the employee’s employment is covered under workers’ compensation. In most cases, this means that not only must the accident occur while the employee is working, but that there must be some connection between the work performed and the injury.

Although each situation will vary, an aggravation of an injury while on the job, even if the initial injury occurred outside of work, may be covered by workers’ compensation. Injuries due to the negligence of the injured employee or other employees are also covered because the workers’ compensation system is a “no fault” system. Even situations where an employee is walking from the employer parking lot into the place of work, but has not yet clocked in, are generally found to be work-related.

On the other hand, an employee who is on a regularly scheduled lunch break and not performing any work on behalf of the employer when injured will not likely be entitled to workers’ compensation benefits. Also, employees engaged in horseplay resulting in an injury may be denied workers’ compensation benefits.

Accidents do not need to occur at the workplace to be considered work-related. Employees who are “on call,” or fall within the category of “continuous employment” (an off-duty police officer, possibly), may be covered if injured. Every situation is unique. If you have questions regarding the circumstances of a particular accident, please consult with your insurance company or attorney. ■

### Pre-Existing Injuries

If an employee aggravates a pre-existing injury to the point where medical treatment is required, or if aggravating a pre-existing injury disables the employee from working, he will be entitled to workers’ compensation benefits. However, he is only entitled to workers’ compensation benefits as long as the aggravation continues. Therefore, a medical opinion from

the treating physician that the employee's aggravation has subsided and that he has returned to his baseline condition prior to the aggravation may relieve you of responsibility for any further workers' compensation benefits. ■

### **Employee's Notice**

From a legal standpoint, the employee is required to notify the employer of an accident within thirty days of its occurrence. If the employer is already aware of the accident, no additional notice from the employee is necessary. The employee is not required to provide specific notice of a work-related accident; the notice need only provide the employer with enough information so that they can conduct an investigation to determine if the injury is work-related. ■

### **First Report of Injury, WC-1**

Employers should complete a First Report of Injury (WC-1) any time an employee seeks medical treatment for an injury on the job or misses work as a result of an injury. Also, if an employee claims he was injured on the job, but you dispute that contention, you should still complete a First Report and send it to your insurance company. If you have any doubt as to whether you should complete a First Report, contact your insurance company for direction. Disputing the occurrence of an accident does not relieve you of the responsibility of completing a First Report. Similarly, completing a First Report is never an admission that you agree the employee sustained an accident on the job, as it generally cannot be used in court. Once completed, send the First Report to your insurance company immediately. ■

### **Investigating an Accident**

The supervisor should interview the injured employee to determine how, when, and why the accident occurred. At that point, the supervisor and other human resources employees can broaden the investigation by interviewing witnesses and taking a written statement from the employee and any witnesses.

## Questions to Ask When Investigating an Accident:

1. When and where did the accident happen?
2. Were there any witnesses?
3. Who did you first tell about the accident?
4. How did you hurt yourself?
5. Did someone or something, like a machine, cause the accident?
6. What parts of your body did you injure?
7. Have you ever injured those body parts before?
8. Do you need medical treatment? If not, why not?

Make certain to tell the employee that if he remembers anything else about the accident, needs medical treatment, or has any questions, the employee should contact you immediately. ■

### Information for the Insurance Company

The employer's insurance carrier will need a lot of information, as quickly as possible. There are deadlines which must be met by the insurer shortly after an accident or even an alleged accident. The insurance company will conduct their own investigation, but the more detailed information that you can provide immediately following the accident will prevent delays in a decision about the claim's compensability. The insurance company will need copies of all written statements and accident reports. They will also want the names of all witnesses. You will also need to provide your insurance company with the employee's payroll records, usually for the 13 weeks before the accident date. ■

### Types of Benefits

There are three different types of benefits. First, employees are entitled to medical treatment related to their accident. Second, employees are entitled to payment for lost time—temporary total or temporary partial disability benefits—if they miss more than seven days from work, with a doctor's excuse. Third, employees may be entitled to permanent partial disability benefits. ■

### Medical Benefits

The employee is entitled to medical treatment for the injury or injuries sustained at work. In most cases, the physician or hospital will bill the insurance company directly. If you receive any medical bills, forward them immediately to your insurance company or claims administrator so they can either pay the bill or file a denial. There are specific penalties for late payment of medical bills. Medical expenses include travel to and from medical appointments. The employee is entitled to reimbursement for mileage to and from the medical provider. The reimbursement amount is established by the State Board of Workers' Compensation. ■

### Lost Time Benefits

The amount of weekly benefits—which is called temporary total or temporary partial disability benefits—depends on the employee's "average weekly wage." The average weekly wage is calculated by taking the average of the 13 weeks of pay prior to the injury. Two-thirds of the average weekly wage becomes the compensation rate, subject to a maximum amount. For accidents occurring on or after *July 1, 2007*, the maximum weekly amount is \$500.00. ■

An employee may be entitled to temporary total disability benefits when he is unable to work in any capacity or if he is released to light duty work but the employer cannot accommodate the work restrictions. Temporary partial disability benefits compensate the employee for a reduction in wages due to the injury. An employee is entitled to temporary partial disability benefits if the employee returns to work, but is required to work

at a reduced pay or reduced hours because of his injury. The insurance company will calculate temporary partial benefits based on two-thirds of the difference between the pre-accident average weekly wage and the post-accident weekly wage. For accidents occurring on or after **July 1, 2007**, the maximum weekly amount is \$334.00. ■

### **Permanent Partial Disability (PPD) Benefits**

The treating physician may assign an impairment rating by following certain medical guidelines. The impairment rating is a percentage indicating the degree to which an injury results in permanent impairment. The physician consults a book known as the Guides to the Evaluation of Permanent Impairment published by the American Medical Association which is used in an equation and results in a monetary payment to the employee. The payment is in addition to the weekly lost time benefits and may be owed even if the employee does not miss any time from work. ■

## RETURNING THE INJURED EMPLOYEE TO WORK

### Light Duty Work

There is no requirement to offer an injured employee light duty work following an accident. However, the ability to make light duty work available will likely reduce the total payout in workers' compensation benefits. If an employee is on light duty restrictions, but no light duty work is available, he will continue to receive workers' compensation benefits. If the employee is given light duty work, his workers' compensation benefits will be reduced based on the income from the light duty work. Experience has shown that the longer an employee remains out of work on workers' compensation, the less likely he is to return to work. ■

### Procedure for Offering an Injured Employee a Light Duty Job After an Accident

In general, the procedure for offering an injured employee a light duty job is as follows: 1) the treating physician indicates the employee can return to light duty and provides specific restrictions; 2) the employer prepares a job description for the light duty position that accommodates the restrictions using the form WC-240(a) or similar document; 3) the insurance company sends the job description to the treating physician to obtain his approval; 4) assuming the light duty position is approved, the employee will be formally offered the position on a form called a WC-240; and 5) the employee must be given at least ten days written notice of the job availability. If he does not return to work, his lost time benefits may be suspended. ■

### Terminating an Employee Performing Light Duty Work

An employer may terminate an employee performing light duty work following an accident but there may be significant ramifications. If an employee is terminated because of his injury, he will be entitled to income benefits. However, if the employee is terminated "for cause," then the employee must prove to an administrative law judge he is entitled to income benefits. Often a terminated employee will claim he was terminated because of his work injury rather than "for cause." Therefore, it is important to document all previous warnings prior to the decision to terminate. ■

## UNDOCUMENTED WORKERS

There is no specific Georgia statute which addresses this issue. Instead, the Georgia courts have examined this issue in terms of legal precedent in this state, and the impact of federal legislation, including the Federal Immigration Reform and Control Act of 1986 (IRCA). In general, Georgia courts have held that undocumented workers are entitled to workers' compensation benefits after an industrial accident. However, once the undocumented worker is released to return to some type of work, future income benefits may be denied if the worker's unemployed status is not due to the injury, but to his undocumented status. ■

### Courts in the Workers' Compensation System

Workers' compensation cases fall within the jurisdiction of the State Board of Workers' Compensation. The main office is in Atlanta; however there are numerous offices throughout the state. If the injured employee files a lawsuit against an employer seeking workers' compensation benefits the case will be heard by an administrative law judge in or near the county of injury. There is no jury, but it otherwise is like any other trial. There is testimonial/documentary evidence submitted and each side may cross-examine witnesses. Usually, the judge renders a decision within sixty days of the hearing. The administrative decision may be appealed to a three-judge panel within the State Board of Workers' Compensation known as the Appellate Division. Following an Appellate Division decision, claims may be appealed further to the appropriate Superior Court, but chances of reversing a decision diminish as the number of appeals increase. ■

### What to do if You Receive Notice that the Injured Employee has a Lawyer

Forward all written communications you receive either from the employee, his attorney, or the State Board of Workers' Compensation to the insurance company, especially if it does not appear as though it was already sent to your insurance company. There are certain deadlines that must be met and you could jeopardize your case by not responding quickly. The most common communications that you may receive from an attorney are the following: 1) a letter indicating the attorney is now representing the employee; 2) a notice of a claim and/or request for hearing; and 3) written discovery, which may include documents known as Requests for Admissions, Interrogatories, and Requests for Production of Documents. Do not talk about the case to the employee once he retains an attorney until the employee's attorney gives you permission to do so. ■

### Discovery

Discovery is the process whereby each side attempts to find out information about the case from the other side by asking questions, either in written form or in person. In certain situations, you may receive

Requests for Admissions, Interrogatories, and/or Requests for Production of Documents from the employee's attorney. These should immediately be forwarded to the insurance company. If it appears your insurance company has already received a copy of this written discovery, contact the insurance company to be certain. Do not respond to any requests from the employee's attorney or communicate with the attorney in any way, without first checking with your insurance carrier or attorney.

The other common form of discovery is the deposition. In most workers' compensation cases in Georgia, the attorney representing both you and your insurance company will take the deposition of the employee at his attorney's office. Occasionally, the employee's attorney might take the deposition of a witness or supervisor. Sometimes the parties will need to take a doctor's deposition to clarify various medical issues. ■

### **Documents Most Likely to be Requested from You as Part of the Discovery Process**

The employee's attorney may seek a copy of the employee's personnel file, payroll records to calculate the average weekly wage, the posted Panel of Physicians, accident reports, medical notes, disability slips, and witness lists. You should not provide this information directly to the employee's attorney, but instead, forward it to your attorney, who will review it first. Your attorney might also request additional documents from you which may include notes you have taken since the injury. In many situations, the employee's attorney will not be entitled to this information, but it may be helpful to your attorney to have this documentation in preparing a defense of the case. ■

### **Employees Appearing in Court**

Whether testimony of a company representative is needed often depends on the reason the case is in court. If there is a dispute regarding whether the incident actually occurred, the supervisor may need to testify regarding whether the alleged incident was ever witnessed or reported. Your attorney will speak with company witnesses before the hearing. If your

testimony is required, the attorney representing you and the insurance company will work to ensure that questions are limited to what is relevant to the accident and the employee's work history.

A hearing usually lasts one to three hours. Once the hearing is over, the parties submit written briefs arguing their legal position which is essentially a "closing argument." The judge considers the evidence and issues an award with a decision. Generally, a judge will not issue a decision until at least two months after the hearing. ■

## **WORKERS' COMPENSATION AND OTHER EMPLOYMENT BENEFITS: *UNEMPLOYMENT, EMPLOYER-FUNDED DISABILITY PLANS, AND THE AMERICANS WITH DISABILITIES ACT***

### **Workers' Compensation and Unemployment Benefits**

An injured employee may be entitled to workers' compensation benefits and unemployment benefits simultaneously, but with limitations. An employer and its workers' compensation insurance carrier are entitled to a dollar for dollar credit for any unemployment benefits paid to an employee. For instance, if an employee is receiving workers' compensation benefits of \$300.00 per week, and subsequently receives unemployment benefits of \$200.00 per week, the workers' compensation insurance company is only obligated to pay the employee \$100.00 per week for every week the employee receives \$200.00 per week in unemployment benefits. ■

### **Workers' Compensation and Short or Long Term Disability Benefits**

Similar to the situation where an employee is entitled to workers' compensation benefits and unemployment benefits, an injured employee may be entitled to both workers' compensation benefits and short or long term disability benefits, but with limitations. In the unemployment situation, the employer is entitled to a dollar for dollar credit. In the short or long term disability situation, the employer and insurance company are entitled to a credit to the extent the employer contributes to the premiums for the disability plan. For example, if the employer funds a company disability plan 100%, then the employer is entitled to a dollar for dollar credit just as in the unemployment example. However, if the employer only funds 50% of the premium for the disability plan and the employee is responsible for the remaining 50%, then the employer and insurance company can take a \$.50 credit against workers' compensation benefits for each dollar the employee receives in disability benefits.

**NOTE:** Some short or long term disability plans may not pay any benefits if the employee is receiving workers' compensation benefits. ■

## The Americans with Disabilities Act (ADA) and Workers' Compensation

There is no direct effect of an ADA claim on a workers' compensation claim. An ADA claim is a federal action where the employee alleges discrimination on the basis of his disability. A workers' compensation claim is based on state law. An employee is entitled to simultaneously file an ADA claim and a workers' compensation claim. However, there may be an overlap of issues. For instance, an employee may contend his employer fired him because of an injury he sustained on the job. He could pursue an ADA claim on the basis that the only reason he was fired was due to his injury. He could also file a workers' compensation claim seeking payment for lost time following his termination. It is possible that an employer may win an ADA claim and lose the workers' compensation claim and vice versa. If an employer settles or loses an ADA claim, the employer and insurance carrier will not be able to credit the settlement payment or verdict against the workers' compensation benefits that may be owed. ■

### The Subsequent Injury Trust Fund (SITF)

The SITF is an agency responsible for reimbursing employers and insurers certain benefits for on the job accidents if the employee had a pre-existing permanent injury or condition. The objective of the SITF is to encourage employers to hire and retain employees with pre-existing conditions. **The SITF does not accept claims for any date of accident after June 30, 2006.** ■

### Information and Documentation Needed to Make a Subsequent Injury Trust Fund Claim

Your insurance company should take the lead in pursuing an SITF claim. However, in general, you need to show the following: 1) a pre-existing permanent impairment; 2) employer knowledge of that impairment prior to the on-the-job injury; 3) "merger" between the pre-existing permanent impairment and the accident on the job. Item three means the on-the-job injury was complicated or made worse by the existence of the pre-existing condition/injury. You can help most with item two, the employer knowledge requirement. The supervisors that have knowledge of the pre-existing injury may be asked to complete an Employer Knowledge Affidavit stating they knew of the pre-existing condition/injury, when they knew of it, and why they considered it to be a permanent impairment. ■

### Subrogation

It is possible to recover money from third-parties responsible for an employee's injury, but there are limitations. This is called workers' compensation subrogation. For example, if a machine malfunctions injuring an employee, and the manufacturer of the machine is at fault, then you may be able to recover a certain amount of workers' compensation benefits paid if the employee sues the manufacturer. This lawsuit is separate from the workers' compensation case and the purpose of subrogation is so that the employee does not "double-dip," or receive money for the same injury from both his workers' compensation case and from a separate lawsuit against the negligent party. There are limitations regarding this right to recover. For instance, the employee must recover some money

through a verdict or settlement and the employer and insurer can only recover after the employee has been “fully and completely compensated” for all economic and non-economic losses. ■

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