



# Workers' Compensation

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## Background

WORKERS' [COMPENSATION](#) is a system that requires employers, typically through their insurance companies, to pay lost wages, medical expenses, and certain other benefits to employees who are injured on the job. Because employers pass on the costs of workers' compensation benefits or insurance premiums in the pricing of their products, consumers ultimately fund the workers' compensation system.

Workers' compensation is different from other types of torts in that it is not based on fault or [NEGLIGENCE](#). A worker who is injured due to her own negligence or that of her employer typically is entitled to the same workers' compensation benefits as a worker whose injury did not result from negligence at all. The idea behind workers' compensation is not to right a wrong or punish negligence; rather, it is a way to protect employers from negligence lawsuits and injured workers from destitution. The goal is to return injured employees to work efficiently and economically without damaging the employer's business.

Workers' compensation is legislated by every state, and the laws vary among jurisdictions but carry many of the same features. An employee who sustains an occupational disease or [PERSONAL INJURY](#) arising out of and in the course of employment is entitled automatically to certain benefits. These benefits may include lost wages, payment of medical treatment, provision of vocational rehabilitation or job placement assistance, and in the case of an employee's work-related death, benefits to the employee's dependents. Some workers, such as independent contractors, are excluded from workers' compensation protection.

## History

Workers' compensation came about in the United States in the early 1900s, a product of the industrial age and a result of increasing numbers of job-related injuries and deaths. Until the development of workers' compensation laws, workers had little or no recourse against their employers for injuries sustained on the job. When job injuries led to the inability to work and the inability to pay for medical care, these workers frequently were left destitute.

## Encyclopedia of Everyday Law: Workers' Compensation

The system of workers' compensation grew from the law of vicarious liability, an English law developed in approximately 1700. The law of vicarious liability made a master or employer liable for the negligent acts of a servant or employee. An 1837 English case, *Priestly v. Fowler*, modified the law of vicarious liability with the fellow servant exception, which relieved a master or employer of liability for a negligent employee who caused injury to a co-employee. Following the example set in *Priestly*, U. S. courts continued to modify the law of vicarious liability and provide the employer with greater protections against liability resulting from negligence. The doctrine of assumption of the risk presumed, often incorrectly, that employees could refuse dangerous job assignments, thereby relieving the employer of liability when those job assignments caused injury or death. Employers could also rely on the defense of contributory negligence, which completely absolved them of liability when the employer's negligence along with the employee's negligence caused his injury.

Workers were left with inadequate remedies against their employers for injuries resulting from work. At the same time, the industrial age was spawning an increase in work injuries. States began to recognize a problem by the end of the nineteenth century and looked to the compensation systems of other countries for guidance. In 1884, Germany, with its socialist traditions, had developed a compensation system whereby employers and employees shared the cost of subsidizing workers disabled by injury, illness, or old age. Next was England, which in 1897 developed a similar system called the British Compensation Act. Finally, in 1910, representatives from various states met in Chicago and drafted the Uniform Workmen's Compensation Law. This uniform law was not widely adopted, but states used it as a model to draft their own workers' compensation statutes. Most states had such laws in place by 1920, and when Hawaii passed its [STATUTE](#) in 1963, all fifty states had workers' compensation laws.

### Rationale

Workers' compensation is a no-fault law, meaning that it is irrelevant whether the employer was not negligent or whether the employee was negligent. No-fault law differs from most types of personal injury lawsuits, which require the injured party to prove the negligence of another party before recovering money and which allow a [DEFENDANT](#) who was not negligent to escape liability.

The rationale behind a no-fault workers' compensation system can be illustrated by imagining what would happen without it. Assume, for example, that an employer owned a loading dock and instructed its employees how to safely lift heavy merchandise on the dock, requiring them to use a forklift to lift any carton weighing more than 100 pounds. A worker, hurrying to complete his shift, negligently ignored the forklift requirement and attempted to lift a carton weighing 110 pounds and badly injured his back as a result. He had to undergo surgery and became disabled from working at all for six months.

Without workers' compensation, society would have essentially two different options in dealing with this injured worker. It could decline any assistance and force the worker to fund his own medical care and unemployment, which could be impossible and could leave him destitute. Or, it could provide government assistance such as **MEDICAID**, welfare, or food stamps. This option would guarantee the injured worker's survival, but at the expense of local taxpayers regardless of any ties to the employer or injury.

With workers' compensation, the injured worker receives an income and payment for medical care from a private source rather than at government, or taxpayer, expense. It is not the goal of workers' compensation to punish or hurt the employer, and that is why state laws require employers either to establish a self-insured fund or to buy workers' compensation insurance. Employers fund the costs of the system but pass those costs along to the consumers of the products or services that cause or contribute to the worker's injury. The goals of the workers' compensation system are therefore accomplished: the worker retains his dignity, receives

appropriate financial and medical benefits, and the consumer becomes the ultimate source of payment.

## Third Party Negligence

In exchange for workers' compensation protection, an injured worker loses the right to sue the employer under the [COMMON LAW](#) for negligence. An injured worker retains the right, however, to sue a third party whose negligence caused or contributed to the worker's injury, even if the worker receives workers' compensation. A common example of this involves a sales employee whose job duties include driving to customers throughout a certain territory. If that employee, while making a sales call, is injured by a negligent motorist who runs a red light, the employee is covered by workers' compensation but can additionally sue the motorist under a common law tort theory. If the worker recovers money from the negligent third party motorist, the worker must repay the employer or insurer who paid workers' compensation benefits and keep only what is left. In some jurisdictions, the employer or insurer paying workers' compensation benefits may sue a negligent third party on behalf of an injured worker with the hopes of recovering part or all of those benefits from the third party. This is known as subrogation.

## Procedure

Workers' compensation disputes in most states are resolved in an administrative court rather than a judicial court. This is in keeping with the goal of returning the injured worker to productive employment quickly and efficiently. Workers' compensation courts often follow their own rules of procedure and [EVIDENCE](#), and the administrative system typically is more relaxed and speedy than the judicial system. As with judicial courts, parties can represent themselves but frequently hire attorneys for representation.

Workers' compensation laws require employers to either be self-insured, meaning they must have enough verifiable financial resources to be able to pay workers' compensation benefits directly to their injured employees, or to purchase private workers' compensation insurance. Many major insurance companies in the United States offer workers' compensation policies in various states. Other insurance companies are smaller and may provide coverage in only one or a few states. Some states choose to fund their own insurance companies, either as the state's exclusive provider or in competition with other private insurers.

## Compensable Injuries

Various types of injuries are covered by workers' compensation. Perhaps the most typical type of injury involves a specific trauma or event; for example, a painter who falls off a scaffold or a car mechanic who injures his back after lifting an engine. Another type of injury is a cumulative trauma injury, an injury caused by repetitious work over time. An example of cumulative trauma injury is carpal tunnel syndrome caused by using a computer keyboard. A third type of compensable injury is occupational disease, and an example of that would be lung disease caused by exposure to asbestos at work.

Mental illness caused by work is compensable in some, but not all, jurisdictions. Mental illness such as stress, anxiety, or depression, even when caused by work, is not compensable in most states. However, mental illness that accompanies a work-related physical injury is compensable in most states. For instance, a nurse who develops depression related to his work in an emergency room typically would not be entitled to workers' compensation, but a nurse who is attacked and physically injured by a patient and as a result develops anxiety could receive workers' compensation benefits for the physical as well as the mental injury in most states.

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Injuries are deemed to be work-related and compensable under workers' compensation if they arise out of and in the course of employment. The requirement that the injury arises out of employment ensures a causal relationship between the injury and the job, and it is usually the employee's burden to prove that an increased risk of the job caused a compensable injury.

There are three general categories of risks that determine whether an injury is compensable. The first type of risk is one that is associated directly with the employment, such as a when a roofer falls off a roof. An injury like this clearly arises out of employment and is always compensable.

The second category of risk involves personal risk. An example of personal risk is an employee with high blood pressure who suffers a stroke while on the job. Assuming nothing on the job caused the stroke, or assuming the stroke would have occurred notwithstanding the employment, the stroke would be considered personal rather than arising out of employment. Purely personal risks are not compensable.

It is more difficult to determine compensability with the third category of risk called neutral risk. Neutral risks are those that are neither distinctly personal nor distinct to the employment. Examples of neutral risks include a worker who has an allergic reaction to a bee sting sustained while on the job, or an employee who is struck by lightning while on the job. Whether neutral risks are compensable depends on the [JURISDICTION](#) and the fact surrounding the injury and the job duties. In general, an employee trying to collect workers' compensation must demonstrate that the job increased the risk of the injury and that the risk was greater than that to which the general public was exposed. The risk of being injured by lightning, for example, is greater for an employee working on the top of a metal communication tower than it is for the general public. Therefore, a lightning strike would be a compensable injury for that employee. ASSAULT is another neutral risk injury. If a worker is assaulted on the job and injured, courts generally look at whether the nature of the job increased the risk of assault, such as the case of a prison guard. If an argument led to a workplace assault, the court would determine whether the argument was work-related or personal. Other common forms of neutral risk injuries include sunstroke, frostbite, heart attacks, and contagious diseases.

To be compensable, the injury must not only arise out of, but also in the course of, employment. This means that the injury must occur at the place of employment, while the employee is performing the job and within the period of employment. Employees who are injured while traveling to or from their jobs typically are not covered by workers' compensation, although there are exceptions to that rule.

### Types of Benefits

There are two general categories of workers' compensation benefits, medical and indemnity. Medical treatment that is medically reasonable and necessary and serves to cure or relieve the effects of the injury is compensable. Disputes may arise over the kind of treatment the injured worker receives, and courts and legislators try to strike a balance between the patient's right to select medical care and the employer's right to curb excessive or unnecessary treatment.

Indemnity benefits are those that attempt to compensate the injured employee for lost earnings or earning capacity caused by the work injury. Some injured workers never lose time from work and may be entitled only to medical benefits. Other injured workers are out of work temporarily and receive temporary total [DISABILITY](#) payments, usually two-thirds of the worker's average wage. Injured workers who are able to return to a job only part time or at a reduced wage receive temporary partial disability payments, which supplement the worker's reduced paychecks. Workers who sustain injuries that cause permanent disability are entitled to permanent partial disability payments if they are able to return to work. The calculation of permanent partial disability payment varies among states but usually depends on a disability rating given by a

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doctor. If a worker is permanently precluded by a work injury from ever working again, that worker is deemed permanently and totally disabled and may receive workers' compensation benefits until retirement or death. When a work injury causes death, most states require the payment of dependency benefits to the employee's spouse, children, or both.

The workers' compensation system is criticized at times for being outdated in a post-industrial age world. Workers' compensation premiums and expenses drive up the cost of products, and the system is made more expensive by [FRAUD](#) and [LITIGATION](#). Disputes often arise between employers and employees regarding the legitimacy of workers' compensation claims. Yet proponents of the system say it is effective in returning injured workers to work and that it promotes safe workplaces.

### State Workers' Compensation Laws

**ALABAMA:** For temporary or permanent total disability, an injured worker receives 66 2/3 percent of the wage with a minimum and maximum wages established by law. The employer selects the employee's physician.

**ARIZONA:** Disability rate is 66 2/3 percent of the wage with no minimum weekly payments but maximum payments established by law. The employee selects the physician.

**CALIFORNIA:** A state agency oversees the selection of the physician.

**DISTRICT OF COLUMBIA:** The employee selects the physician from a list created by the District of Columbia.

**FLORIDA:** After employee reaches maximum medical improvement, a \$10 co-payment is required to be paid by the employee for all medical services.

**GEORGIA:** Maximum period of temporary total disability payments is 400 weeks.

**ILLINOIS:** No limit on duration of temporary total disability payments.

**IOWA:** Disability rate for temporary or permanent total disability is 80 percent of "spendable earnings."

**KANSAS:** Temporary total disability capped at \$100,000. Permanent total disability capped at \$125,000. Workers' compensation benefits subject to offset for unemployment and social security benefits.

**MASSACHUSETTS:** Disability rate is 60 percent of wage.

**MISSISSIPPI:** Maximum period of temporary disability is 450 weeks. Cap on temporary total disability is \$131,787. Cap on permanent total disability is \$136,507.

**NEVADA:** Injured worker can waive the right to workers' compensation.

**NEW YORK:** Disability rate is 66 2/3 percent of wage. Employee selects physician from state's list of workers' compensation physicians.

**OREGON:** Duration of temporary disability payments is duration of disability.

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TEXAS: Employers are not required to purchase workers' compensation insurance.

WEST VIRGINIA: State funded insurer is the exclusive workers' compensation insurer in West Virginia.

### **Additional Resources**

*West's Encyclopedia of American Law. West Group, 1998.*

### **Organizations**

*U. S. Department of Labor*  
200 Constitution Avenue NW  
Washington, DC 20210 USA  
Phone: (866) 487-2365  
URL: [www.dol.gov](http://www.dol.gov)

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