

## **Avoid These New York Workers' Comp Mistakes & Misconceptions**

### **If you've been hurt on the job, you need to know your rights**

At its core, the workers' compensation system in New York is straightforward. If you're hurt at work, you are covered by workers' comp. However, the details of the system – what you need to do, what benefits you can get, and what your rights are as you're receiving treatment – can be quite complex and confusing. There is a lot of misinformation out there, and unfortunately, too many injured workers end up losing benefits they're entitled to receive because of those mistakes and misconceptions.

We've guided thousands of New York workers through the workers' compensation process, and we've encountered many misconceptions and mistakes during that time. Here are a few of the most common ones.

#### **Misconception 1:** “The accident was my fault, so I can't get workers' comp.”

Workers' compensation is a “no-fault” system. It doesn't matter who caused your accident. What matters is that you were at work when the accident happened. If you tripped over your own feet, fell, and broke your nose, that's probably not your employer's fault, but if it happened at work, workers' compensation still pays for it.

There are only a few specific circumstances in which workers' comp can be denied because the injured worker was at fault:

- You intentionally injured yourself.
- You were injured in a fight that you started.
- You were under the influence of drugs or alcohol, and your intoxication was the sole cause of your injury.
- Your injury occurred in the commission a criminal act for which you were convicted.

Otherwise, you get workers' comp no matter who was at fault for the accident. This is the “bargain” at the core of workers' compensation. You can't sue your employer for damages, such as pain and suffering, in a work accident they caused, but you *can* get compensation for your lost wages and medical expenses whether they caused the accident or not.

#### **Misconception 2:** “I was off-site when the injury happened, so I'm not covered.”

Workers' compensation applies to any injuries that occur in the course and scope of your employment, not just when you are on your employer's premises. If you were injured while attending an off-site meeting, doing a job at a client's property, or running an errand for your employer, your injuries are compensable. You also don't have to be actively engaged in a job-related activity – if you slip and fall in the hallway on the way to the bathroom during your workday, that's a compensable injury, too.

Note that your *commute* to and from work is generally not covered by workers' compensation, but even then, there are exceptions. Injuries in the portion of your commute that is on your employer's premises (for instance, if you are hurt in an accident in the company parking lot) may be covered. Also, if your employer gives you specific instructions regarding your commute and you are injured following those instructions, the injury should be covered by workers' comp. For instance, if your employer tells you to park in a particular off-site parking lot and you are injured while walking from that parking lot to your office, that is compensable.

Workers' compensation also may not cover injuries at optional recreational events that take place outside work hours, such as company holiday parties. However, the event must be *truly optional* and *not a work duty* for this exception to apply. If we can prove your employer explicitly or implicitly required you to be there, or that the company benefited in some way from your attendance (for instance, if you interacted with customers during the event), your injuries may be covered by workers' compensation.

**Misconception 3:** "I have to see the doctor my employer wants me to see."

This is true to an extent in some states, but it's not how workers' comp works in New York. If you are hurt on the job, you can generally see any medical provider who is authorized to treat injured workers by the New York Workers' Compensation Board. These physicians have undergone a training and medical review process to treat on-the-job injuries. You can find an authorized healthcare provider using the search function on the [Board website](#). If you're not happy with the care you are getting from your current treating physician, you are free to switch to any other authorized physician at any time.

There is one exception: if your workers' compensation insurance company has a preferred provider organization (PPO), you need to go to a doctor in the PPO for any non-emergency treatment within the first 30 days after the work injury. However, after 30 days have passed, you are generally free to switch to any other doctor authorized by the Board, whether they're in the PPO or not.

**Misconception 4:** "I didn't miss any work, so I don't need workers' comp."

Even if you don't have to miss a single day of work, there are several other benefits to filing a workers' compensation claim.

First, workers' compensation pays for the full cost of all medical treatment for your work injury – meaning you pay nothing out of pocket for doctor's visits, surgery, medication, medical devices, physical therapy, and any other treatment you need. If you go through your regular health insurance, you most likely have co-pays, deductibles, and other out-of-pocket expenses.

Second, New York workers' compensation law provides for Schedule Loss of Use (SLU) awards for permanent injuries to the extremities, loss of sight, loss of hearing, and disfigurement of the face, neck, or scalp. An SLU award gives you a certain number of weeks of compensation depending on the body part that was injured and the percentage of permanent impairment.

In an SLU award, you get two-thirds of your average weekly wage (based on your gross earnings in the 52 weeks before the injury) for a number of weeks depending on the body part and the percentage of loss of function. For instance, if you suffered a permanent leg injury that caused you to lose 25 percent of use of one leg, you can get 72 weeks of compensation for that injury, even if you work a desk job that was not affected by your leg injury. If your average weekly wage is \$900, you would get \$600 for each of those weeks, for a total award of \$43,200 – again, even if you didn't miss a single day of work!

**Mistake 1:** Not promptly reporting the injury in writing.

To get workers' compensation for a work injury, you need to notify your employer as soon as possible. Telling a coworker doesn't count – you have to inform your supervisor or someone else in charge at your employer.

Under New York law, injured workers have up to 30 days to report a work injury, and that report can be made either verbally or in writing. However, we strongly recommend reporting the injury as soon as possible and doing so in writing because it makes it harder for your employer or the insurance company to dispute later. If you wait several days or weeks to report the injury, you are still entitled to workers' comp, but the insurance company can also argue that something else happened in the intervening time to cause or aggravate your injuries. This can make the workers' compensation process more difficult and ultimately affect the amount of compensation you receive.

If you're in a work accident that happens at a single moment in time, such as a slip and fall, your window of time to report the injury starts ticking on the day the accident happens. Failure to report your claim to your employer within 30 days may bar your claim for compensation completely.

**Mistake 2:** Not disclosing all symptoms to your doctor.

When you're hurt on the job you need to see a doctor as soon as possible, and you need to tell the doctor about all your symptoms. Don't exaggerate, but don't leave anything out either. This is important for two reasons. First, your doctor needs all the information you can provide in order to effectively diagnose and treat your injuries. Even a minor symptom may be indicative of a larger problem that requires a test, such as a CT scan or MRI.

Second, disclosing all your symptoms to your treating physician creates a record of your injuries that makes it harder for the workers' comp insurance company to dispute them later. If you see a doctor as soon as possible after the injury, tell that doctor everything you're feeling, and proceed with your follow-up care, you will have a clear paper trail supporting your workers' comp claim.

Speaking of which, follow your doctor's instructions. Take your medications as prescribed. Go to your follow-up appointments. Take it easy when you need to take it easy and ask for

reasonable accommodations at work, if needed. Again, this is the best course of action for both your health and your legal rights.

**Mistake 3:** Not hiring an experienced workers' compensation attorney.

The New York workers' compensation process is complex and can be frustrating for people who aren't used to navigating its intricacies. Of course, the insurance companies deal with the system every day, and they are adept at protecting their interests – which means paying injured workers as little as possible. The only way to level that playing field is to get an attorney on your side who has extensive experience with the New York workers' comp system and knows how to get results for injured New York workers.

We offer a [free case consultation](#), and we work on a contingency fee basis, which means you don't owe us a cent until and unless we get a positive result for you. In other words, there is no downside to discussing your work injury with an attorney, and potentially much to gain. If you've been hurt on the job, we'd be happy to meet with you, answer your questions, and explain your legal options.