

Information for Worker's Compensation Clients

Overview of the Worker's Compensation Act

Indiana Worker's Compensation cases are governed by a State law known as the Worker's Compensation Act. The legislature has established that when an employee is injured within the course and scope of his employment, the employer has a duty to provide only three (3) statutory benefits to the injured employee. These three (3) benefits are: 1) temporary total disability (wage replacement) benefits; 2) statutory medical benefits; and 3) permanent partial impairment benefits based on a permanent partial impairment rating.

These are the only benefits that you will be entitled to receive in your case. Therefore, you cannot collect for many of the other damages involved in personal injury cases or other states' worker's compensation cases. Indiana ranks VERY LOW in terms of all Worker's Compensation benefits paid to an injured employee – YOU – in the United States. It is important for you to know this in the beginning of your case, because no one will become rich or even return to where they were before your accident from this Worker's Compensation case in Indiana.

The First Two Benefits: TTD and Statutory Medical

After you were injured your employer is entitled to a thirty day investigatory period from the date that your employer became aware of your injury assuming that they do not file for any extensions of time. Your employer will be getting in touch with their worker's compensation insurance carrier who will probably contact you. **PLEASE DO NOT TALK WITH THEM. REFER THEM DIRECTLY TO US.**

After thirty days, the employer must either indicate that they accept your case as compensable, or deny compensability. If it accepts your claim, your employer will pay you your benefits. Your temporary total disability benefit in Indiana is 66% of your Average Weekly Wage, with different statutory caps depending on when you were injured and the cap that applies to that time. The caps generally change each July 1st. Your Average Weekly Wage is the average of the weekly gross wages for each of the 52 weeks prior to your injury. You should ask our staff about the different rates that may apply to your claim, based on when you were hurt.

The insurance company should send you an Agreement to Compensation, State Form 1043, that lists exactly what you will be receiving for a weekly benefit. This is called your Temporary Total Disability benefit, based on your Average Weekly Wage. **PLEASE DO NOT SIGN IT. MAIL OR FAX THIS FORM TO US WHEN YOU RECEIVE IT. DO NOT SIGN IT UNTIL WE HAVE HAD A CHANCE TO REVIEW IT WITH YOU.**

You must be temporarily totally disabled at least seven days as a result of your work related accident to receive temporary total disability benefits. You will be paid from day eight on a weekly or bi-weekly basis until you meet any of the conditions below. Then, those benefits for the first seven days will be paid retroactive after you have been totally disabled for twenty-two days. Once your employer has begun paying temporary total disability benefits, pursuant to State statute, I.C. 22-3-3-7, there are only five reasons when they may terminate your benefits. Those reasons are as follows:

1. The employee has returned to **any** employment;
2. The employee has died;
3. The employee has refused to undergo a medical examination as required by the employer;

4. The employee has received five hundred weeks of temporary total disability benefits, or has been paid the maximum compensation as allowed by the Worker's Compensation Act; or,
5. The employee is unable or unavailable to work for reasons unrelated to the compensable injury.

If your employer is going to terminate your benefits, they must notify you in writing of their intent to terminate these benefits. The employee, or their worker's compensation insurance company, will mail a form directly to you titled **"Report of Change Status & Request for Independent Medical Examination,"** State Form 38911. This form is extremely important to both of us. It **must** be filled out and returned to the Indiana Worker's Compensation Board within **seven** days of your receiving it. **If it is not returned** within seven days to the Board, **you are not entitled** to an independent medical examination at the employer's expense, and **you are not entitled** to dispute the termination of your other benefits. **You must keep the envelope** in which you receive this form from the insurance carrier, as **it may become crucial evidence** in the event of a dispute with the insurance carrier as to a difference between the date on the form that they signed it, in the bottom left corner, and the date it was actually mailed. The **envelope** will be the only proof that the insurance company mailed the form later than it indicates in its communication to us, that the Worker's Compensation Board will accept from us in order to get you the free examination. **Keep the envelope with the letter.**

Medical Issues and Answers

Your employer has the exclusive right to authorize and direct all of your medical care. As indicated above, your failure to cooperate can be a basis for the termination of your temporary total disability benefits. However, if you have been assigned a rehabilitation nurse, **you do not have to allow that nurse to come into the doctor's office with you.** If there is a problem regarding this, please call immediately to resolve this problem. Please be careful what you tell the rehabilitation nurse, as the nurse or case worker is employed by the insurance company to make sure that your benefits are terminated as quickly as possible and to make sure that the doctor is not providing you with too much "extra" care.

We would prefer that you not speak with any of these people; it is not in your best interest to talk to them.

If you are required to travel outside of the county in which you are employed for medical treatment, your employer shall pay the reasonable expense of travel, food and lodging, if necessary, during the visit. You should make sure that we are aware if you have not been paid mileage when forced to travel. Your employer is entitled to reduce your mileage after the first 500 miles that you travel for medical care.

While you have a pending Worker's Compensation claim, you cannot be sued or "hassled" for any outstanding medical bills related to the work injury. You need to bring any bills you are receiving as a result of your medical care **from this work related accident** to our attention immediately by **mailing or faxing the bills to us.** If you do so, we can send letters to protect you and your credit rating.

If you do not inform us of your bills received, we cannot protect you from future bills that you assume have been paid after your case is resolved. **Those bills may become your responsibility after the case is done.** When you give us your bills, we will create a table of them for you to review to make sure we have all the bills that you have received before we send it to the worker's compensation insurance company or your employer. Assuming that your bills are being paid is an incorrect assumption on your part because we will not be responsible for these bills if they are unpaid as we cannot investigate what you do not tell us about your bills, case or medical care.

You will continue to receive your statutory medical benefits, as well as your temporary total disability benefits until your treating physician finds that you are medically “quiescent.” This is a term, sometimes called P&Q or MMI (maximum medical improvement) which means that you are as good as you are going to get, or as bad as you are going to get, and there is nothing further that modern medicine can do to improve your condition resulting from your injury. Remember this may be only one doctor’s opinion.

You may also hear the term “**MMI**,” from your insurance adjuster, case manager, my staff or me. This acronym stands for “maximum medical improvement” and is effectively the same as P&Q. The insurance company may terminate your first two benefits based on the doctor’s determination that you have reached “MMI” or “P&Q.” If you want a second opinion, at no cost to you, then you will need to follow the **same termination procedures regarding the “Report of Change Status & Request for Independent Medical Examination,” State Form 38911.**

Get the Form 38911 with its envelope to us within five days of you receiving it; otherwise you will have missed your chance for a second opinion.

Permanent Partial Impairment Rating

At this point, you have been terminated by the insurance company’s doctor from your first two benefits. The doctor will then say that you are ready for your third benefit under the Worker’s Compensation Act, a permanent partial impairment rating, commonly referred to as the “PPI rating.” This rating is determined based upon medical evidence from your treating doctors. Doctors often consult the American Medical Association’s Evaluation Guide to Impairment, 6th Edition, to aid in determining the percentage of your impairment and your “PPI rating.”

It is important to realize that **impairment** and **disability** are words that in the Indiana Worker’s Compensation Act have two distinct meanings. *Impairment* is the physical loss of function or your physical inability to perform a specific task, such as bending over. *Disability* is your inability to work. We will arrange, if required, for you to be evaluated by a vocational rehabilitation specialist with regard to your disability. You will note later in this letter that we suggest you sign up with and go through the Indiana Workforce Development’s Vocational Rehabilitation Services. The vocational expert that I am referring to here is very different from the one the State offers with its Vocational Rehabilitation Services.

Since July 1, 1991, the Indiana Worker’s Compensation Board has determined that your permanent partial impairment compensation should vary based upon degrees of impairment. For the first ten “degrees of impairment to the person as a whole,” you receive different dollar amounts per degree, based on whether you were injured before or after July 1. Please ask our staff about the different dollar amounts relating to PPI ratings and how different parts of your body may have to be converted to “degrees of a person as a whole.” The PPI rating you may read in your medical report, or be told by the doctor, may need to be converted into “degrees of a person as a whole” if it is just a PPI rating based on an extremity, leg, knee, elbow, hand or any other body part. You should ask our staff about this issue when you receive your rating.

Additionally, if you have received your temporary total disability benefits for over 125 weeks, 2.7 years, then the employer is entitled, by statute, to a permanent partial impairment credit for any temporary total disability benefit payments they have made over 125. Therefore, it is usually not advantageous for you to be on temporary total disability benefits for more than these first 125 weeks from the date of your injury. You should discuss this issue with our office if you have any questions because it can be difficult to sort out and there may be other issues to understand.

Attorney Fees and Costs

It is important from the beginning that you understand the costs to you, the basis for those costs, and what you may expect with regard to billing from our office. It is understood that Worker's Compensation litigation matters differ greatly from other cases because our attorney fees are determined by the Worker's Compensation Board.

With your cooperation, we will provide legal consultation and advice; draft such documents and pleadings as we deem appropriate; hold conferences and negotiations; then, **only with your permission confirmed by letter**, resolve your case, either by agreement or by trial, whichever is necessary in your case. If necessary, we will hire, on your behalf, physicians, expert witnesses, accountants, court reporters, process servers and others. We may require that you pay for these costs as the costs are incurred. **You should contact the attorney handling your case to discuss these expenses at the appropriate time.** Any expenses or costs that you do not pay at the time they are incurred will be deducted from your settlement by our office.

We are entitled to fees of \$200.00 plus 20% of the first \$50,000.00 of your recovery – either Temporary Total Disability or Permanent Partial Impairment – and 15% of everything over \$50,000.00 which we recover for you.

Precise fees cannot be predicted, without knowing what your permanent partial impairment rating will be, and whether there is any disagreement about your temporary total disability benefits that we are successful in getting for you. Our staff will be able to tell for each set amount of money, how much the fees will be for your case. For example, if your PPI rating is 10% of the person as a whole, that translates to a specific dollar amount. Our fee is 20% of that dollar amount. This does not include any costs or expenses associated with your file. Our fee is 10% of any disputed medical bills that we recover.

When your settlement check or a Temporary Total Disability check arrives, you may have to sign it if you have not already executed a Power of Attorney for us to deposit your check in our Trust Account. This account is a special account for which the Indiana Supreme Court requires us to follow very strict accounting procedures as to clients' monetary settlements and attorney's fees, on one check, are deposited in the Trust Account. **All checks – your settlement check or TEMPORARY TOTAL DISABILITY BENEFITS check – that are deposited into the Trust Account must stay there at least ten days before we can cut any checks – either to you or to us from that account.** We cannot modify or change those rules. You can give us permission to sign your name only to deposit the money into this account. You will have a Settlement Statement prepared for your review and signature to see what expenses and costs (copies, postage, telephone calls, doctors' reports, depositions, mileage, etc.) were deducted from your settlement in this case relating to your accident. If you have retained us to represent you in another case, those fees may also be deducted from your settlement. You will have to sign this Settlement form or a letter explaining the costs and fees to receive any money from the Trust Account.

Expenses

Our office policy is to require that a statement for all costs for copies, telephone calls, postage, mileage and such will not be sent to you until there is at least \$50.00 in total costs. You should discuss this with the attorney handling your case if you have any questions. You will be informed by our staff and required to sign agreements regarding any receipt of temporary total disability benefits disputed or unpaid or permanent partial impairment rating that will show how the funds are to be distributed because we will claim our portion of costs and expenses from all of these funds. In addition to our firm's legal fees, you will be responsible for payment of these other expenses in connection with your case. Additional costs include expenses such as doctor reports, depositions, travel, investigators, copying, long distance calls, mail, etc., where warranted. You

will also be responsible for all costs, attorney fees and expenses reasonably and necessarily incurred by us for collection of any unpaid amounts due our firm for representing you, should that be necessary.

We will handle your case as quickly and efficiently as possible. We cannot be responsible for any delays caused by the insurance company or which might arise should you change your mind. Our function is both to represent you and advise you, and once you have been advised, we are ready to do what you instruct. Should you decide to withdraw from any litigation which is before the Board, or in the process of being prepared, please notify us at once so that we can stop the legal process from going any further, and stop fees from accumulating to you.

Attorney Lien for Fees and Costs

If there is a breakdown of our relationship or we decide to withdraw our appearance as your attorney in this claim, or you decide to terminate our relationship, then you will, in either case, agree to allow us to lien any Award from the Board or any payment from the insurance carrier for our outstanding time and costs incurred in your file. We will lien your file for the amount of work, costs, and expenses until the date that you request we no longer work on your case and you agree now to allow us to receive our fees from any settlement that you may receive from the insurance carrier after we withdraw our appearance, even if you retain another attorney.

Telephone Calls and Office Hours

Our normal office hours are weekdays from 8:30 a.m. to 5:00 p.m. When calling the office to leave information or make inquiries about your case against your employer you may speak with the attorney handling your case or his legal staff. We have a voicemail box for after-hours calls that only our staff can access, so you can leave messages containing confidential information as only our staff will receive your call and hear those messages. Your call should include your telephone number, and should tell our staff why you are calling and what you need.

If your telephone call requires a return call from our staff, then you need to be aware that your phone call **may not be returned immediately by our staff**. This is generally because our staff may not have the information to answer your questions immediately.

In our experience, many of the answers to your questions will depend on our staff contacting your employer, the insurance company, their attorney, or the Worker's Compensation Board to get the requested information. An immediate return telephone call to you would not be helpful because you would not have any more information than before you called and our staff would not have anything to tell you except that a message was left for the other attorney or your employer. This is not an efficient use of time for either our staff or you. It is better if we can gather information and call you back with the answers you need.

Most telephone calls are returned in no more than four business days because of the exchange of telephone calls between our staff, the other attorney or the insurance company. Please remember that if you cannot speak immediately to our staff, because they may be meeting with clients or preparing for trial, or in trial when you call, that they will not be taking telephone calls when they are meeting with you or getting your case ready for trial or resolution. We are out of the office a significant amount of time. If there are certain times that are better for you to receive a return call, please let us know so that we can better serve you.

Please remember that our law firm concentrates in handling Worker's Compensation matters. Our legal staff has significant knowledge about the Worker's Compensation Act and can answer a number of your questions and issues and may take and/or return telephone calls for the attorney about your questions and concerns. If

this arrangement is a problem for you, please contact our staff to work out a different arrangement. You will find that everyone is very helpful.

E-Mail and Faxes

To better serve you, we now have a website (www.bullmanlaw.com). You may also send us an e-mail. The attorney's individual e-mail address can be found on www.bullmanlaw.com or by asking our staff. We encourage use of e-mail as you can send it any time and responses from our staff may be a little quicker. We encourage you to fax documents to us rather than delivering them personally to the office. Just note on your fax the person who should receive it in our office.

Your Responsibilities As Our Client

You are required to strictly obey all Orders entered in the case by the Hearing Member or the Worker's Compensation Board; to tell us the truth at all times; to provide us with certain information from which we will obtain the necessary facts to prepare and file legal documents; and to provide us with complete and accurate statements concerning your medical status and any changes in that status or work status.

This requirement includes telling us when **your street address or telephone number changes**. It is understood that we may withdraw from representing you if you fail to cooperate with us in these matters or if we cannot contact you at the address or telephone number we have in your file. **Your cooperation is essential** for your case to go forward successfully.

When our attorney-client relationship exists after you have signed our contract you should no longer be approached by your employer or the insurance company with specific settlement proposals or any other discussions about your medical care and conditions. **All contact with them should be through our office.** If you are contacted, please ask the party to contact our office and let us know immediately.

It is your responsibility to maintain communication with your family about your case relating to your injury. We will not and cannot discuss your case with any third person not directly involved unless authorized, in writing, by you.

It is your responsibility to be present and on time when Court appearances are scheduled. We will send you a letter advising about any hearing that is scheduled. Please remember that hearings are often changed or continued for many different reasons. We would appreciate your contacting us several days before any scheduled hearing to confirm the date and time and discuss your questions and concerns relating to the hearing. **If a hearing is continued, we will try to notify you, but you should confirm the date with us before taking a day off work.**

If witnesses are required to be present on your behalf, you will be expected to help us coordinate the details and advise us who you believe will help your case. We will assist you in these matters as appropriate.

If we indicate that a Pre-Trial Conference has been scheduled, **you do not need to appear** as this is our opportunity to discuss with the Hearing Member your case's procedural issues and to establish time frames and deadlines on a Pre-Trial Order. You will receive a copy of this Pre-Trial Order if the Hearing Member enters one in your case.

It may be necessary for you to produce records, such as income tax returns or your total medical and employment history. You must also furnish a complete list of all outstanding medical bills and liabilities, including amounts you have paid as any installment payments, if you expect us to try to recover the amounts that you have paid and to make the insurance company pay those bills and costs not paid.

Particularly, keep **complete** notes for yourself regarding all medical expenses and doctors. You will need to provide my office with copies of all medical bills that you have or are receiving from your injury **both paid and unpaid**. We will instruct the medical providers that they must seek reimbursement from the insurance carrier or your employer. Keep in mind that the Hearing Members are experienced in these matters and will quickly recognize exaggerated demands related to medical bills. It is recommended that you keep all documents related to your case and your work-related injuries in a file folder where they can be easily accessed as needed. Bring this folder with you to all meetings with us. We will create a table of your bills, indicating the provider, the amount due, the claim number, etc. It is your responsibility to review this table for us as you know better what providers you went to and what bills you have received and what amounts you may have paid to different providers. You will be required to acknowledge our prepared table of bills, based on the information you provide us. **This is the only basis we have to make a claim for your medical bills.**

Other Services and Remedies Available to You

We recommend that if you believe you may not be able to return to your employment that you contact Vocational Rehabilitation Services as this State agency is designed to help people with disabilities obtain a number of essential services. You may have to fill out an Application in person. Vocational Rehabilitation Services will determine in 60 days if you qualify. The best part of this program is the school to work programs and job placement services. You can find Vocational Rehabilitation Services in the telephone book under Government services or please call us and we will help you locate the office nearest you. **This is a program that you should really consider immediately and we recommend it in all cases.** The best number to call is 800-Workone for the closest location to you.

Social Security benefits and programs can be confusing. We recommend that you apply for Social Security benefits if you have been receiving Temporary Total Disability benefits for more than six months. Social Security has a number of different programs, food stamps, Social Security Supplemental and Social Security Disability. You can reach the Social Security Administration's office at 800-772-1213. We recommend that you apply for every benefit that you may qualify for, and you **must inform** the Social Security Administration that you have a pending Worker's Compensation Claim before the Worker's Compensation Board and that we are handling the Worker's Compensation case for you. If you get any Award from Social Security, please inform us immediately as your Social Security file may have important documents that we can use for your benefit in your Worker's Compensation claim.

We do not handle the Social Security appeal processes, but we will refer you to competent legal counsel who specializes in this type of law should you need this service.

There are a number of different State and Federal Acts that you may feel apply to you and your employment situation and conditions. I recommend that you discuss any issues you may have directly with the **Indiana Civil Rights Commission (800-628-2909)** about your case as there is a deadline of **180 days from the date of the act** done to you.

The Indiana Civil Rights Commission will ask you to state your complaints in writing to them. You should get help from the Commission's staff in writing about your complaints as this letter will be given to your employer and their attorneys to defend the company. The Commission begins an investigation to collect and summarize the facts from both sides – you and the employer. The Commission may attempt to help you resolve and settle your case at this point. If there is no resolution between you and the employer, the Director of the Civil Rights Commission makes a determination as to whether an illegal act of discrimination occurred. You have only fifteen days after the Director determines that there was no illegal act of discrimination to ask for a Reconsideration from the Director.

You may have a hearing before an Administrative Law Judge, not a jury, where you have the burden of proof to prove your case. You can be represented by one of the staff attorneys for the Civil Rights Commission. You should keep us posted on the progress if you pursue this remedy against your employer, with the case number and the name of the investigator, as you have a legal right to know who the Commission has working on it and the status of the case.

The Equal Employment Opportunity Commission also handles discrimination issues related to your employment. You have **three hundred days** to file any claim through the **Equal Employment Opportunity Commission**. You can contact them at **800-514-0301 OR 202-663-4900**. The process is much the same as that stated above for the Indiana Civil Rights Commission.

You need to start on these different processes on your own as they require that you call and begin the claim with the different organizations. You should let us know that you have made such a claim, but unless we enter into another Attorney-Client Agreement, **then we are not and cannot represent you in that different claim**, even if we may give you some informal recommendations. We will probably refer you to a specialist in that area of law.

Conclusion

Work-related injuries are a common part of American life, and thus, you can expect to be exposed to a great deal of gossip and “friendly” advice concerning your case and its outcome. Because the Worker’s Compensation Act is complex, please write down your questions to discuss with our staff. We will help you become more knowledgeable about your case and less vulnerable to misinformation and uncertainty regarding your work-related injury. This article is not intended to be a complete survey of the law. Due to the individual nature of your worker’s compensation case, this letter should not necessarily be applied to any specific case.

Please remember, just as every individual is different, every worker’s compensation case is different. Your particular circumstances will dictate how your case is handled. Do not be overly concerned about proceedings or results of other cases that you have heard about. It is essential, however, that we communicate with each other when questions or concerns arise, and that you fully comply with all of our requests for information.

You will get a significant number of letters from us. Use a file folder and simply put everything that says “client copy” or “copy” in that folder as that letter is for your information and does not require any action on your behalf, but is only sent to keep you updated on the latest letters written in your case. We will let you know, either by telephone call or by a letter, if we need anything. If you do not hear from us, do not worry as your case may take some time to gather all the necessary information. **Please keep us updated if your address or telephone number changes.** Thank you for the opportunity to be of service to you. We look forward to assisting you.

John P. Bullman