



Know Your Workers' Compensation Rights

Workers injured or made ill on the job may be entitled to cash benefits and/or medical care under the NYS Workers' Compensation Law. PEF members have additional contractual benefits and civil service law protections. What follows are some of the procedures NYS employees should follow when filing for Worker's Compensation.

Union

PEF has trained over 250 leaders statewide, called Worker Compensation Navigators, to assist injured members. These Navigators can provide helpful information on workers' compensation and contract benefits. The PEF Health & Safety Department has put together a packet of reference materials including the *AFL-CIO's NYS Worker's Compensation Navigator* book, *Injured on the Job? An Employee's Guide to NYS Worker's Compensation Benefits*, information on the Article 13/ Worker's Compensation Benefit of the PEF/NYS contract, Civil Service Law Section 71, Occupational Health Clinics, the Advocate for Injured Workers, a resource list of Worker's Compensation Lawyers, COSH groups, etc. This packet also includes information on the areas including supplemental pay, time and attendance, alternate work assignments (Mandatory Alternate Duty Program) and disability leave.

The Navigators Packet is provided to injured members upon request. Ask your PEF Council Leader or Executive Board member for this assistance or call the PEF Health & Safety department at 800-342-4306, ext. 254.

Employee

Reporting all work related injuries and illnesses is critical to ensuring that workers' compensation claims are handled properly. Notify your supervisor in writing about the injury/illness as soon as possible, but no later than 30 days, and call the Accident Reporting System at (888) 800-0029.

You should obtain first aid or other necessary medical treatment as soon as possible. If you go to the Emergency Room, be sure to see your own doctor afterwards, and confirm that they accept workers' compensation. A listing of doctors accepting workers' compensation is available at the Workers' Compensation Board (WCB) website on the "Workers" tab at www.wcb.state.ny.us. You should not pay your doctor, HMO, hospital, ambulance or co-pays. These bills will be paid by the insurance carrier, the NY State Insurance Fund (NYSIF), if your case is not disputed. If your case is disputed, the medical providers must wait for payment until the Workers' Compensation Board (WCB) decides your case. You are entitled to be reimbursed for medications, mileage, car fare or other travel expenses going to and from your doctor's office, or hospital. Keep receipts for all such expenses. In the event you have already paid for all or part of these expenses, you can be reimbursed when your claim is settled.

You do not have to prove that the illness was caused solely by your job, but you must show that your work substantially contributed to your injury/illness. Do NOT waive your right to have limited access to your medical records by your employer. The C-3.3 gives the NYSIF and your employer the LIMITED access necessary to address your claim, you need not sign any other waivers giving them unlimited access to your records.

Filing a Claim

You must file a C-3 "Employee's Claim for Compensation" and C-3.3 "Limited Release of Health Information [HIPAA]" within 2 years of knowledge of your work-related injury or illness. **You do not have to lose time from work in order to file a claim.** When a C-3 is filed, the WCB must open up a case file. You will receive these forms in the Claimant Information Packet your employer is required to provide to you. Forms are also available through the NYSIF website at <http://ww3.nysif.com/>. You may also contact your union representative, or a Workers' Compensation licensed representative or attorney.



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Keep Records

Documentation is key to preventing delays and resolving disputes. Reconstruct your work history, including the time, date, place where you were working and when the symptoms occurred. Record what the symptoms were and when they first developed. Write down what happened, who witnessed the accident, whom you informed and when. Keep a record of all necessary medical treatment, number of doctor visits, mileage, medications purchased and days lost from work. Also, make sure you keep all documentation and paperwork sent to you by your agency including the statement accompanying payment and your timesheets.

Waiting Period

PEF members with a non-disputed claim may use accruals during the waiting period, which is the first 7 calendar days of the injury/illness. After that you are put on Workers' Compensation Leave Without Pay and will receive the statutory benefit from the NYSIF.

To be compensated for loss of earnings (statutory benefit), your injury/illness must keep you out of work for a total of more than 7 calendar days. These do not have to be consecutive days of absence, they can be cumulative. If you are out of work from 8-14 days, you will receive payment beginning on the 8th day. If you are out more than 15 days, you will be paid from the first day of injury/illness. You will not receive payment if you are out for less than 8 cumulative calendar days. Include Saturday and Sunday in calculating the waiting periods. Furthermore, if you experience intermittent lost time, you must accumulate 7 to 14 lost work days to meet the requirements of the waiting periods. It is important to keep track of loss time due to injury / illness, so that when you satisfy the waiting period you may receive payment for lost time.

Under the PEF/NYS Collective Bargaining Agreement (CBA) PEF members with disputed, or controverted, claims, may charge accruals for the entire period or choose to go on leave without pay pending a determination by the Board.

At the conclusion of the case if the WCB awards restoration of accruals, PEF members will receive restoration of credits on a pro-rated basis to the amount of the award.

Cash Benefits

Workers who are totally or partially disabled and unable to work for more than seven days receive cash benefits based on their average weekly wage (AWW) for the previous year. The formula used to calculate benefits is: **$\frac{2}{3} \times \text{average weekly wage} \times \% \text{ of disability} = \text{weekly benefit}$** . The weekly benefit cannot exceed the flowing maximums (based on the date of accident):

<u>Date of Accident</u>	<u>Weekly Maximum</u>
• July 1, 1992—June 30, 2007	\$400
• July 1, 2007—June 30, 2008	\$500
• July 1, 2008—June 30, 2009	\$550
• July 1, 2009—June 30, 2010	\$600
• July 1st of each succeeding year	$\frac{2}{3}$ of NYSAWW
▶ July, 2010—June 30, 2011	\$793.83

The NYSAWW as reported by the Commissioner of Labor may be found at the Workers' Compensation Board website at www.wcb.state.ny.us/content/main/onthejob/CashBenefits.jsp.



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FACT SHEET

Awards for Permanent Injuries: The Workers' Compensation Laws also provides benefits according to a fixed schedule for permanent injuries involving the fingers, toes, hands feet, legs, arms, loss of vision, loss of hearing, even if there is little or no lost time from work. These benefits are called *Schedule Loss of Use Awards*. The number of weeks of compensation awarded as set forth in the statute is dependent upon the particular body part injured and the degree of permanent damage. There are also benefits awarded for disfigurement of the face and head.

Death Benefits: If death occurs from an injury on the job or because of an occupational disease, the spouse, minor children and/or other dependents as defined by law, are entitled to receive weekly cash benefits as set forth in the statute. Even where there is no spouse or dependants, the law provides for a \$50,000 benefit to the deceased workers' estate. The law also provides for limited reimbursement of funeral expenses. PEF members have additional death benefits in the CBA.

Employer

Your employer is required to complete and submit form C-2, "Employer's Report of Injury/Illness" within 10 days after the occurrence to the WCB and the insurance carrier, SIF. This requirement applies if there is a loss of time beyond the workday on which the incident occurred, or in cases in which medical treatment beyond first aid is provided. The state agencies process the C-2 electronically via the accident reporting system. Once they have, you will receive notice from WCB and SIF that a case has been filed. You have the right to receive a copy of the C-2. Requests should be made in writing to the Workers' Compensation Board.

Your employer may not ask you to waive your rights under the Law. You cannot be discharged or discriminated against. The Law contains penalties if you are harassed for filing a claim. Your employer is responsible for making sure that you are aware of your rights and obligations under this program. It is also the employer's responsibility to administrate the processing of claims accurately and on a timely basis.

Some of the agencies have their own forms and procedures for processing claims. Generally, cooperating with these internal procedures will ensure a more timely filing of claims. But remember, DO NOT agree to provide unlimited access to your medical records! However, if a C-2 is not filed subsequent to a work related injury or illness, you and your union steward may question management on why they are not doing so.

Your employer is required to provide a Claimant Information Packet, including the C-3 and C-3.3 forms. It also contains information on the temporary authorization procedures for receiving prescription drugs. If you do not receive this information contact your personnel office. The Claimant Information Packet is also available on the NYSIF Website.

Doctor

Your medical provider should file a form C-4, "Attending Doctor's Progress Report" or a narrative report with both WCB and the NYSIF, and, if requested, to the employee's representative, within 48 hours of the first treatment.

The provider must furnish a 15 day report of injury/illness and treatment after the first treatment. Additional progress reports are required during treatment, at 45-day or less intervals, with a final report immediately on termination of care.

Under the law, medical evidence is critical to proving that an injury or illness is work related. Therefore, it is key that the treating physician be provided all necessary information to assist him/her in deciding if a case is work related. The initial report must state the the patient's injury is causally related to their employment, and briefly recite the details of the accident or occupational



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disease. Every report should state the patient's current percentage (0% —100%) of temporary impairment at the time of each visit, and if the patient is able to work with restrictions if at all. The degree of temporary impairment must be given in a percentage, and is a crucial piece of information used in determining the compensation rate for the patient. It also has an impact on whether the PEF member qualifies for the contractual supplemental pay benefit, which is only available if the member is 51% or more disabled.

The PEF Navigator Packet contains a flyer with more details on this for PEF members to bring to their doctors called "Information for Physicians: Treating Workers' Compensation Claimants & Filling OUT C-4 Forms.

One of the biggest obstacles to claims being processed is providers not sending in the C-4 to SIF. Remind your doctor to submit the C-4 after every visit.

Insurance Carrier for NYS employees (State Insurance Fund)

If the carrier does not dispute your claim and lost time exceeds 7 days, it prepares form C-6 and begins payment of compensation within 18 days after disability begins or within 10 days after notice of the employee's knowledge of the injury/illness, whichever is greater. If payments are later modified or stopped, the SIF must notify the WCB and the employee on form C-8 with evidence on which the action is based.

The carrier must also furnish a written statement of Employee Rights under the law within 14 days or with the initial check, whichever is earlier.

If compensation is not provided, the SIF must send the WCB and the employee form C-7, "Notice that Right to Compensation is Controverted" within the same time frame referred to above.

Workers' Compensation Board Hearing

If your claim is disputed you have the right to a hearing before an Administrative Law Judge. Hearings are scheduled by the WCB. The WCB ultimately decides if a case is compensable and any other controversies. In some cases, a number of hearings are held on the same day. You can represent yourself at hearings, but if your case is complicated, it is better to have an experienced compensation lawyer or licensed representative represent you. Your union representative can be consulted for information and referrals.

Attorney's fees are set by the WCB, deducted from your award and paid directly by insurance carrier. Therefore, never retain a representative who wants money upfront.

Check your union contract language for more information about your rights to supplemental workers' compensation benefits, use of accruals and mandatory alternative duty assignments.

- Cover all bases. Make sure your supervisor is notified for each incident. File a timely claim, keep good records, and have medical documentation.
- **Note:** Form C-3 must be sent to the Workers' Compensation Board.
- Medical expenses should be sent to the State Insurance Fund. Bring copies of receipts to hearing and present to WCB judge.



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For PEF members only: PEF 2007-2011 Contract Language – Article 13

Contract language pertaining to Workers' Compensation is contained in Article 13 of the PS&T collective bargaining agreement. The contract language also clarifies procedures and rules for time and attendance purposes when PEF members suffer an occupational injury or illness that is compensable under the Workers' Compensation Law. Contractual benefits for injuries or illnesses that are determined to be compensable under the Workers' Compensation Law will be structured and paid according to the date of injury or onset of illness. Employees whose injuries or illnesses occurred in prior collective bargaining agreements are treated and paid in accordance with the contract provisions effective at the time of their injury.

Supplemental Pay:

As part of the agreement, if a PEF member is **more than** 50% disabled they may be eligible for supplemental pay benefit. This benefit is designed to bring the bi-weekly income of the NYSIF payment and supplement payment combined to be up to 60% of pre-disability gross salary. The supplemental wages are payable for a period of 39 weeks. NOTE: the benefit is available in the *first* 39 weeks of a *continuous* absence or for 39 *cumulative* weeks for *intermittent* absences.

The supplement is payable only if the injured PEF member participates in a Medical Evaluation Network. The network is a group of doctors hired by the state to evaluate the level of the employee's disability and to monitor the prognosis for their return to work. Doctors in the Medical Network do not treat you, nor do they make a determination about whether your claim is compensable.

Mandatory Alternate Duty (MAD)

Program: When the employee is determined to be 50% or less disabled and has a prognosis to return to full duty status within 60 days, they are eligible to return to work under the Mandatory Alternative Duty Program (MAD) However, employees must request a MAD Assignment in writing.

IMPORTANT: Agencies **must** accept eligible employees into the MAD Program. They cannot say that alternative duty is not appropriate for their particular work location or function. Although the alternate duty assignment may not match the employee's customary shift, work week or job description, full regular pay will be maintained during the assignment. If a MAD Assignment is refused other benefits may be available. Contact your union representative or H&S staff for more information.

Death Benefits:

The CBA provides for additional benefits in addition to the statutory death benefits. Accidental death benefits including cash payments and tuition provisions are provided for in Article 11 of the PS&T collective bargaining agreement.

Upon request, the PEF Health & Safety Department will provide factsheets, standards, regulations and other resources. Contact us at 518-785-1900, ext 254 or 1-800-342-4306, ext 254. Also visit our webpage at www.pef.org

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Kenneth Brynien, President

Arlea Igoe, Secretary-Treasurer