

# The Law Offices of Dr. Peter M. Schaeffer

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### **WORKERS' COMPENSATION MEMORANDUM**

If you feel that you need to call our office, please refer to this memorandum first. It is written to explain the nature of the proceedings and your rights under California Workers' Compensation Law. Please keep it for reference, especially if you have a question as to what to do.

When you were injured on the job you became eligible for several types of benefits under Workers' Compensation Law in California.

#### **TEMPORARY DISABILITY (TD)**

Temporary disability is paid at a weekly rate during the time the doctor says you are unable to work due to the injury. Your compensation rate is two-thirds (66%) of your gross earnings, up to the maximum amounts set by law. The current maximum rate is \$\_\_. Depending on the date of your injury, there is a short waiting period for your first check. It usually takes about 2 weeks before the first payment is made.

If for some reason the insurance company will not pay temporary disability, it is often possible to receive disability payments from the Employment Development Department. These are called SDI (State Disability Insurance) benefits. You should advise the person assisting you at the Employment Development Department that you have applied for workers' compensation benefits and your request has been denied. You cannot, however, receive benefits from both the workers' compensation carrier and from the Employment Development Department.

#### **PERMANENT DISABILITY (PD)**

You may be entitled to receive a permanent disability rating if your injury leaves you with any residual disability. This is not payable until your condition becomes permanent and stationary, which means the doctor has stated your condition has leveled off and will stay substantially the same in the future. It does not necessarily mean that you have totally recovered from your injury. We will contact you as soon as we receive any report from a doctor which indicates that your condition is permanent and stationary. Until that time, your case will not be ready for settlement and we are unable to give you any evaluation as to the value of your claim.

#### **MEDICAL CONSULTATION**

As soon as your treating doctor indicates that your condition may be permanent and stationary or that you can return to work, we may make arrangements for you to be examined by a medical specialist

who deals with the type of injuries you sustained. The purpose of that consultation will be to evaluate your medical and physical condition. The insurance carrier may also have you evaluated by a physician of their choice. It is very important to your case that you promptly attend all medical consultation as scheduled. You will be given plenty of advance notice, by mail, of any scheduled appointment.

After the consulting physician examines you, he or she will send us a detailed narrative report setting forth his or her opinion as to the nature and extent of your disability, your need for further medical care and your ability to return to work. It usually takes the doctor about 4 to 6 weeks to prepare and mail out the report.

Generally, your case cannot be settled until all of the medical reports are prepared and mailed to everyone. As soon as we receive the report, it is reviewed and evaluated. The report will also be "rated" and a percentage of disability will be assigned to the doctors opinions in accordance with the rating guidelines of the State of California. These rating guidelines are pre-set and uniform throughout the state.

The "rating" percentage is then converted to a monetary amount also in accordance with a pre-set schedule. At this point, we can give you our opinion as to the value of your claim. The value of your case is based upon this rating and not upon pain and suffering or loss of earnings or upon the extent of your medical treatment.

As you can see, the medical consultation may be the most important part of your case. It is therefore very important that you attend all of your medical appointments as scheduled and that you cooperate fully with the examining physician.

## REHABILITATION

If your doctor indicates that because of your work injury, you will not be able to return to your usual occupation or the job you were engaged in at the time of the injury, you may be entitled to rehabilitation benefits. A rehabilitation program includes services which are reasonably necessary to return you to suitable gainful employment. A rehabilitation counselor will be assigned to your case and the counselor will assist you in the preparation of the program, taking into consideration your injury, past working experience, transferable skills, motivation and labor market. While you are actively engaged in the rehabilitation program, you will continue to receive either temporary disability benefits or a rehabilitation maintenance allowance, depending on the date of your injury.

## HOW THE SYSTEM WORKS

### 1. COURTS AND LAWSUITS

The Workers' Compensation Appeals Board is the trial court for all industrial injuries involving your employer. This is an administrative law proceeding. There are no juries. A workers' compensation judge makes all of the decisions if your case goes to trial. If you are injured as a result of the fault of someone who is not employed by your employer, you may be able to sue that person in Civil Court, in addition to your action against your employer. If this is the case, call it to our attention so that all your rights under California law will be protected. If there were defective equipment or tools involved or unsafe working conditions, be certain to call these to our attention.

In most new cases, we immediately file a formal claim with the insurance carrier or administrator. The Workers' Compensation Appeals Board cannot take any action on your claim until such time as this office requests a hearing to determine any issues which cannot be resolved with the insurance carrier. After we open your file, we obtain your medical reports, conduct an informal investigation, monitor your file in order to determine when your condition becomes permanent and stationary and generally begin preparing to present your case to the Appeals Board. We will promptly request a hearing if your case cannot be settled.

Remember, no case will be settled unless we have your full authority to do so ahead of time. You will be advised of all settlement negotiations, along with our evaluation of the claim, so that you will be able to make an intelligent decision regarding the disposition of your case.

## 2. ATTORNEYS' FEES

Our attorneys' fees are limited by guidelines of the Workers' Compensation Appeals Board and are usually 12% to 15% of your award or settlement. We are also entitled to a similar fee for assisting you in your rehabilitation program. When there is no recovery on a case, there is no attorneys' fee.

## 3. ADDITIONAL BENEFITS

Under workers' compensation law in California, you are entitled to some of the following:

a. Transportation costs are allowed for:

- (1) Examination and treatment by doctors;
- (2) Physical therapy;
- (3) Special trips to the pharmacy to pick up a prescription;
- (4) Trips made to an attorney's office for a deposition only.

Since public transportation is not usually available, most people drive their cars and mileage is allowed. This is paid at 24 cents per mile. Keep a list of your round-trip mileage for all of the above and include the date and place and round-trip mileage of your visits. We have enclosed a form that you can use. When completed, send the forms to us for submission to the carrier.

b. You are entitled to one day's compensation for each full day of work lost to report to a doctor to a deposition. Keep a careful record showing the date and doctor's name.

c. Incidental medical costs you may have paid, such as prescriptions, bandages, etc., can be reimbursed to you. However, we must have receipts for proof so be sure to save them.

## 4. INSURANCE COMPANY INVESTIGATIONS

Insurance companies sometimes hire private investigators to take movies of injured people doing more than they say they can do. Sometimes, they will try to trick you into doing things you should not do. They use long-distance cameras and you may not see them filming you so be aware of this and especially the following:

- a. Some investigators will take air out of your tires or put loose change on the ground so they can film you bending over, lifting the tire, etc. Don't fall for this.
- b. Be careful doing yard work around your house as they may be filming you.
- c. When you go to the doctor or any prescheduled appointment, they will often follow you there and back, taking pictures. Do not do anything you cannot usually do upon such days.

## 5. THINGS TO ALWAYS BE CERTAIN TO DO

- a. REFER ALL INSURANCE COMPANY REPRESENTATIVES TO YOUR LAWYER  
DO NOT GIVE WRITTEN OR RECORDED STATEMENTS.
- b. Do not contact the insurance company yourself - let us do it.
- c. Notify us of any change in your address or phone.
- d. Keep all medical appointments arranged by the insurance company or us.
- e. Let us know when you return to work or lose work if you have been working. Keep a record yourself of days lost from work so you can testify from your notes if need be.
- f. Let us know if you feel you are not getting proper medical treatment or if you are not getting treatment and feel you need it.
- g. If you have been released from medical treatment and your condition worsens, always call the insurance company's last authorized doctor for an appointment. If you are refused an appointment, call us. You may have to testify to this later.
- h. If the doctor releases you to return to work it is always best to try and work. You do not have to work for the same employer. The important thing is to try working as you may have to testify that you did try. If you find, after a trial period of work, that you cannot do it, then call us.
- i. Keep a record of your compensation checks, writing the amount of each check, the date received and especially the periods the check is for.
- j. Whenever you talk to anybody, such as the insurance company, an attorney, the Employment Development Department, a doctor, etc., always get the name of the person you talked to in case we have to contact them. To make this easy, you can always ask for a business card.
- k. If your case is closed by a Findings and Award, remember that if your condition becomes worse, we can Petition to Reopen within 5 years from the date of injury. Keep this date in mind and if you are worse, call us 3 months BEFORE the 5-year anniversary date of your injury.

## 6. JUST SOME LAST REMINDERS;

- ✚ It is a criminal offense to file a false claim to obtain workers compensation benefits. The cost of workers compensation insurance is driving many employers either out of business or out of California where the rates are the highest in the country currently. Therefore the insurance companies may hire investigators on suspicious claims to film injured workers doing their daily activities without their knowledge. If you are filmed doing activities that you claim you are unable to do because of your injury, the insurance companies can and will use this film to destroy your claim and even prosecute for fraud.
- ✚ Your case cannot be settled until after your condition becomes permanent and stationary.
- ✚ It will not jeopardize your case or impact upon the value of your claim if you return to work. Just be careful that you don't aggravate your injury.
- ✚ If you have questions about your case you can always talk to one of our legal assistants. Our legal assistants are trained to answer many questions about your case. If they cannot answer your questions or handle a problem that may arise, they will check with the attorney. Please do not demand to speak to your attorney.

We trust that this information will be useful to you and hope you will refer to it in the course of your case.

I hope you find the above information useful and informative. This outline should give you a timetable of what to expect during your claims normal aging process.

*Peter M. Schaeffer Esq.*